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Letter of Comment No: File Reference: FSP8524A

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Mr. Lawrence W. Smith, Director Technical Application and Implementation Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Proposed FASB Staff Position No. EITF 85-24-a, Application of EITF Issue No. 85-24, "Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge," When Cash for the Right to Future Distribution Fees for Shares Previously Sold Is Received from Third Parties

Dear Mr. Smith:

In proposed FASB Staff Position (FSP) No. FAS 140-b, "Application of EITF Issue No. 85-24, 'Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge,' When Future Distribution Fees Are Sold to Unrelated Third Parties," the staff had concluded that the sale of future distribution fees did not give rise to revenue or gain recognition because the transfer of the rights did not involve the sale of a financial asset within the scope of FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities. In addition, EITF Issue No. 88-18, "Sales of Future Revenue", indicates that the cash received from the sale of future revenue generally should be classified as debt when "the enterprise has significant continuing involvement in the generation of the cash flows due to the investor (for example, active involvement in the generation of the operating revenues of a product line, subsidiary, or business segment)."

In proposed FSP EITF 85-24-a, the staff has now concluded that revenue recognition is appropriate where there is no continuing involvement or recourse. Although the Basis for Conclusions of proposed FSP EITF 85-24-a addresses certain issues considered by the staff in reaching its conclusion, it does not explain why the staff changed its conclusion from proposed FSP 140-b. The final FSP should include an explanation of why the staff changed its position from the earlier proposed FSP. That explanation may be helpful to readers in evaluating the appropriate accounting for other transactions.

In reaching its conclusion in proposed FSP EITF 85-24-a, the staff appears to be using a narrow application of the term "continuing involvement" by permitting revenue recognition on the sale of future distribution fees if the nature of the continuing



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involvement of the distributor or its affiliates is of a "distinct nature and are separable from the services provided by the distributor." Since the description of "continuing involvement" in the proposed FSP appears to be more limited than the description of continuing involvement in EITF 88-18, it is important that the staff provide clear guidance on the framework that should be used in determining the appropriate application of continuing involvement to other transactions involving the transfer of future cash flow streams that are not within the scope of Statement 140.

In addition, we believe the staff should clarify the guidance provided in paragraph 24 as to whether constraints that are placed on the distributor or other members of the consolidated group to maintain the status quo and protect future 12b-1 fee revenues would constitute an activity that is considered a future performance obligation that would preclude revenue recognition. For example, sales agreements may contain provisions prohibiting members of the consolidated group from initiating any changes in fundamental investment objectives or policies that might significantly affect the risk profile of the mutual fund or imposing the responsibility to use best efforts to discourage such changes. It is not clear from the proposed FSP what effect, if any, constraints placed on the distributor or its affiliates will have on the revenue recognition decision.

Finally, we believe the staff should clarify the guidance provided in paragraph 19 as it relates to revenue recognition in the "distributor's separate-company financial statements." Since "separate-company financial statements" are not discussed elsewhere in the proposed FSP, it is not clear whether the staff intends to provide guidance related to a specific situation regarding separate-company financial statements or if this paragraph also is intended to address situations where the distributor sells future distribution fees to its parent or other affiliate. Also, due to the lack of specific guidance in the accounting literature on presentation of separate-company financial statements, it is not clear when continuing involvement by another member of a consolidated group or a related party may impact revenue recognition in other situations. Accordingly, additional explanation on why continuing involvement by other members of the consolidated group would not affect revenue recognition in the separate-company financial statements would be helpful to readers in addressing other situations.

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If you have questions about our comments or wish to discuss any of the matters addressed herein, please contact Mark Bielstein at (212) 909-5419 or Paul Munter at (212) 909-5567.

Sincerely,

KPMG LLP