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Mr. Lawrence Smith
Director, Technical Activities and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
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RE: File Reference No. 1082-300

Dear Mr. Smith:

Merrill Lynch appreciates the opportunity to comment on the proposed modification to Financial Interpretation No. 46 (the "ED"). We have followed with great interest the development of FASB Interpretation No. 46 ("FIN 46" or the "Interpretation") and the related FASB Staff Positions ("FSPs") and continue to be interested in the development of this guidance as it has far reaching effects on both our business and that of our clients. Although we have specific comments regarding the content of the ED, in general, we are more concerned by what is omitted than what is included and believe that the modification as drafted does not address certain key issues related to the implementation of FIN 46 that are still being deliberated by the Board. In our opinion, it is not practical for the Board to expect its constituents to implement a new accounting standard while major issues related to FIN 46 are still being debated by the Board, and therefore, we do not support the issuance of the ED at this time.

In our previous letter to the Board regarding FSPs 46-B and 46-D, we expressed our view that the Board should pursue a principles-based approach to FIN 46. We continue to believe the Board should avoid issuing overly detailed implementation guidance, and that the most critical clarification that should be issued by the Board is that the application of FIN 46 should produce a result that presents fairly the substance of the underlying transaction and a result that is not distortive or misleading to investors. In addition, we believe that there are other issues that the Board has been petitioned to resolve that we believe should be finalized prior to issuance of a final modification.

We identify the following four issues that we believe should be resolved in order to accurately identify the primary beneficiary and appropriately record a variable interest entity (“VIE”) transaction in the financial statements:

- Clarification on expected loss calculation – We understand that the FASB Staff is currently proposing guidance (and potentially drafting additional unexposed guidance) to clarify the expected loss calculation. If the Board intends to proceed with this project, we believe that detailed guidance regarding mathematical calculations should be rejected in favor of more general, qualitative guidance, and that such guidance should be exposed for public comment and resolved prior to the full implementation of FIN 46.
- Treatment of fees to decision maker – We understand that the FASB Staff is currently drafting guidance regarding the treatment of fees to decision makers and how those fees would impact the FIN 46 calculation. It is anticipated that the guidance may result in a significant change to how asset managers determine whether or not they are the primary beneficiary.
- Treatment of non-recourse liabilities – The FASB has not addressed the “day-two” issue of how to account for debt that is paid based exclusively on the performance of assets in a VIE. We believe that in these situations there should be clear guidance supporting an adjustment to the carrying value of the liability.
- Definition of a variable interest (*i.e.*, elimination of Appendix B) - The elimination of Appendix B results in the standard being issued with no descriptive examples about what constitutes a “variable interest”. We do not believe it is appropriate to issue a pronouncement that has not provided clear guidance on such a fundamental aspect of FIN 46.

We are concerned that if the FASB finalizes the ED now, with the above four items unresolved, many constituents may find that they have to consolidate certain entities now and then deconsolidate them later when clarifying literature is released (or vice versa). Therefore, we feel the most appropriate approach would be for the Board to postpone implementation of FIN 46 until these four issues are resolved.

A related concern that we have is the Board’s overreliance on the FSP process. As of the current date, the FASB Staff has already released FSPs addressing six substantive issues associated with the implementation of FIN 46, and we understand that the Staff is currently drafting several more. We feel that the continued issuance of additional guidance is a strong indicator that there continues to be serious implementation issues with the standard. In our view, the FSP process should be used to provide clarification on implementation guidance, not as a method for amending pronouncements by addressing complex issues related to the conceptual framework of standards.

We believe that modifications to the conceptual framework of FIN 46 should be issued in aggregate in the form of an amendment or modification to the original Interpretation. We do not believe addressing these key items through multiple FSPs over an extended period of time is an efficient or effective way for constituents to adopt the standard. We believe that such a piecemeal approach is undesirable because it may result in prescriptive, rather than principle-based literature, and it creates a great deal of uncertainty for constituents attempting to implement the standard in the meantime.

