

**AMVESCAP PLC**

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Director, TA&I-FSP  
Financial Accounting Standards Board  
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**Proposed FSP 46-b and 46-c**

AMVESCAP PLC is a leading independent investment manager with approximately \$348 billion in assets under management. We operate under the AIM, INVESCO and Atlantic Trust brands. We are listed on the London and New York stock exchanges and qualify as a foreign private issuer under the SEC regulations.

We appreciate the opportunity to comment on FASB Staff Position (FSP) 46-b, Effective Date of FASB Interpretation No. 46, *Consolidation of Variable Interest Entities*, for Certain Decision Makers, and FSP 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*.

**FSP 46-b**

We urge the FASB to consider clarifying the term "no variability" in fees in its discussion of the fee received by certain decision makers. For example, retail unit trust fees are a fixed percentage of the underlying net asset value of the unit trust product. By their nature, they include variability due to fluctuations in the market values of the assets held by the funds. FIN 46, without clarification that market-driven variable decision maker fees are excluded, indicates that these types of entities would need to be analyzed to determine their VIE status. This likely will result in significant amounts being included in the balance sheet, even though the advisor company has no control over the funds and will not participate in any risk or reward of ownership for these products.

FIN 46 suggests that many investment industry products, such as unit trusts, could be considered variable interest entities due to the fact that the manager has the decision-making ability, even with zero ownership equity. The equity owners of these entities do not make decisions about the daily operational activities of the trusts, yet they have equity ownership rights such as the right to consent to fundamental changes to the entity (fee increases, changes in investment objectives, changes in fund manager, changes in auditors, and fund mergers). Despite these actual legal rights of the unit trust owners, they may be deemed to lack decision-making ability under FIN 46 because they do not hold rights similar to common shareholders of corporations, such as the right to elect the trustee.

In practice, there are no substantial differences in control structures between unit trust products and corporations. For example, investors may already have watchdog mechanisms in place that provide elements of indirect control, such as trustees governing unit trusts. Also, the level of regulation that exists in jurisdictions in which unit trust products are offered is an element of control in itself by providing investors with a front-line of defense against conflicts of interest and other potential abuses. Finally, investors can exercise their vote by choosing to redeem their investments in unit trust products.

The consolidation of our unit trust products would add voluminous figures to our balance sheet, materially misstating the underlying statement of position and results of operations of AMVESCAP. An unintended

consequence of consolidating these products would be that the management fee earned from these products would have to be eliminated in the consolidation. Therefore, the fund manager's financial statements would not even reflect the management fee earned by these unit trusts. Additionally, the inclusion of interest income from money market funds into the profit and loss statement of the fund manager would imply that the fund manager became involved with the fund to earn interest income, when the real intent was to earn management fees that were required to be eliminated as a result of FIN 46. The grossing up of the assets and liabilities of the fund manager by the inclusion of the unit trusts' assets and liabilities may have a significant impact on minimum capital requirements and debt covenants of our various subsidiaries. The analysis would need to be completed for the over 800 other international products offered by AMVESCAP subsidiaries. Each one of these products would need to be analyzed to determine VIE status, and then a quantitative analysis would need to be completed, on a product-by-product basis, to determine if we are the primary beneficiary. The timeline for completing a VIE analysis and an expected losses/residual returns calculation would be considerable.

We feel that if the term "no variability" in fees were expanded to exclude variability caused by market fluctuations, this would fairly eliminate the consideration of and possible inclusion of significant investment product balances into our financial statements.

#### **FSP 46-c**

We would like to request that the FASB consider modification of FIN 46 for kick-out clauses which work effectively to disperse control over the VIE, because where there is no other risk of loss or potential for gain from the VIE, kick-out clauses provide another layer of protection for the other participants in the VIE. The decision-maker can be removed with or without cause, effectively spreading control to the other parties to the VIE.

For example, certain of our subsidiaries provide investment advisory services to collateralized debt obligations (CDOs) in the context of our investment management business. The industry practice is that we invest in these products with our clients, in a very limited amount. CDO products usually have kick-out clauses that protect the other investors by allowing them to remove us as manager at-will. The kick-out clauses provide the principal participants in these products to exert their influence into the decision making process.

If consolidated, these CDOs would add variability into AMVESCAP's profit and loss statement. The assets of these CDOs would be required to be marked to market, with gains and losses going through the income statement, while the liabilities would not. These market movements would cause significant movements in components of the P&L, only to be reversed by similar movements in the minority interest, resulting in little or no change to the reported net income. The management fees received from CDO products would also be eliminated upon consolidation, rendering the fund managers profit and loss statement meaningless.

#### **Conclusion**

Consolidation of our investment products, including unit trusts and CDOs, would not present fairly our financial position or our results of operations. Variability would be unnecessarily introduced into our P&L, and our balance sheet would show massive assets and minority interests. We urge the FASB to clarify its FSP 46-b and 46-c to take into consideration the types of fees and contractual arrangements specific to the investment management industry.

Please contact us if you require additional information regarding our comments.

Sincerely,

Robert F. McCullough  
Chief Financial Officer