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October 10, 2003

Mr. Lawrence Smith Director of Technical Application and Implementation Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116 E-mail: director@fasb.org

Dear Mr. Smith:

Bank One Corporation ("Bank One") is pleased to have the opportunity to comment on the proposed Financial Accounting Standards Board ("FASB") Staff Position No. FIN 46-d, Treatment of Fees Paid to Decision Makers and Guarantors as Described in Paragraph 8 in Determining Expected Losses and Expected Residual Returns of a Variable Interest Entity under FASB Interpretation No. 46, Consolidation of Variable Interest Entities ("FIN 46-d" or the "FSP"). Bank One is the nation's sixth-largest bank holding company, with assets of more than \$299 billion, a large seller of originated loans through securitization vehicles, and an active participant in the asset-backed finance market as an issuer, as an administrator for certain multi-seller commercial paper conduits and as an underwriter of asset-backed securities. Bank One believes it is well qualified to comment on FIN 46-d.

Our comments are outlined below:

## Consideration of a variable interest in an expected loss calculation

FIN 46-d states, "For the purpose of calculating an entity's expected losses and expected residual returns, the expected variability in the entity's net income or loss is determined based on the various estimates of net income or loss available to, or absorbed by, the variable interest holders."

With regard to the allocation of expected losses to multiple variable interest holders, we believe it is appropriate to only consider those parties that have a substantive "interest arisk" (i.e., an interest that carries an economic obligation to absorb an entity's expected losses or a portion thereof). For instance, in a well-collateralized Collateralized Debt Obligation (CDO) structure, the most senior AAA tranche may not have substantive "interest at risk" since the holders of the AAA tranche often do not have a high probability of bearing any true risk of loss. This notion of substantive "interest at risk"

exists elsewhere in GAAP, for example in EITF 99-20, Recognition of Interest Income and Impairment on Purchased and Retained Beneficial Interests in Securitized Financial Assets, where only tranches of a certain level of subordination are considered in the assessment of impairment because the EITF recognizes that only those tranches are truly exposed to risk of loss.

## Subordination/ranking of the risk of loss

As currently drafted, we do not believe that the proposed FSP adequately addresses the relative subordination of variable interests in a VIE in absorbing the entity's expected losses (i.e., the order in which economic losses are absorbed, as outlined in the entity's "waterfall"). Exhibit A of FIN 46-d could be interpreted as suggesting that expected losses should be proportionately shared among the variable interest holders without regard to relative subordination. We believe that the allocation of the entity's expected losses must reflect the relative subordination of variable interests. This is necessary in order for the expected loss model to be aligned with the economic reality of the VIE (i.e., expected losses must be aligned with possible loss of value, not just negative variability in general). To illustrate, the Exhibit A example of FIN 46-d allocates 5% of the variability in expected losses to the decision-maker even though the decision-maker will be paid out prior to any other variable interest holder. Under such circumstances, we believe the decision-maker should be allocated zero variability in expected losses because it will not absorb any economic losses (i.e., it has no interest at risk). Alternatively, if the decision-maker was paid its fee out of the entity's residual earnings and was not protected by other subordinate interests, the decision-maker should be allocated the 5% of variability in expected losses since its interest is truly at risk.

## Expected losses of the entity taken as a whole vs. aggregation of expected losses of individual variable interest holders

When individual variable interests have variability that is not represented in the entity's overall expected losses, we believe that variability should be excluded from the allocation of expected losses to those variable interests. For example, expected losses or expected residual returns due to interest rate variability of a variable interest that is eliminated in the entity through matched finding or hedging should be excluded from the calculation of expected losses (i.e., absorbed variability should be included whereas contributed variability should be excluded). We believe that the aggregation of expected losses of individual variable interest holders should, under no circumstances, exceed the expected losses of the entity taken as a whole.

Bank One appreciates the opportunity to comment on the FSP. If you have any questions on this comment letter or would like any additional information, please do not hesitate to contact Melissa J. Moore at (312) 336-4060 or William L. Tabaka at (312) 336-3723.

Very truly yours,

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Melissa J. Moore Controller and Chief Accounting Officer

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William L. Tabaka Director of Reporting and Accounting Policy