



LETTER OF COMMENT NO. 15

October 30, 2008

Mr. Russell G. Golden  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**File Reference No. 1620-100**

**Re: Amendments to FASB Interpretation No. 46(R)**

Dear Mr. Golden:

MBIA Inc. ("MBIA") and its wholly owned subsidiaries including MBIA Insurance Corp. ("MBIA Corp."), a financial guarantee insurance company regulated principally by the New York State Insurance Department, appreciates the opportunity to comment on the Proposed Statement of Financial Accounting Standards, *Amendments to FASB Interpretation No. 46(R)* ("Proposed Statement"). MBIA supports the FASB's effort to "improve financial reporting by public enterprises involved with variable interest entities (VIEs) and to provide more relevant and reliable information to users of financial statements," an increasingly important objective given the need and desire among investors and creditors to more clearly understand the full scope of enterprises' exposure to these entities.

Having reviewed the Proposed Statement in the context of our various businesses, we believe the amendment will not improve presentation and disclosure with respect to financial guarantee insurance contracts written on obligations issued by VIEs. Instead, we propose that FASB amend paragraph 4 to provide a scope exception for financial guarantee insurance contracts issued by insurance enterprises under SFAS 163, *Accounting for Financial Guarantee Insurance Contracts* and credit derivatives issued by insurance enterprises under SFAS 133, *Accounting for Derivative Instruments and Hedging Activities*, as amended.

MBIA believes the qualitative assessment approach to determine controlling financial interest is neither clear nor operational, and through this letter, we would like to suggest changes and additions to the examples in Appendix A of the Proposed Statement. Additionally, we have attached responses to the Board's questions in the Request for Comments. Given our exposure to these entities and our concerns over the Proposed Statement, we welcome, and hereby request, the opportunity to attend the public roundtable meeting on the Proposed Statement planned for November 6, 2008.

MBIA provides financial guarantee insurance contracts (and credit default swap, or CDS, contracts) through MBIA Corp., as well as fixed income asset management, and other financial services to public finance and structured finance issuers, investors and capital markets participants on a global basis. MBIA generally does not act as a sponsor or transferor of financial assets to VIEs and does not provide noncontractual financial support or other noncontractual support to VIEs.

**Controlling Financial Interest.** MBIA supports a principles-based approach that uses a qualitative analysis to determine the primary beneficiary of a VIE. We are interested in clarifying the “power to direct matters that most significantly impact the activities of a VIE, including, but not limited to, activities that impact the entity’s economic performance” in relation to financial guarantee insurance contracts written on obligations issued by VIEs.

The financial guarantee insurance contracts we issue provide an unconditional and irrevocable guarantee of the payment of principal and interest when ultimately due to the holders of insured obligations. Payments under financial guarantee insurance contracts generally cannot be accelerated against MBIA Corp. In addition, we are not required to post collateral.

At the initiation of certain financial guarantee insurance policies or when certain contingent events occur under certain insurance policies (for example, MBIA Corp. makes a payment to a policyholder that is not reimbursed by the obligor), the options, votes, rights, powers and remedies of the policyholder are fully subrogated and assigned to MBIA Corp. (the options, votes, rights, powers and remedies may revert back to the policyholder if MBIA Corp. is reimbursed by the obligor in full for the payment made to the policyholder). In other words, MBIA Corp. may inure to certain rights and protections of the policyholder, generally provided in the indenture and other transaction documents, while the financial guarantee insurance policy is in effect.

The policyholders or MBIA Corp. generally do not have the power to direct matters that most significantly impact the activities of a VIE, including, but not limited to, activities that impact the entity’s economic performance. The indenture and other related transaction documents generally provide protective rights to the policyholders and MBIA Corp. under certain provisions, including events of default and breach of contract. In these events, the indenture generally requires that the trustee makes certain decisions as fiduciary of the bondholders (including policyholders). Under the indenture, the policyholders or MBIA Corp. are allowed to provide consent in order for the trustee to take certain actions. Given these facts and circumstances under an ongoing qualitative assessment approach, policyholders or MBIA Corp. generally do not have the power to direct matters that most significantly impact the activities of a VIE.

Overall, MBIA views its rights and remedies (generally subrogated from and assigned to MBIA Corp. by the policyholder) as described above as protective rights that it obtains as a potential creditor of the entity. To further support our view on protective rights, the following guidance is referenced. While MBIA acknowledges that VIEs are not in the scope of EITF 04-5, *Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights*, the Task Force does not consider that protective rights overcome the presumption of control by the general partner in that consensus. We believe protective rights are not considered participating rights. Separately, the IASB in the

proposed new IFRS on Consolidation, Appendix B – Application Guidance, refers “to rights that do not give a party control of an entity as protective rights” and specifically defines protective rights to include “the ability to remove the party that directs the activities of the entity in exceptional circumstances, such as bankruptcy or on breach of contract by that party.”