Thus, as an overall matter, we support the view of the dissenting Board members who felt it would be prudent to postpone the implementation of FIN 46 until key issues have been addressed and implications of the guidance have been fully assessed. We cannot emphasize enough how important it is for the Board to take sufficient time to conduct due diligence related to identifying and addressing the ramifications of adoption by preparers and users. We continue to believe that field-testing should be a major component of this process as it would be instrumental in demonstrating if the standard is operational.

Although we strongly believe that this guidance should not be issued until the key issues in FIN 46 have been addressed and incorporated into the ED, should the Board decide to proceed with the finalization of the ED at this time, we have the following specific comments regarding the content of the ED.

Paragraph 5

We commend the Board for adding the requirement in paragraph 5a to consider qualitative factors when determining if equity at risk is sufficient to absorb expected losses. We believe the inclusion of a qualitative analysis is a move in the right direction as it promotes a more “substance over form” approach. One of the concerns we have had with FIN 46 is its overreliance on a mathematical calculation to answer the consolidation question, without an overall review to ensure that the result makes intuitive sense. We strongly support this change by the Board to greater encourage more of a qualitative analysis to determine the primary beneficiary of a VIE.

However, we are confused by the requirement added to paragraph 5c whereby consideration must be given to each party’s ability to share in the expected losses and expected returns beyond the equity investment at risk in determining if an entity is a voting rights entity or VIE. Currently in FIN 46, there are provisions at the end of paragraph 5 which were included as a final hurdle in determining if an entity is a voting rights entity or a VIE (commonly referred to in practice as the “anti-abuse clause”). It is our understanding that the purpose of the anti-abuse clause is to prohibit an entity from being considered a voting rights entity if both of the following conditions exist:

- a) voting control is held by investors who are not at risk of absorbing expected losses and/or expected returns in the same proportion as their voting rights; and
- b) a single investor with limited or no voting rights absorbs a majority of the expected losses and/or expected residual returns.

We believe that the anti-abuse clause appropriately serves as a final check in determining if an entity should be considered a voting rights entity or VIE. However, we do not believe that the additional sentence at the end of what is now paragraph 5c is necessary. We do not believe the requirement makes logical sense because if a preparer determines that equity is sufficient to absorb expected losses, then, by definition, other interests will absorb a very small portion of the expected losses. Therefore, in our opinion, there should be no need to look to any other interests held because the determination has already been made that the equity is sufficient to absorb the risks and rewards of the entity. It is our view that the additional requirement conflates the idea of substantive equity with that of primary beneficiary. We would strongly encourage the Board to remove this requirement or provide clearer guidance as to the intent and purpose of the modification, perhaps by providing an example of how the requirement would be applied.

Triggering Events

We support the Board's clarification that the incurrence of operating losses greater than amounts originally expected would not cause a variable interest holder in a VIE to reassess its FIN 46 analysis (often referred to in practice as a "triggering event"). However, we strongly disagree with the Board's decision to include events that are beyond the control of a variable interest holder and/or that relate to information that is not public as triggering events. We are disappointed to see this proposed modification as we recall that a similar proposal was debated and rejected in the original FIN 46 deliberation process.

As previously expressed, it is our view that it is operationally impracticable to apply this requirement in practice, as variable interest holders of an entity usually are not privy to knowledge of transactions between the VIE and third parties. In many VIE transactions, variable interests are widely dispersed, and the various parties are not known to one another (nor are the terms and conditions of their respective interests). In addition, once a transaction is closed, there is no mechanism to provide this type of information to investors; providing it would likely be cost prohibitive, as it would involve detailed tracking of all purchases and sales of interests that occur over the life of the VIE. We strongly believe reassessment events (beyond changes in the VIE's capital structure) should only be based on events within the control of the reporting entity, i.e., in its capacity as purchaser or seller of variable interests.

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In closing, we believe this ED addresses very few significant implementation issues associated with FIN 46. We understand and acknowledge the Board's desire to resolve questions regarding the application of FIN 46 in a timely manner. However, we believe that if the Board intends to proceed with issuing guidance on the key issues noted above, preparers, practitioners and other users of financial statements would be better served if the Board were to delay issuance of the ED until after these issues are addressed.

Thank you again for the opportunity to comment on the ED. If you have any questions regarding our comments, please do not hesitate to contact either John Fosina, Controller

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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