



October 2, 2003

Mr. Lawrence Smith  
Director, TA&I—FSP  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**Comments on Proposed FSP FIN 46-b**

Effective Date of FASB Interpretation No. 46, *Consolidation of Variable Interest Entities*, for Certain Decision Makers

Dear Mr. Smith:

FleetBoston Financial Corporation (Fleet) is a diversified financial services company with over \$190 billion in assets. We appreciate the opportunity to comment on the above-referenced FASB Staff Position (FSP).

We applaud the decision to defer the effective date of FIN 46 for a decision maker that receives a fee that has no variability and has no exposure to expected losses or expected residual returns of a VIE. We request, however, that the FASB expand the notion of a fee that has “no variability,” as that phrase is unduly restrictive and excludes a significant array of fee arrangements that we believe should not represent a variable interest in a VIE, particularly if the recipient of the fee has no other interests in the VIE. We urge the FASB to provide guidance as to when payment of a fee is sufficiently assured and the amount of the fee is sufficiently fixed that the fee is clearly not indicative of a controlling financial interest in the VIE.

The concept of a fee that has no variability might be interpreted to include only a fee that is fixed in dollar amount and is payable only once or a predetermined, fixed number of times. The scope of the proposed FSP would then exclude a decision maker that receives an annual fee that is fixed in dollar amount but payable for an uncertain number of years. Similarly, the scope would exclude a decision maker that receives a fee that is calculated as a fixed dollar amount per hour of service, or a fixed percentage of assets under management. We believe that such a narrow interpretation would be inappropriate. A fee may have some variability but not represent an

interest in residual cash flows of the VIE by virtue of its standing as a senior obligation of the entity combined with a calculation methodology that is not directly tied to net income.

Consider, for example, an irrevocable grantor trust with multiple unrelated beneficiaries, which is a situation periodically encountered by our trust department. The asset manager typically receives a market-based fee that is fixed as a percentage of assets under management but otherwise has no interest in the net income of the trust. The fee is senior in priority to all other obligations of the trust and payment of the fee is virtually assured. Nevertheless, if the assets of the trust are effectively diversified and the trust has a long expected life, there is a significant chance that the asset manager will be required to consolidate the trust if it is subjected to analysis under FIN 46. We believe that such trusts and fee structures should be included in the scope of the proposed FSP to ensure that inappropriate consolidation does not occur, but fear that the related fee will not meet the exposure draft's definition of a fee that has no variability.

We therefore recommend that the scope of the proposed FSP include a decision maker that receives a fee meeting all of the following criteria:

1. The fee is sufficiently senior to other obligations of the VIE that payment of the fee is reasonably assured. Stated another way, there is little or no likelihood, within a reasonable range of expected outcomes, that the fee will not be paid.
2. The fee is a fixed amount or is calculated based upon a fixed rate that is not primarily linked to net income of the VIE. Acceptable calculations would include a fixed dollar amount per year, a fixed dollar amount per hour of service, or a fixed percentage of assets under management. A fee that is based solely upon a fixed percentage of net income of the VIE or changes in fair value of the assets held in the VIE would not be acceptable.
3. Payment of the fee is not contingent upon the VIE's attainment of any predetermined performance criteria.

Assuming that the decision maker has no other exposure to expected gains and losses of the VIE, we believe that a fee meeting the criteria described above does not represent a variable interest in the VIE and is not evidence of a controlling financial interest that should subject the recipient of the fee to possible consolidation of the VIE.

\*\*\*\*\*

Thank you very much for your consideration. If you would like to discuss these comments in more detail, please call Barbara Riddell at 401-278-5091 or me at 617-434-2341.

Sincerely,

Ernest L. Puschaver  
Director of Finance  
Chief Accounting Officer