



CANADIAN BANKERS ASSOCIATION

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Via email: director@fasb.org

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Mr. Lawrence Smith
TA & I Director
Financial Accounting Standards Board
Of the Financial Accounting Foundation
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116
U.S.A.

Letter of Comment No: 79
File Reference: 1082-300
Date Received: 12/1/03

Dear Mr. Smith:

Re: File Ref. No. 1082-300 – Exposure Draft: Consolidation of Variable Interest Entities, Modification of FASB Interpretation No. 46

Thank you for the opportunity given to the Canadian Bankers Association (CBA) to comment on the U.S. Financial Accounting Standards Board's ("FASB") Exposure Draft ("ED") on the *Consolidation of Variable Interest Entities* and the modification of FASB Interpretation No. 46 ("FIN 46").

The CBA is the main professional industry association representing over 40 of Canada's domestic and foreign-owned Chartered banks and it is a principal contributor to the development of accounting standards and public policy on issues that affect banks. As several of our members are SEC registrants, they are impacted by the accounting standards that are implemented in the U.S. since they must apply U.S. GAAP when preparing financial statements for U.S. filings.

The Canadian banking industry strongly endorses the proposed modifications made to paragraph 4 of FIN 46 that will exclude mutual funds organized as trusts and trusts of a bank's trust department that are by design, customary practice and law and not for the benefit of the trustee or related parties of the trustee, from the scope of FIN 46.

However, we would recommend that paragraph 4(h) be amended, as shown below in bold type. This amendment brings forward to paragraph 4(h) the proposed wording in paragraph A13 and leaves less room for ambiguity.

"Paragraph 4

- h. Mutual or other pooled funds (whether in the form of trusts, corporations, partnerships or otherwise) and personal or institutional trusts of a bank's trust department or subsidiary company and similar arrangements that are organized and operated in a manner consistent with customary existing practices and law, not for the benefit of the trustee, manager, sponsor or custodian or their related parties, are not subject to consolidation according to the requirements of this Interpretation. However, if a fund or trust is used by business enterprises in an effort to circumvent the provisions of this Interpretation, that fund or trust shall be subject to this Interpretation.*

The CBA believes that mutual funds, organized as trust or corporate structures, and other pooled and institutional funds should be exempted from the scope of the Interpretation, as the managers do not manage these for their own benefit, but rather for the benefit of the unit holder/participant in exchange for a fee. The manager has an obligation to manage the funds in accordance with the terms of the prospectus (or similar placement memorandum) and is limited in the actions it can make. Given the structure of mutual funds and their relationships with the fund manager, we believe that it is appropriate to exempt mutual funds and other pooled and institutional trusts from the application of FIN 46.

We also submit that personal trusts administered by professional trustees are distinct in that they are initiated by unrelated third parties and therefore outside the control of the trustee, unlike the other vehicles caught under this Guideline. The trustee is only carrying out the interests of the settlor for a fee. Therefore, as long as the settlor is an unrelated third party, the trustee should not be considered a potential beneficiary under FIN 46. Furthermore, the trustee has a fiduciary obligation to the beneficiaries, making it illegal to manage the funds in any way that would result in the trustee becoming a beneficiary of the trust, outside of the fee that was set by the unrelated settlor. We would question the rationale for any scoping-in of personal trusts under FIN 46 and we will be unable to see a justification for the costs involved given that these trusts are initiated by unrelated third parties and therefore outside the control of the trustee. As a consequence, for both practical and principled reasons, we believe the proposed change in the language of paragraph 4 of the FIN 46 correctly addresses the issues raised.

Thank you for considering our comments on this important matter. If there is any further information that you require or if you have any questions or concerns, please do not hesitate to contact me.

Sincerely

*Original Signed by
Kelly Shaughnessy*

RKS