December 1, 2003

Director, Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Via e-mail: director@fasb.org

RE: FILE REFERENCE NO. 1082-300

RBC Financial Group would like to thank the Financial Accounting Standards Board ("Board") for this opportunity to comment on the proposed interpretation on Consolidation of Variable Interest Entities - a modification of FASB Interpretation No. 46.

We appreciate the Board being receptive to the industry concerns on a number of implementation issues of FIN 46 and its efforts to address these issues by the issuance of this exposure draft. Specifically, we support the Board's decision to scope out mutual funds, personal and institutional trusts from FIN 46, since they are entities with bona fide business purposes and are not established to avoid consolidation. However, to add clarity to the proposed amendments, we ask the Board to consider our comments in the following areas:

**Mutual Funds and Trusts**

We believe the exemption should apply to both pooled and mutual funds. While a mutual fund is a type of pooled fund by definition, the primary difference between the two is the extent of regulatory filing requirements for dispersal purposes. The term "mutual fund" is used to describe a fund which offers its securities to the general public by way of a prospectus and which must meet a number of ongoing reporting and disclosure requirements. The term "pooled fund" is used to describe a fund that typically offers its securities to more sophisticated investors such as high net worth individuals and institutions in a manner that is exempted from the prospectus and other regulatory requirements.

The exemption should also be available to the pooled and mutual funds regardless of their legal structures. The form of a fund may differ depending on the legislative environment in which they operate. The corporate law and tax rules in each jurisdiction may vary, resulting in the establishment of the funds with different legal structures to suit the advantages or disadvantages that may exist in the jurisdiction. Even though the legal structure of the funds may be in the form of trusts, corporations, partnerships or otherwise, their operations and economics are quite similar.

We recommend the Board scope out both personal and institutional trusts in paragraph A13. In addition, paragraph A13 should make reference to paragraph 4(h) and not 4(g).
Since trust business is very often conducted through a trust company that is a subsidiary of the bank, we ask the Board to update the wording of paragraph 4(h) to make a reference to the trust company as well as a bank's trust department.

The anti-abuse clause in the last sentence of paragraph 4(h) is too broadly defined and would be difficult to apply because the intent of clients in establishing a trust or fund cannot be known for certain by the financial institution. It is also not necessary to include such a clause, if the Board adds the descriptions of mutual and pooled funds, personal and institutional trusts (see the proposed wording below) to clarify what constitutes these funds and trusts. Based on these reasons, we ask the Board to remove the last sentence of paragraph 4(h) from the final standard.

The proposed amendments to FIN 46 do not contain descriptions of mutual funds, pooled funds, personal and institutional trusts. We believe that for the implementation of FIN 46, it would be helpful to include these descriptions in the Background Information, Basis for Conclusions and Alternative Views as a set of examples.

Here is our proposed wording for the Board's consideration:

4(h) Mutual or pooled funds (whether in the form of trusts, corporations, partnerships or otherwise), trusts administered by a trust company or a bank's trust department, and similar arrangements where the financial institution is acting in a fiduciary capacity that are organized and operated in a manner consistent with customary existing practices and law are not subject to consolidation according to the requirements of this Interpretation.

A13 The activities of mutual or pooled funds (whether organized as trusts, corporations, partnerships or otherwise) and personal or institutional trusts administered by a trust company or a bank's trust department are by design, customary practice and law not for the benefit of the sponsor of the funds, the custodian, the trustee or their related parties. Therefore, the Board did not expect sponsors and others involved in the operation of the funds or trustees to be deemed to be the primary beneficiaries of those entities. However, the Board has been informed that some mutual or pooled fund sponsors, trust companies and banks have been determined to be primary beneficiaries of mutual or pooled funds and trusts administered by a trust company or bank trust departments. Therefore, the Board decided to add paragraph 4(h) to explicitly exclude those entities from the scope of Interpretation 46.

Description of mutual and pooled funds
An investment entity that pools investors' money for the purpose of having it managed by an investment professional in accordance with stated investment objectives. Securities of mutual funds and pooled funds give investors the right to receive payment of a proportionate share of the income distributions made by the mutual or pooled fund and, upon redemption, a right to receive payment equal to a
proportionate share of the net asset value of the investments of the mutual or pooled fund at that time. All material risks and rewards accrue to the investors.

