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Proposed FASB Staff Position FAS 140-b – Application of EITF Issue No. 85-24, "Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge," when Future Distribution Fees Are Sold to Unrelated Third Parties

AMVESCAP PLC is a leading independent investment manager with approximately $372 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. As such, AMVESCAP follows UK GAAP, where the accounting treatment of these securitization transactions mirrors the economic and legal substances of a true sale. A reconciliation between US and UK GAAP is included in the supplemental information disclosed in AMVESCAP's financial statements.

We appreciate the opportunity to comment on the Proposed FASB Staff Position – Application of EITF Issue No. 85-24, "Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge," when Future Distribution Fees Are Sold to Unrelated Third Parties.

The distributor sells the right to future fees to an unrelated third party and the purchaser assumes all risks and rewards associated with the sale. The future fees that are sold include 12 b-1 fees that are received from the funds and a contingent deferred sales charge (CDSC) that may be charged to the shareholder of a fund upon early redemption. However, the amount the distributor receives (paid by the third party) for the sale of the right to the future fees is determined immediately at the time of distribution of the fund B shares. Only the passage of time determines the composition and amount of these future fees.

In the nine years of AMVESCAP's agreement with the third party buyer, the fees collected, which are based on the fluctuating net asset values of the underlying funds, have also fluctuated (either up or down). During that time, the third party buyer has experienced the economic risks and rewards of ownership of the future fees. However, since the economic risks and rewards have transferred to the purchaser no adjustments can be or have been made to the amounts previously received by the distributor due to fluctuations in the future fees.

The agreement between the distributor and parent selling the future fees contains no representations, warranties or indemnification provisions; however, the parent does indemnify the third party for certain events described in the agreement selling the future fees to the third party. However, there is no indemnity protecting the third party against a good faith termination of the distribution plan by the directors of the fund, which would terminate payments of the future fees comprised of the 12b-1 fee. The collection of future CDSC's, from the shareholder, would continue in spite of possible termination of the distribution plan. The termination risk, as well as the NAV risk, are risks explicitly retained by the third party purchaser (in addition, the risk that the future fees will be uncollectible is similar to risk common to securitizations of other classes of assets). Further, there has never been an indemnification claim made by the third party or an indemnification payment made by the parent to the third party, thus indicating that the probability of indemnification payments is very remote.

In addition, the directors of the fund could also choose to terminate the fund's distribution agreement with the current distributor and enter into a new agreement (this is a fairly common occurrence in the industry due to acquisitions and mergers). Since the original distributor has completed all services required to earn the future distributions fees, the fees continue to be paid to the purchaser regardless of the change in the distributor.

Our understanding is FASB's intent is to move toward concept based accounting principles versus rule based accounting principles. The Proposed FSP does not focus on the substance of the transactions as it ignores the economic substance of the transfer of risk to the buyer of the future fees as well as the legal form of the transaction as a true sale under bankruptcy laws. Including the asset and debt, within the balance sheet, runs counter to provisions of FASB Concepts Statement No. 6 paragraphs 25, 35 and 44-48.

The proposed FSP expresses the conclusion that revenue recognition is not appropriate at the time that cash is received pursuant to EITF 85-24 because a receivable is not created at the time the share is issued due to the uncertainty of timing and amount of revenue to be received in the future. When EITF 85-24 was issued it did not contemplate the receipt of cash for a sale of the future 12b-1 fee streams and the CDSC from the shareholder to an independent third party. This sale significantly changes the transaction and makes the amount of the revenue known, thus the receivable is certain at the time it is sold. Therefore, we recommend that the Board revisit the basic conclusions of EITF 85-24 when third party sales of the shares are completed.

Assuming that the conclusions of EITF 85-24 remain unchanged, one must then look to EITF 88-18 to determine if the liability created in the sale transaction is debt or deferred income. The terms of the securitization agreement pass all of the criteria of EITF 88-18 thus resulting in a transaction that does not qualify as debt. If not debt, then one assumes the transaction is treated as deferred income and yet all revenue recognition criteria have been satisfied fully at the point of sale; therefore, immediate revenue recognition is the appropriate method of accounting for this transaction.

The board should reconsider these facts when it reaches its conclusions regarding EITF 85-24 and how the credit created in the transaction, if not a sale, should be treated in the balance sheet.

