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Ms. Suzanne Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Letter of Comment No: 56
File Reference: 1082-200
Date Received: 08/30/02

Re: File Reference No. 1082-200
Exposure Draft on Consolidation of Certain Special Purpose Entities, a
Proposed Interpretation of ARB No. 51 (the "FASB Exposure Draft")

Dear Ms. Bielstein:

The Bank of Tokyo-Mitsubishi, Ltd. ("BTM") herein submits our comments on the FASB Exposure Draft and we thank you for giving us the opportunity to do so. Our comments are given from the perspective of our asset securitization and asset backed commercial paper conduit businesses.¹

First of all, BTM supports FASB's efforts to strengthen financial statement reporting by requiring SPE's that are controlled by an enterprise to be consolidated into that enterprise thereby eliminating the type of financial irregularity that has been seen in certain corporations in recent years. However, as a general matter, we do not believe that a broad consolidation standard should be applied to the asset backed commercial paper ("ABCP") business being carried out by banks in the United States, Europe and Japan since the 1980s. The ABCP business has had a legitimate and useful place in the global marketplace, greatly enhancing liquidity and credit to our customers and the public, and we believe these legitimate transactions and structures are being properly reported based on the actual risk such banks are undertaking.

We fully support disclosure as part of the financial statements of an entity's asset backed commercial paper business and various liquidity and credit facilities the bank provides to the asset backed commercial paper conduits.

¹ BTM's New York Branch, which administers our asset backed commercial paper conduits in the United States, is commenting separately along with several major banks as part of a Multi-Seller SPE Consolidation Working Group.

Open Questions:

Our analysis of the consolidation tests in the FASB Exposure Draft lead us to the Section entitled "SPE's that Hold Certain Financial Assets" (Section 22 and 23).

Q1. Section 22 (b):

Section 22 (b) requires meeting all the conditions in paragraph 35 of FAS 140 except for three exemptions. The problem is when we go through the exemptions and compare them to what remains in paragraph 35 there appears to be contradictions that we believe were unintended by FASB. This may result from the fact that we understand FAS 140 to apply to parties transferring assets, whereas ABCP Conduits purchase those assets. For example, paragraph 22 (b) (3) of the Exposure Draft specifically exempts SPE's that hold financial assets from restrictions on sales of assets imposed by "paragraphs 42-45 of Statement 140". The problem is these paragraphs (42 – 45) are explanations of paragraph 35 (d) of Statement 140. Therefore, we believe paragraph 35 (d) itself does not apply for an SPE to meet the requirements of the Exposure Draft in paragraph 22 (and therefore 23).

To avoid doubt we request FASB restates the sections of FAS 140 in the intended form that eliminates the contradictions.

Q2. Section 23 (a):

As ABCP Conduit Administrators, we view our function as acting within the conduit's operating and credit guidelines. Any authority or discretion we exercise is not for our benefit but rather for the smooth operational functioning of the conduit and to maintain the rating of the conduit by providing maximum protection to the ABCP noteholders. We do not sell assets in the conduits except if there is significant credit deterioration as defined by our investment guidelines. As such, we would request FASB to clarify that conduit administrators operating within operating and credit guidelines as described above do not have "authority" to buy and sell assets and "sufficient discretion" in significantly affecting the financial performance of the SPE.

Q3 Section 23 (c):

We believe FASB's standard to "presume that its fee from an SPE is not market-based unless it can be demonstrated to be comparable to fees in similar observable arm's length transactions or arrangements" is impractical in our marketplace. It is important to understand the entire context of fees received by, and paid out by a conduit.

The fees on individual transactions in our business are highly competitive and most transactions are bid upon by more than one conduit. The fees paid out by the conduit to the sponsor bank have both a fixed and variable component. The fees are paid for specific administrative services such as issuing and payment agent fees, administrative agent fees etc., and for credit enhancement and liquidity facilities being provided to the conduit.

However, a multi-seller conduit is an amalgamation of a series of underlying transactions (silos), each of which have a fixed but differing level of fees based upon the credit quality of the underlying transaction. Therefore the aggregate fee amounts received by the conduit are market based but variable due to the fact that the outstanding balance of each transaction (each of which as explained above have differing fees) typically fluctuates every month.

These market-based fees are paid out by the conduit to the sponsor bank in various forms such as liquidity fees, credit enhancement fees, administrative agent fees etc. after deducting the overhead cost of the conduit's operational expenses. In other words, in order to manage operational timing issues with regard to overhead cost, the sponsor bank receives the market-based fixed fees in two stages. Firstly, the conduit pays the sponsor bank liquidity fees and/or credit enhancement fees and retains the remainder as a reserve to cover overhead costs in the conduit. Secondly, after paying the overhead cost, the sponsor bank receives from the conduit the rest of the reserve in the form of administration fees, etc. Therefore, it is our view, once the sponsor bank's fee is appropriately broken down and correctly analyzed, it is simply the original market-based fixed fees received from the underlying transactions constituting the multi-seller conduit, despite its inherent variable nature.

In addition, it must be noted that the tax authorities normally require the sponsor bank not to utilize the conduit in order to manage the bank's profits; therefore the conduit should be a tax neutral entity which can only be achieved by the conduit contractually paying net revenues to the sponsor Bank.

Thus, it is our opinion that fees paid out by the SPE are de facto market-based and the relevant test in paragraph 19 should be based on the fees received by the conduits instead of fees paid by the conduits in the case of multi-seller ABCP conduits.

We request FASB clarify that such practices are considered market based.

Once again, we appreciate the opportunity to comment.

Sincerely,



Yasuyuki Otsu

General Manager

Securitization Office

The Bank of Tokyo-Mitsubishi, Ltd.