

J.P. Morgan Chase & Co.

October 1, 2003

To: Director-FASB

J.P. Morgan Chase & Co. (JPMorgan Chase) appreciates the opportunity to comment on the proposed FASB Staff Positions No. FIN 46-b, Effective Date of FASB Interpretation No. 46, Consolidation of Variable Interest Entities, for Certain Decision Makers (FSP 46-b), and 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 (FSP 46-c).

FSP 46-b

JPMorgan Chase supports this proposed FSP. Under the current definition, a "decision maker" who has no exposure to expected losses and no right to residual returns should be excluded from the requirements of FIN 46. FIN 46 is grounded on the risk/reward model. Fixed fees, whether fixed dollar or fixed percentage, should not be a critical factor in determining the primary beneficiary of a Variable Interest Entity (VIE) - provided such fees are comparable with usual and customary pricing for the services provided. The primary beneficiary of a VIE should be the party that will receive the majority of the returns (i.e., expected and residual) and assumes the majority of the losses, if any.

We believe that this FSP should cover both fixed amount and fixed percentage fee structures, and ultimately, be incorporated into the FIN 46 amendment. Fees that are fixed in amount or a fixed percentage of assets managed are both fixed depending on how they are viewed. One perspective would be that a fee fixed in amount has no variability in dollar terms. Alternatively, a fixed percentage fee provides no variability when measured against assets managed and, thus, presents a fixed cost relative to the investor's position. Further, the dollar amount of a fixed percentage fee can vary due to additional investments in or withdrawals from the asset portfolios and, thus, changes in the fee are not always due to the performance of the asset portfolios. This question of fixed versus variability is reminiscent of FAS 133 and its distinction between fair value and cash flow hedges of interest rate risk. Fixed and variable interest rate instruments each have different fixed components, principal value versus income stream, and thus, both are effectively different sides of the same coin.

Further, we do not believe that fees can be addressed in isolation on a gross basis. The fee structure may encompass expenses that are assumed by the "decision maker" on behalf of the VIE that would otherwise be expenses of the VIE. In consideration of the amount of fees to be included in the calculation, assuming that the "decision maker" covered by the FSP is not scoped out by amendment to FIN 46, then the expenses of the VIE assumed by the "decision maker" included in the fee structure should be incorporated into the FIN 46 assessment calculation.

FSP 46-c

We do not agree with the Staff's conclusion regarding the ability of an investor or another party to remove the "decision maker." If a "decision maker" is retained under contract and serves at the discretion of the investor group, then the "decision maker" is not an independent entity. In this capacity, the "decision maker," similar to any other representative or agent, is an extension of the investor group. In such case, the level of authority granted to the "decision maker" is dependent on the level of involvement and control imposed on the position by the investor group.

Accordingly, the "decision maker" provides a service in the capacity of representative or agent to the investor group and is an independent, direct party to the VIE. Its fees, remuneration for services provided, whether contracted as a fixed dollar amount, a percentage of assets managed or an amount or percentage based on investment performance, are not a participating interest in the returns of the VIE. Rather, such fees are a direct cost to the investor group, separate and apart from investment performance, and, thus, should be outside the scope of the FIN 46 assessment calculation. An entity paid usual and customary recompense for services provided should be viewed no differently than any third-party service provider.

We urge the Board to act promptly by finalizing these FSPs at its October 8th Board meeting to allow for implementation prior to release of third-quarter earnings beginning in mid-October and the subsequent issuance of September 30, 2003 quarterly financial statements. Any delay would result in consolidation of those investments that qualify as VIEs under FIN 46 in the September 30, 2003 financial statements with subsequent reversal of the effects of such consolidation in the December 31, 2003 financial statements.

Joseph Scalfani