We request that FASB consider providing guidance in the form of an illustrative example in Appendix A to clarify the qualitative analysis of variable interests in the form of financial guarantee insurance contracts and to distinguish these variable interests from a guarantee facility within the scope of Interpretation No. 45 (Example 5). The principles in paragraphs 14-14B and any illustrative example should also explain that protective rights do not give the holder power to direct matters that most significantly impact the activities of a VIE, including, but not limited to, activities that impact the entity’s economic performance.

Further, we support a joint FASB/IASB project on Consolidation and encourage the FASB to consider the proposed new IFRS on Consolidation in developing the Proposed Statement. We believe the proposed IFRS guidance on protective rights is clear and operational and should be incorporated into the Proposed Statement.

**Transparency of Financial Information.** MBIA does not believe the Proposed Statement will improve financial reporting to the users of our financial statements if the assessment of the characteristics of our financial guarantee insurance contract under the controlling financial interest approach results in additional consolidation of VIEs on our balance sheet. Obligations wrapped by the financial guarantee insurance contract issued by MBIA Corp. include liabilities of municipalities, voting interest entities, and VIEs. MBIA Corp.’s financial guarantee insurance contracts and its exposure do not differ among VIEs, voting interest entities, or entities meeting the scope exceptions under paragraph 4 of the Proposed Statement. In all cases, MBIA Corp. provides an unconditional and irrevocable guarantee of payment of principal and interest when due on the insured obligations. Financial guarantee insurance contracts and insured credit default swaps follow the accounting and disclosure requirements in accordance with the following pronouncements:

- SFAS 163, *Accounting for Financial Guarantee Insurance Contracts* (effective January 1, 2009 for MBIA)
- SFAS 133, *Accounting for Derivative Instruments and Hedging Activities*
- SFAS 5, *Accounting for Contingencies*
- FSP FAS 133-1 and FIN 45-4, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161* (effective December 31, 2008 for MBIA)

An insurance contract that in substance guarantees payment of principal and interest on obligations currently results in three different accounting and reporting models i.) a financial guarantee insurance contract according to SFAS 163, ii.) an insured credit default swap, that is in substance a financial guarantee insurance contract, according to SFAS 133, and iii.) a consolidated VIE according to the Proposed Statement. The different accounting and reporting models for substantially the same contract increases complexity, reduces transparency, and lessens the relevance of financial reporting to users of our financial statements. Our maximum exposure on a contractual basis is the payment of principal and interest when due on the insured obligation given no

noncontractual exposure to a VIE. By disclosing maximum exposure under SFAS 5, one of the objectives of the Proposed Statement that being “the accounting and disclosure under the Interpretation 46(R) do not always provide timely and useful information about an enterprise’s involvement or involvements in a variable interest entity” is addressed.

**Scope.** In our view, financial guarantee insurance contracts should be presented and disclosed in accordance with SFAS 163 so that they provide consistent and transparent information to users of MBIA’s financial statements. Ongoing assessment will require MBIA to continually monitor only those financial guarantee insurance contracts protecting obligations issued by VIEs. Additional disclosures will be required for this group of contracts. MBIA will incur significant costs to implement the Proposed Statement. Additionally, operational burdens and inconsistencies will likely result from treating insurance contracts on VIE-issued obligations differently than the majority of our insurance contracts issued by non-VIEs, even though the nature of our exposure under these insurance contracts, a guarantee of scheduled payments by the issuer of the insured obligation, is basically identical on an economic, contractual, and risk basis. In our view, the users of our financial statements do not benefit from additional consolidation of VIE assets and liabilities that may result from the Proposed Statement. Users of our financial statements would benefit from transparent, consistent and uniform accounting and reporting of all financial guarantee insurance contracts by applying the approach in SFAS 163. Therefore, the FASB should amend paragraph 4 in the Proposed Statement to provide a scope exception to financial guarantee insurance contracts accounted for under SFAS 163 and insured credit default swaps accounted for under SFAS 133.

In addition to our comments above, we believe the Proposed Statement requires clarification or further development to facilitate implementation and compliance. These comments are provided in the following Appendix, including our responses to the questions the FASB solicited in the Notice for Recipients.

