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October 3, 2003

Mr. Lawrence Smith
Director, Technical Activities and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-51156

**Re: Proposed FASB Staff Position Nos. 46-b and 46-d**

Dear Mr. Smith:

We appreciate the opportunity to comment on the above-referenced proposed FASB Staff Positions (the "FSPs"). Although we understand that these FSPs have been proposed by the Board in an effort to provide further guidance to practitioners and auditors regarding the implementation and application of Interpretation 46, we do not support the issuance of such detailed implementation guidance, and are especially concerned given the timing of its issuance – namely, shortly after the date that the Interpretation is required to be implemented.

More specifically, we believe that if the Board is truly committed to issuing principle-based standards, it should resist the urge to issue the type of detailed implementation guidance that is exemplified by the mathematical calculations in the proposed FSP 46-d. We note that there have been many questions raised in practice regarding how to perform the mathematical calculation illustrated in Appendix A of Interpretation 46, and FSP 46-d is an attempt to deal with just one narrow issue. If the Board were to attempt to grapple with all the issues that are encountered in applying the relatively simplistic example in Appendix A to real world transactions, it would likely have to form a committee similar to the Derivatives Implementation Group – an approach that we and many others would not support.

Further, we believe that many of these implementation questions underscore a larger issue, namely, an overreliance on a mathematical calculation to answer the consolidation question, without an overall review to ensure that the result makes intuitive sense. We strongly believe that if the mathematical calculation produces a result that does not make

sense, the result should be rejected; yet we are finding (at least anecdotally) that in many instances this does not appear to be the case. We believe that an FSP worth issuing would be one where the Board clarifies that Interpretation 46 should be governed by an overall principle that the application of the Interpretation should result in a conclusion that overall presents fairly the financial condition and results of the entity. Though the application of a "substance over form" approach should be obvious, we are dismayed to find that this is not always the case in practice.

In addition, we are concerned that these FSPs would be issued so soon after the date that companies are required to implement Interpretation 46. As a result of the expedited implementation timeframe of Interpretation 46, companies have necessarily had to make a number of independent decisions regarding the practical application of Interpretation 46, and we believe that they have done so in good faith, attempting to be true to the spirit of the overall guidance. If the Board proceeds with the issuance of these FSPs, there is a real risk that companies may arrive at different answers regarding consolidation and will have to change their accounting. Clearly, this would be operationally inefficient, and hard to justify from a cost-benefit perspective. As a general matter, we believe that this state of affairs argues for a more extended time frame for the implementation of complex standards that are issued by the Board in the future, as well as the need to expose for public comment all aspects of a standard, including the type of implementation guidance included in Appendix A to Interpretation 46, prior to finalization, so that practitioners and auditors have an appropriate amount of time to raise and resolve questions.

That said, if the Board decides to proceed with the issuance of these FSPs, we have the following comments regarding the content of the proposals, primarily with respect to the application of Interpretation 46 to decision makers:

**FSP 46-b**

We agree with the proposal to defer the effective date for applying the provisions of Interpretation 46 for certain decision makers, as we believe that in many cases, the application of Interpretation 46 produces anomalous results for decision makers. We therefore encourage the Board to redeliberate these provisions, and consider not only those situations where the decision maker receives a fee that has no variability (as is currently proposed in FSP 46-b), but also those instances where the decision maker receives a fee that is proportional to the assets that are managed by the decision maker (for example, where an asset manager receives a fee equal to a percentage of the assets managed). In general, we believe that where a decision maker receives a fee based on the assets it manages, has no exposure to the expected losses of the entity, and is able to be removed at will by the investors who do have exposure to the expected losses of the entity, the decision maker is merely receiving a fee for services rendered, and should not be required to consolidate the entity.

**FSP 46-d**

We are concerned that the calculations in Exhibit A to the proposed FSP result in a double counting of the fees to the decision maker. In calculating the decision maker's share of the expected residual returns of the entity, the following are added together:

1) the decision maker's expected residual returns arising from its fees ($37,857 in the example) which represents the probability weighted average of a range of fees that might be earned by the decision maker, discounted back to net present value
2) the decision maker's expected variability in its return on fees ($1,333 in the example), which is effectively derived from the above number.

Apart from the difficulty of expressing this calculation in words, we find it hard to understand why *both* the expected fees themselves *and* the variability of those fees are considered to be variable interests. In effect, it seems as if the decision maker's fees result in *two* forms of variable interests. Furthermore, we do not believe that Interpretation 46 as written would lead a reader to this conclusion. Accordingly, we urge the Board to reconsider this calculation.

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In closing, we understand the Board's desire to resolve questions regarding the application of Interpretation 46; however, we continue to believe that the Board should pursue a principles-based approach. We believe the most critical clarification that should be issued by the Board is that the application of Interpretation 46 should produce a result that presents fairly the substance of the underlying transaction and should not be distortive or misleading to investors.

Thank you again for the opportunity to comment on the proposals. We hope that the Board will give serious consideration to our comments as they further deliberate this project. If you have any questions regarding our comments, please do not hesitate to contact either John Fosina, Controller of Merrill Lynch, at 212-449-8618, or Lizbeth Applebaum of the Accounting Policy Department, at 212-449-1984.

Sincerely,

/s/ Esther Mills

First Vice President

cc:
Mr. Eric Schuppenhauer, Office of the Chief Accountant, *SEC*