THE BANK OF NEW YORK MELLON

June 2, 2009

Mr. Robert Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

RE: Amendments to FASB Interpretation No. 46(R)

Dear Mr. Herz:

The Bank of New York Mellon Corporation is a global financial institution with over $200 billion in assets and $880 billion in assets under management. We are writing you to request that the Amendments to FASB Interpretation No. 46(R), which are expected to be issued shortly, be re-exposed for further comment before they are issued in their final form. It has come to our attention that there are substantial changes to the original exposure draft, which we do not believe have been fully vetted with your constituents, specifically, financial institutions and asset management businesses. It is our understanding that these changes could have significant unintended consequences and adverse impacts on the financial statements of asset managers. These changes are likely to render meaningless current financial ratios, such as ROA, on which analysts and investors rely.

The Bank of New York Mellon's asset management sector solely acts as the asset manager for its clients (e.g., pension and 401K plans) through its institutional funds, which include collective defined benefit and defined contribution investment funds. For providing asset management services, we receive performance fees and/or management fees.

Based on discussions with our peers and auditors, we understand that it is likely that many of these funds could be consolidated onto an asset manager's financial statements if the amendments to FIN 46(R) are issued as currently drafted. In particular, we believe there will confusion in the application of paragraphs B22 and B23 regarding whether or not fees paid to a decision maker constitute variable interests. Please refer to Exhibit A to this letter for examples of typical asset management arrangements, which we believe require clarification prior to the issuance of the new standard. We have formatted them in a manner similar to the examples you have included in the Implementation Guidance Appendix to Interpretation 46(R).

Due to the potential significant changes to the original exposure draft and to avoid a similar situation that which occurred in 2003, when FASB Interpretation No FIN 46(R), Consolidation of Variable Interest Entities, was issued shortly after the original FASB Interpretation No. FIN 46, we request the Amendments to FASB Interpretation No. 46 (R) be re-exposed for comment to allow the FASB's changes to be thoroughly vetted.

One Wall Street, New York, NY 10286

In the absence of a re-exposure, we would encourage you to seriously consider the linked presentation model, which would provide the disclosures and basis of accounting as currently included in the Amendments to FASB Interpretation No. 46(R), but would more fairly present the financial statements of asset managers. While the assets and liabilities of a VIE are required by paragraph 22 to be shown separately, we recommend adding a sentence that allows them to be shown on the same side of the balance sheet to the extent the assets are only available to settle liabilities of a VIE and the liabilities of a VIE do not have recourse to general assets of the reporting entity.

If you have any questions or are in need of any further information, please contact me at (212) 635-7080 or Rob Hitchings, Corporate Accounting Policy, at (212) 635-7083.

Sincerely,

John A. Park
Corporate Controller

Appendix A – Interpretation 46(R) Implementation Examples

Example 10
Facts and Circumstances

1. An asset management company creates various entities to provide its institutional client's such as defined benefit and defined contribution pension and 401K plans with investment opportunities. The objective of these commingled investment funds is to provide the institutional clients with exposure to different asset classes; examples include medium term corporate bonds, large cap growth equities, non-U.S. real estate assets, and international value equities. In this example 10, Asset Manager creates a large cap equity commingled fund ("entity") which is offered to 20 Pension Plans which invest in aggregate $1.2 billion. The entity uses the proceeds to purchase a portfolio of large cap equity securities. Asset Manager does not invest in the fund; however, to ensure that the performance objectives of employees of the Asset Manager are aligned with the interests of the Pensions Plans, certain employees' bonuses are invested in the fund and are required to be retained in the fund for a minimum of 5 years prior to withdrawal.
2. The transaction was marketed to the institutional clients as an investment in a portfolio of large cap equity securities with the purpose of generating gains on the securities and dividend returns. The Pension Plans are exposed to the investment gains (losses).
3. The assets of the entity are managed within the parameters established by investment guidelines provided to the Pension Plans. The parameters provide Asset Manager with the latitude to manage the entity's assets. Performance is tracked versus Russell 1000 Growth index. In addition to normal redemptions and reinvestments, a Pension Plan may withdraw its funds based on established notice provisions.
4. For its services, the Asset Manager earns a fee equal to a graduated percentage of assets managed for each Pension; 1% of AUM up to $25 million, 0.95% of AUM between $25 million and $50 million, 0.85% of AUM between $50 million and $100 million and 0.65% of AUM above $100 million. There are no provisions allowing for the removal of the Asset Manager.

