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Via email: director@fasb.org

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

Dear Mr. Smith

Re: Comments on Proposed FSP FIN 46-d - Treatment of Fees Paid to Decision Makers and Guarantors as Described in Paragraph 8 in Determining Expected Losses and Expected Residual Returns of a Variable Interest Entity under FASB Interpretation No.

46, Consolidation of Variable Interest Entities

The Canadian Bankers Association (CBA) would like to thank the U.S. Financial Accounting Standards Board (FASB) for the opportunity to comment on the above-proposed FASB staff position (FSP).

The CBA is the main professional industry association representing over 40 of Canada's domestic and foreign-owned Chartered banks and it is a principal contributor to the development of accounting standards and public policy on issues that affect banks. As several of our members are SEC registrants, they are impacted by the accounting standards that are implemented in the U.S., as they must apply U.S. GAAP when preparing financial statements for U.S. fillings.

I. Nature of Fees

With respect to FSP FIN 46-d, the CBA offers the following comments.

As noted within the FSP, the premise behind its guidance is:

The ability to make decisions is not a variable interest, but if the decisions significantly affect the value of the variable interests, decision making will almost certainly be directly or indirectly associated with the holder of a significant variable interest. For that reason, decision-making is an indicator of the primary beneficiary of a variable interest entity. (Emphasis added) [FIN 46.C31]

In certain arrangements, a decision maker is paid a fixed dollar amount and/or a nominal fixed percentage fee of net assets for providing a service. In addition, for certain legal structures, fees are charged based on time spent in managing the assets. From the decision maker's perspective, the primary objective of providing such services is to fulfill the objectives stated in a prospectus and/or the maximization of the investment returns for the outside investors or beneficiaries, not the decision maker. Furthermore, the decision maker is restricted in its abilities to manage the assets by the broader mandates of the funds or trusts. These broader mandates cannot be changed by the decision maker further signifying that these funds are not managed for the benefit of the decision maker. Therefore, in instances where the decision maker has no other variable interest in the managed entity, the outside investors are the ones who are impacted the most by the actions of the decision maker. Given this, we believe that fixed dollar amount and fixed percentage fees should be excluded from the process of quantifying expected losses (EL) and expected residual returns (ERR).

With the issuance of this FSP, it appears that the FASB has included fixed fee arrangements as variable interests in the calculation of EL and ERR where such items had previously been excluded in accordance with FIN 46.

Appendix B of FASB Interpretation No. 46 states that:

Contracts for services may be significant variable interests if the contracted compensation (whether fixed or variable) is designed to be different from the market value of the services provided [FIN 46.B8]

Fixed dollar amount or fixed percentage fees are normally dictated by market conditions and are a factor in pricing the portfolio. In our view, there is little distinction between a fixed dollar amount and a nominal fixed percentage fee. Many banking products are based upon a fixed percentage fee in order to scale the fee income with the time and effort needed to service the asset portfolio. This effort is dependent on the size of the portfolio and not the portfolio's investment return. Hence such fees should be excluded from the determination of EL and ERR of a variable interest entity. We believe that the inclusion of these fees will result in the consolidation of variable interest entities (VIEs) where the only relationship the primary beneficiary has with the entity is that of an asset manager. We do not believe it was the intention of the FASB to require enterprises to consolidate VIEs where the primary beneficiary has no ownership in any of the assets and is not exposed to any risks of the VIE.

II. Inclusion of Assets on the Balance Sheet

FASB Concept Statement No. 5 states that

A statement of financial position does not purport to show the value of a business enterprise but, together with other financial statements and other information, should provide information that is useful to those who desire to make their own estimates of the enterprise's value.

We do not believe that the inclusion of assets under management represents information that is useful to the users of the financial statements. The Concept Statement goes on to state that financial presentation should provide:

information about the economic resources of an enterprise, the claims to those resources (obligations of the enterprise to transfer resources to other entities and owners' equity), and the effects of transactions, events and circumstances that change resources and claims to those resources.

The Concept Statement also states one of the characteristics of an asset is that an entity can obtain the benefit and control others access to it.

As an asset manager does not own the assets under management, it cannot be said that they control the assets nor are they the primary beneficiaries of those assets. Their inclusion would result in the financial statements not meeting the concepts set out in these FASB Concept Statements.

III. Nature of Calculation

Furthermore, the expected loss calculation outlined in the FSP requires that the fees paid to decision makers be added back to the estimate of net income or loss available to or absorbed by the variable interest holder. When calculating residual returns, the fair value of the fees paid to a decision maker are added to the variable component of ERR to get the total ERRs which are then allocated to the variable interest holder. Based on the example provided and current interpretation of the FSP, it would appear that fees to the decision maker are being counted twice in the ERR calculation as the variability in fees is measured in the variability of ERR and then the fair value of those same fees are added to the calculated amount of ERR. We believe that if fees are to be included at all, variable fees should only be included in the measurement of ERR which measures the variability in these fees.

IV. Conclusion

In conclusion, where the decision maker has no other variable interest in an entity and when the decision maker receives only a fixed dollar fee, a fixed percentage fee or a fee based on time spent, as dictated by market circumstances, we do not believe that these fees should be included in the calculation of ERR. Their inclusion results in a decision maker consolidating assets in which they have no ownership or economic stake. This is not consistent with the principles outlined in the FASB Statement of Concepts. Furthermore, the inclusion of both the fair value of fees and the variability in fees in the ERR calculation should be amended such that only the variability in fees is measured.

We thank you for considering our comments. If there is any further information that you require, please do not hesitate to contact us.

Sincerely,
Original Signed by Karen Michell
Per Kelly Shaughnessy