Mutual fund securities are offered under a prospectus that has been filed with securities regulators pursuant to applicable securities legislation. Pooled fund securities are offered to sophisticated investors and are exempt from prospectus and other regulatory requirements.

**Description of personal and institutional trusts**

Personal or institutional trusts are trusts established by individuals or institutions. Under the legal relationship created by a personal trust, property is held by the trustee for the benefit of one or multiple beneficiaries. A personal trust may be established pursuant to a will (a testamentary trust) or may be created during the lifetime of the individual or individuals settling the trust (an inter vivos trust).

Similarly, institutions may also either desire, or be required for regulatory purposes or otherwise, to have assets held in trust by the trustee for the benefit of a certain class of beneficiaries and the trustee holds the title to the assets for these institutions. Some examples of these types of trusts are, but not limited to, pension plan trusts, pension master trusts, supplemental pension plan trusts, mutual fund trusts, pooled fund trusts, Registered Retirement Savings Plan trusts, Registered Retirement Income Fund trusts, Registered Education Savings Plan trusts, Group Registered Retirement Savings Plan trusts, Deferred Profit Sharing Plan trusts, employee profit sharing plan trusts, Retirement Compensation Arrangement trusts, employee savings plan trusts, unemployment benefit plan trusts, regulatory capital trusts, foreign insurance company trust, foreign reinsurance trusts, real estate investment trusts, environmental trusts and trust established in respect of endowments, foundations and registered charities.

**Reconsideration Events**

In a troubled debt restructuring, the primary objective of the lender is to improve its security position and mitigate the risk of any loss. The lender will typically restructure loans by negotiating new terms and conditions such as establishing additional covenants, extending maturity dates, repricing the loan, increasing the interest rate and/or obtaining additional security and guarantees. The size of the loan commitment may also increase as a result of the restructuring.

In general, we believe that requiring a lender to consolidate the assets and liabilities of its debtor due to a troubled debt restructuring would not provide a true and fair presentation of the financial condition of the lender, as the lender does not control or manage the business of its debtor. There could be instances that the lender (e.g. a bank) is required under FIN 46 to include machinery, livestock, airplanes or retail goods of its debtors in its balance sheet and disclose in a note that the lender does not have access to these assets before foreclosure. Moreover, a troubled debt restructuring is an event that is beyond the control of the lender. Having been forced into such a situation, a lender is only trying to
recover its loan. Therefore, a troubled debt restructuring is not a “controlling financial interest” to the lender. To a certain extent, the lender expects that certain loans of its loan portfolio will default and lead to troubled debt restructurings. This expectation is considered in determining the commercial terms at which loans are granted. Since there are other existing standards to account for impaired loans already that are reflective a lender’s position, we ask the Board to reconsider if FIN 46 should be applied to troubled debt restructuring.

Regarding paragraphs 7, 15 and A25, we agree that the incurrence of operating losses or the renegotiation of debts or other contracts caused by the incurrence of operating losses should not cause a change in the determination of whether an entity is a Variable Interest Entity. However, we would like the Board to clarify under what circumstances an arrangement would increase the level of additional subordinated support provided to an entity in a troubled debt restructuring. For example, when another lender becomes a “debtor in possession” in order to secure its debt position and as a consequence, the existing lenders move to a subordinated position or rank, are the existing lenders considered to have provided additional subordinated financial support to the entity and hence, required to reassess if they are primary beneficiary? Does providing additional debt or incurring legal fees that the debtor owes to the lender increase the expected losses to the entity? How would a loan renegotiation increase the expected losses of the entity as mentioned in A24?

**Implementation Timeline**

Given the Board is deliberating this exposure draft and a number of FSPs, we urge the Board to consider its timetable in finalize these documents so as to provide companies with sufficient time to appropriately evaluate and conclude their potential Variable Interest Entities by the upcoming implementation date.

Should you have any questions regarding the issues discussed in this letter, please do not hesitate to contact me at 416-955-7876 to discuss our comments with you further. Thank you.

Yours very truly,

Linda F. Mezon  
Vice President, Accounting Policy  
RBC Financial Group  
linda.mezon@rbc.com

cc Peter W. Currie, Vice Chairman & Chief Financial Officer  
Janice Fukakusa, Executive Vice President, Finance RBC Financial Group