Evaluation
Design of the Entity

5. An enterprise must determine the purpose and design of the variable interest entity, including the risks that the entity was designed to create and pass through to its variable interest holders. In making this assessment, the variable interest holders of the entity determined the following:
    a) The primary purposes for which the entity was created were to (1) provide Pension Plans with the ability to invest in a pool of large cap equity stocks, (2) earn a dividend return and the gain (losses) on those securities, and (3) generate management fees for Asset Manager.
    b) The transaction was marketed to institutional investors as an investment in a portfolio of large cap stocks with exposure to the investment gains (losses) associated with the active management of the portfolio. Additionally, the marketing of the transaction indicated each Pension Plan would only be entitled to its prorata share of the investment return from the commingled fund and there would be no other support from the Asset Manager or third parties.

Determination of Primary Beneficiary

6. Pension Plans are variable interest holders in the variable interest entity since the they are exposed to the investment rate risk of the equity securities held by the entity.
7. An enterprise must identify which activities most significantly impact the entity's economic performance and determine whether it has the power to direct those activities. The economic performance of the entity is most significantly impacted by the performance of the entity's portfolio of assets. Thus, the activities that most significantly impact the entity's economic performance are the activities that most significantly impact the performance of the portfolio of assets. The Asset Manager has the ability to actively manage the entity's assets within the parameters of the investment guidelines. No one party has the unilateral ability to exercise the kick-out rights over the Asset Manager; therefore, such kick-out rights would not be considered in this primary beneficiary analysis.
8. The fees paid to Asset Manager are required to be evaluated based on the conditions and factors in paragraphs B22 and B23 of Interpretation 46(R) to determine whether or not the fees represent variable interests.
9. The Asset Manager receives a fee that provides it with the right to receive the benefits of the entity. These fees are customary in the asset management business. The fee is not large relative to the expected return on the debt securities held by the entity. Also, the expected variability in the fee is not large relative to the potential variability in the entities economic performance. While employees of Asset Manager have an interest in the commingled fund, this is the permitted exception in paragraph B22.c.
10. Based on the specific facts and circumstances presented above and the analysis performed, the Pension Plans would be deemed to be the primary beneficiary of the variable interest entity because they have the right to receive benefits that could potentially be significant to the variable interest entity and the obligation to absorb losses that could potentially be significant to the variable interest entity. The Asset Manager is not the primary beneficiary although it has the power to direct the activities of the variable interest entity that most significantly impact the entity's economic performance.

