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October 3, 2003

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

Re:
- *Proposed FASB Staff Position No. FIN 46-a, Effective Date of FASB Interpretation No. 46, Consolidation of Variable Interest Entities, for Nonregistered Investment Companies*
- *Proposed FASB Staff Position No. FIN 46-b, Effective Date of FASB Interpretation No. 46, Consolidation of Variable Interest Entities, for Certain Decision Makers*
- *Proposed FASB Staff Position No. FIN 46-c, Impact of Kick-Out Rights Associated with the Decision Maker on the Computation of Expected Residual Returns under Paragraph 8(c) of FASB Interpretation No. 46, Consolidation of Variable Interest Entities*

Dear Mr. Smith:

PricewaterhouseCoopers LLP appreciates the opportunity to respond to each proposed Financial Accounting Standards Board (FASB) Staff Position (FSP) enumerated above.

We generally support each of the three proposed FSPs, but believe that further clarifications and guidance are necessary. We appreciate the Board's willingness to address implementation concerns on a timely basis, and believe that the issuance of the three proposed FSPs will help clarify implementation and interpretation issues surrounding FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (FIN 46 or the "Interpretation").

Proposed FASB Staff Position No. FIN 46-a, Effective Date of FASB Interpretation No. 46, Consolidation of Variable Interest Entities, for Nonregistered Investment Companies

We agree with the conclusion reached in this FSP that a deferral of the implementation of FIN 46 should be granted to investment companies that are not subject to SEC Regulation S-X Rule 6-03(c)(1) and that also meet the characteristics described in this proposed FSP. However, we believe the FASB staff should provide guidance as to the applicability of the transitional disclosures in paragraph 26 of FIN 46 as a result of this deferral. Specifically, the FSP should indicate whether the transitional disclosures included in that paragraph are required to be made during the deferral period granted by this proposed FSP.

Proposed FASB Staff Position No. FIN 46-b, Effective Date of FASB Interpretation No. 46, Consolidation of Variable Interest Entities, for Certain Decision Makers

We agree with the general conclusion reached in this proposed FSP that a deferral of the implementation of FIN 46 should be granted for decision makers who receive fees paid by a VIE when there is no fee variability and the decision maker has no exposure to the expected losses of the VIE and no right to the expected residual returns of the VIE. It appears that the goal of this FSP is to allow those parties who make decisions for an entity, but have no financial incentives, to not be viewed as a decision maker. We believe, however, that the criteria that are stipulated in this proposed FSP are incapable of being met, as we believe it is impossible to have a fee structure with zero variability. We also believe that this concept is inconsistent with the definition of a variable interest in FIN 46. We believe that even a fixed fee for such a service will likely have some variability, as it is exposed to the credit risk of the entity (e.g., there is a possibility, regardless of likelihood, that the entity will default on the payment of such a fixed fee). As a result, we believe that expected cash flows of such a fixed fee could change as a result of changes in the fair value of the entity's net assets. In this regard, if the FASB chooses to allow decision makers to exclude "fair value" of the expected fee when calculating the expected residual returns, we believe the FASB should clarify that the decision making fee to be excluded should have only inconsequential or insignificant variability, or recommend to the Board that the definition of a variable interest should be changed to exclude interests that have only inconsequential or insignificant variability. We acknowledge that further clarification may be forthcoming from the FASB or its staff on the proper criteria to be used in determining whether a fee is "fixed" (i.e., real dollar fee vs. percentage fee). However, we believe that regardless of whether the criteria is established on a real dollar basis or on a percentage basis, the logic contained in this proposed FSP would still be flawed, as it would conflict with the definition of a variable interest.

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Proposed FASB Staff Position No. FIN 46-c, Impact of Kick-Out Rights Associated with the Decision Maker on the Computation of Expected Residual Returns under Paragraph 8(c) of FASB Interpretation No. 46, Consolidation of Variable Interest Entities

We agree with the general concept included in this proposed FSP that the presence of kick-out rights alone should not allow for the exclusion of the decision maker's fees in the computation of the expected residual returns under paragraph 8(c). We recommended, however, that the proposed FSP acknowledge that a rebuttable presumption exists that kick-out rights alone should not allow an enterprise to avoid being a "decision maker" and that this rebuttable presumption could be overcome when substantive kick-out rights do exist. If the right to remove the decision maker is timely, substantial, feasible, and substantially within the control of the equity holders, we believe the presumption may be overcome. We also believe that this guidance can be utilized to determine whether a decision maker is merely acting as an agent that is serving at the pleasure of the equity holder and can be removed at will. We recognize that in practice there are difficulties that arise in making the determination as to whether such rights are substantive. We acknowledge that this is not an easy issue to deal with in practice, but we believe that this would create symmetry between the concept of decision maker in the context of paragraph 8 and the concept of decision making ability in the context of paragraph 5(b)(1) of the Interpretation.

If the FASB staff chooses not to adopt our recommendation, then we believe that further guidance is needed in the form of a detailed and specific definition of the term "decision maker." We believe that such a definition is necessary to create a broad principle to be applied in practice to ensure consistent application of the decision making concept amongst financial statement preparers. Additionally, we believe the FASB staff should reconcile the decision maker concept in paragraph 5(b)(1) and that in paragraph 8, as the distinction between the two decision-making concepts appears inherently inconsistent.

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If you should have any questions regarding our comments, please feel free to contact Doug Tanner at (973) 236-7282 or Thomas Barbieri at (973) 236-7227.

Sincerely,

PricewaterhouseCoopers LLP