Paragraph four of the proposed FSP states, "Because the dollar amount of the 12b-1 fees and the CDSC is uncertain due to market movements and shareholder redemptions, and because the 12b-1 plan could be rescinded by the fund's board, funds that have sold B shares generally do not have a recognizable payable under generally accepted accounting principles (GAAP).

Likewise, the distributor does not have a recognizable receivable under GAAP (EITF Issue 85-24)." The distributor would not have a recognizable receivable except for the fact that the sale to the third party removes the uncertainty of market movements, shareholder redemptions and transfers the risk of termination of the 12b-1 plan to the purchaser of the B shares. This is a significant change in facts from the time EITF 85-24 was issued.

Paragraph seven of the proposed FSP states, "These exchanges may include some level of recourse and various indemnities that protect the third party in the event that the 12b-1 plan is rescinded by the fund's board. This is not the case as the typical agreement transfers substantially all risks to the third party purchaser.

We strongly believe that cash received from the third party should be considered "fees" as discussed in EITF 85-24 because the distributor has provided a service (distribution) and completed performance of all responsibilities to earn the "fees". We believe that EITF 85-24 should be interpreted differently and the fees received from the third party should be recognized at the time of securitization. Our interpretation is that a distributor cannot record a fee until the amount is determinable. This amount is determinable when the right to the fees is securitized and becomes earned, due and payable. This conclusion is supported by Concepts Statement 5 paragraphs 83(a) and (b) which state that revenue should be recognized when it is realized (services are exchanged for cash) and earned (when an entity has substantially accomplished what must be done to be entitled to the revenue).

When considering the transfer of risks and rewards, the historical evidence shows that the substance and legal operation of a typical B share securitization transaction meet the criteria to be considered "sales" more than other securitization transactions that have had accounting pronouncements written specifically to address those transactions. For example, B share securitizations have attributes that make a stronger case conceptually than other securitizations, specifically the collection account is not under the control of the servicer, the sale is to an unaffiliated third party rather than to an affiliated special purpose vehicle, the distributor does not retain any interest in the future fees, the purchase price is fixed and not adjustable post closing, i.e. no revolving price based on yield, dilution, required services, etc.

If the FSP is finalized as proposed, there are problems with the practical application of the FSP. One must look to the actual accounting entries that would follow if the transaction is treated as a financing. A deferred sales commission asset (Asset) and a liability (amount received from third party purchases) would be recorded at the time of sale.

The asset could be amortized over the life of the B share and the liability reduced by the 12b-1 payments received from the fund. Alternatively, some have stated that perhaps the asset could be amortized at the same rate as the related debt (the asset and debt are reduced in tandem). Either way, during the B share period the income accounts will include 12b-1 revenues that have previously been sold. Additionally, the asset amount is "not recoverable" (as the entity has no right to receive the redemption fee) and actual cash flows of the distributor will differ materially from the income statement presentations as described in the paragraph below. In addition, imputed interest, which will never be paid, will be computed on the debt.

The final settlement of the B share conversion or redemption will leave amounts on the balance sheet that will ultimately result in a gain or loss, as these amounts will differ from the actual amounts received at the time of the sale. This income statement volatility illustrates the basic shortcoming of treating these transactions as financings when all risks and rewards have been transferred at an earlier date.

Also, the Board needs to clarify how the transition accounting should be handled for B share sales made in prior periods. How should asset and liabilities be valued – at the time of the original sale or retrospectively? How should tax treatments be reflected since these have been treated as a sale for tax purposes?

The inclusion of B share transactions would add material amounts to the balance sheets of all distributors that offer B shares, especially if classified as debt, materially misstating the underlying statements of position and results of operations. The classification as debt is contrary to EITF 88-18, as discussed above, and to Concepts Statement 6 which states that Liabilities are probable future sacrifices of economic benefits arising from present obligations. There are no present or future obligations to the purchaser. In addition, fees recorded as revenues on the distributor's income statement to which it has no legal or economic right only distorts the reporting of the true financial operations of the company. This result would confuse users of the financial statements and impugn the integrity of the financial statements.

Another consequence of including these transactions in the distributor's financial statements is the need for the distributor to hold capital to meet net capital requirements of SEC Rule 15c3-1 unless a regulatory exception is made. This would require infusing a material amount of cash to meet regulatory capital requirements thus penalizing the distributor for economic risks that do not exist.

We urge the FASB to conclude that the cash received from the third party should be considered "fees" as discussed in EITF 85-24 and that immediate revenue recognition is the proper accounting treatment.

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

Sincerely,

David A. Hartley
Chief Accounting Officer