Example 10-A

Facts and Circumstances

1. Consider the facts as Example 10, except that the commingled investment fund created for the Pension Plans is for international value equities. In this example 10-A, Asset Manager creates an international value equity commingled fund ("entity") which is offered to 15 Pension Plans which invest in total $450 million. As in the previous example, Asset Manager does not invest in the fund; however, certain employees' bonuses are invested in the entity and are required to be retained in the fund for a minimum period prior to withdrawal.
2. The transaction was marketed to the institutional clients as an investment in a portfolio of international equity securities with the purpose of generating gains on the securities and dividend returns. Pension Plans are exposed to the investment gains (losses).
3. The assets of the entity are managed within the parameters established by investment guidelines provided to the Pension Plans. The parameters provide the Asset Manager with the latitude to manage the entity's assets. Performance is tracked versus the MSCI EAFE Value index. In addition to normal redemptions and reinvestments, a Pension Plan may withdraw its funds based on established notice provisions. In such cases, the Pension Plan may be required to take its share of underlying assets in the commingled fund, if Asset Manager determines that liquidation of the underlying equity securities would not be in the best interests of the other Pension Plans invested in the commingled fund.
4. For its services and based on the asset class involved, the Asset Manager earns a fee equal to the greater of a fee based on AUM for each Pension Plan or a performance fee of 25% of the amount by which a Pension Plan's investment return exceeds the MSCI EAFE Value index. The AUM fee is graduated and is 080% of AUM up to $25 million, 0.60% of AUM between $25 million and $50 million, 0.50% of AUM between $50 million and $100 million and 0.40% of AUM above $100 million. The performance fee is billed annually and the AUM fees are netted from the performance fee. In addition, there are no provisions allowing for the removal of Asset Manager.

Evaluation

Design of the Entity

5. An enterprise must determine the purpose and design of the variable interest entity, including the risks that the entity was designed to create and pass through to its variable interest holders. In making this assessment, the variable interest holders of the entity determined the following:
   a) The primary purposes for which the entity was created were to (1) provide Pension Plans with the ability to invest in a pool of international equity stocks, (2) earn a dividend return and the gain (losses) on those securities, and (3) generate management fees for Asset Manager.
   b) The transaction was marketed to institutional investors as an investment in a portfolio of international stocks with exposure to the investment gains (losses) associated with the active management of the portfolio. Additionally, the marketing of the transaction indicated each Pension Plan would be entitled only to its prorata share of the investment return from the commingled fund and there would be no other support from Asset Manager or third parties.

Determination of Primary Beneficiary

6. Pension Plans are variable interest holders in the variable interest entity since they are exposed to the investment rate risk of the equity securities held by the entity.
7. An enterprise must identify which activities most significantly impact the entity's economic performance and determine whether it has the power to direct those activities. The economic performance of the entity is most significantly impacted by the performance of the entity's portfolio of assets. Thus, the activities that most significantly impact the entity's economic performance are the activities that most significantly impact the performance of the portfolio of assets. Asset Manager has the ability to actively manage the entity's assets within the parameters of the investment guidelines. No one party has the unilateral ability to exercise the kick-out rights over Asset Manager; therefore, such kick-out rights would not be considered in this primary beneficiary analysis.
8. The fees paid to Asset Manager are required to be evaluated based on the conditions and factors in paragraphs B22 and B23 of Interpretation 46(R) to determine whether or not the fees represent variable interests.
9. The Asset Manager receives a fee that provides it with the right to receive the benefits of the entity. These fees are customary in the asset management business. However, the fee is not large relative to the expected return on the debt securities held by the entity. Also, the expected variability in the fee is not large relative to the potential variability in the entities economic performance. While employees of Asset Manager have an interest in the commingled fund, this is the permitted exception in paragraph B22.c.
10. Based on the specific facts and circumstances presented above and the analysis performed, Pension Plans would be deemed to be the primary beneficiary of the variable interest entity because they have the right to receive benefits that could potentially be significant to the variable interest entity and the obligation to absorb losses that could potentially be significant to the variable interest entity. Asset Manager is not the primary beneficiary although it has the power to direct the activities of the variable interest entity that most significantly impact the entity's economic performance and is entitled to performance fees.

Example 11
Facts and Circumstances

1. An asset management company creates an entity to facilitate its Customers' ability to participate in securities lending. When a Customer's securities are lent to a third-party, the cash collateral received by the Customer is invested in the entity created by Asset Manager; neither Asset Manager nor other third parties provide financing to the entity. When the securities are returned to securities lending customer, the Customer must return the cash collateral along with interest, generally based on Fed Funds. In total $3 billion of cash from 20 Customers is received from the securities lending activity and invested in the entity. The entity uses the proceeds to purchase a portfolio of debt securities with varying tenors and interest rates. The Asset Manager and Customer expect the return on the debt securities will exceed LIBOR by 15 bp or more.
2. The transaction was marketed to securities lending customers as an investment in a portfolio of short term investment grade debt securities with the purpose of generating interest revenue in excess of the interest to be returned to the securities borrower upon return of the cash collateral. The securities lender is exposed to the interest rate variability of the fund and due to the investment guidelines a minor amount of credit risk associated with the possible default by the issuers of the securities in the portfolio.
3. The assets of the entity are managed within the parameters established by investment guidelines provide to the Customers. The parameters provide Asset Manager with the latitude to manage the entity's assets while maintaining a minimum portfolio rating of single A-plus or higher. The tenor of the debt securities is required to be no longer than 270 days but average no more than 90 days. In addition to normal redemptions and reinvestments, a Customer may halt its securities lending and withdraw its funds based on established notice provisions. In such cases, the Customer may be required to take its share of underlying assets in the entity, if Asset Manager determines that liquidation of the underlying debt securities would not be in the best interests of other Customers invested in the entity.
4. For its services, Asset Manager earns a fee equal to set percentage of the difference between the amount a Customer earns on the investment in the entity and the amount that Customer pays on to securities borrower for the use of the cash collateral. Based on negotiations between the Asset Manager and its Customers, any one fee may range between 20% and 50% and generally approximate 4 – 7 bp of the assets under management. There are no provisions allowing for the removal of the Asset Manager except for gross negligence.

Evaluation
Design of the Entity

5. An enterprise must determine the purpose and design of the variable interest entity, including the risks that the entity was designed to create and pass through to its variable interest holders. In making this assessment, the variable interest holders of the entity determined the following:
    c) The primary purposes for which the entity was created were to (1) provide Customers with the ability to invest in a pool of short-term debt securities, (2) earn a positive spread between the interest that the entity earns on its prorate share of the portfolio and the interest the Customers pay to the securities borrowers for the use of cash colater, and (3) generate management fees for the Asset Manager.

d) The transaction was marketed to potential debt investors as an investment in a portfolio of high quality short-term debt securities with exposure to the interest rate risk associated with the active management of the portfolio and a minor amount of credit risk associated with the possible default by the issuers of the debt securities in the portfolio. Additionally, the marketing of the transaction indicated there would be no other credit support from Asset Manager or third parties.

Determination of Primary Beneficiary

6. The securities lending Customers are variable interest holders in the variable interest entity since the Customers are exposed to the interest rate risk and credit risk of the debt securities held by the entity.
7. An enterprise must identify which activities most significantly impact the entity's economic performance and determine whether it has the power to direct those activities. The economic performance of the entity is most significantly impacted by the performance of the entity's portfolio of assets. Thus, the activities that most significantly impact the entity's economic performance are the activities that most significantly impact the performance of the portfolio of assets. The Asset Manager has the ability to actively manage the entity's assets within the parameters of the investment guidelines. No one party has the unilateral ability to exercise the kick-out rights over the Asset Manager. Therefore, such kick-out rights would not be considered in this primary beneficiary analysis.
8. The fees paid to Asset Manager are required to be evaluated based on the conditions and factors in paragraphs B22 and B23 of Interpretation 46(R) to determine whether or not the fees represent variable interests.
9. The Asset Manager receives a fee that provides it with the right to receive the benefits of the entity. However, the fee is not large relative to the expected return on the debt securities held by the entity. Also, the expected variability in the fee is not large relative to the potential variability in the entities economic performance.
10. Based on the specific facts and circumstances presented above and the analysis performed, the securities lending Customers would be deemed to be the primary beneficiary of the variable interest entity because they have the right to receive benefits that could potentially be significant to the variable interest entity and the obligation to absorb losses that could potentially be significant to the variable interest entity. Asset Manager is not the primary beneficiary although it has the power to direct the activities of the variable interest entity that most significantly impact the entity's economic performance.