\* \* \* \* \*

Thank you for the opportunity to contribute to the standard-setting process. Should you have any questions about our letter, please do not hesitate to contact Greg Wilson, Director of Accounting Policy Group at (914) 765-3381 or Huy Tran, Managing Director of Accounting Policy Group at (914) 765-3557.

Sincerely,



Huy Tran, Managing Director  
Accounting Policy Group  
MBIA Insurance Corp.

Attached: Appendix

## APPENDIX

**1. Will the Proposed Statement meet the project's objective to improve financial reporting by enterprises involved with VIEs and to provide more relevant and reliable information to users of financial statements?**

We do not believe the Proposed Statement will improve financial reporting to the users of MBIA's financial statements. In fact, the Proposed Statement will increase complexity, reduce transparency, and lessen the relevance of financial reporting to users of our financial statements.

MBIA is primarily involved with VIEs as the result of an implied variable interest resulting from a financial guarantee insurance policy written on obligations issued by a VIE. More relevant and reliable financial information would be achieved through accounting and reporting consistently under the model for financial guarantee insurance contracts required under SFAS 163. In certain circumstances, the form of the insured obligation is triggering a different accounting treatment where the substance is identical to other financial guarantee insurance policies that are not consolidated. Interpretation 46(R) currently provides a scope exception for investments held by investment companies and for separate accounts of life insurance enterprises provided these entities qualify and follow specialized industry accounting. We believe a scope exception will improve financial reporting and provide consistent and transparent financial statements for our constituents, including credit rating agencies. Therefore, we are requesting the FASB to amend paragraph 4 in the Proposed Statement to provide a scope exception to financial guarantee insurance contracts accounted for under SFAS 163 and insured credit default swaps issued by insurance enterprises accounted for under SFAS 133. Financial statement users would benefit from transparent, consistent and uniform accounting and reporting of financial guarantee insurance contracts that in substance provide the same guarantee of payment of principal and interest when due on insured obligations regardless of the form of entity.

**2. What costs do you expect to incur if the Board were to issue the Proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits to users of financial statements?**

MBIA expects to incur significant time and expense to implement the Proposed Statement, and to implement the ongoing assessment requirements. The time and cost are associated with the large number of transactions that are required to be reviewed, and the modification of existing information technology systems or requirement for new systems. The Proposed Statement requires significant incremental financial statement disclosures that are expected to be time consuming, costly, and less useful to our constituents.

In addition, MBIA, through its fixed income asset management business, invests in and holds a significant portfolio of fixed income securities that include beneficial interests issued by securitizations. At initial implementation and through ongoing qualitative assessment, MBIA will incur time and expense to

determine and document the qualitative assessment under the Proposed Statement since Qualifying Special Purpose Entities (QSPE) is proposed to be eliminated under the Proposed Statement FAS 140, *Accounting for Transfers of Financial Assets*. Modifications to existing information technology systems or requirements for new systems are expected.

MBIA proposes to the Board to amend paragraph 4 of the Proposed Statement to provide a scope exception to financial guarantee insurance contracts accounted for under SFAS 163 and insured credit default swaps issued by insurance enterprises accounted for under SFAS 133. A scope exception will allow MBIA to concentrate on the implementation of SFAS 163 and provide the presentation and financial statement disclosure requirements to users of our financial statements.

**3. Do you believe the principles in paragraphs 14-14B of Interpretation 46(R), as amended by this proposed Statement, are sufficiently clear and operational?**

In general, a qualitative assessment approach to determine the primary beneficiary of a VIE which incorporates control and the right to receive benefits or the obligation to absorb losses is an approach that MBIA supports. The definition of controlling financial interest is not sufficiently clear and operational in our view.

In our view, the quantitative assessment should be eliminated. If not eliminated, in practice, the expectation may exist that if an enterprise determines that power is shared between multiple parties resulting in no one variable interest holder consolidating a VIE based on a qualitative assessment that a quantitative assessment may be needed to validate the qualitative assessment or may be expected for ongoing assessment.

**4. Do you believe that the examples in Appendix A clearly indicate how the principles in paragraphs 14–14B of Interpretation 46(R), as amended by the Proposed Statement, would be applied?**

The examples in Appendix A do not clearly indicate how the “power to direct matters that most significantly impact the activities of a VIE, including, but not limited to, activities that impact the entity’s economic performance” should be applied to contractual rights included in financial guarantee insurance contracts that are protective in nature. A qualitative assessment example including multiple tranches of debt securities issued by a special purpose entity used to securitize mortgage loans and an implied variable interest resulting from a financial guarantee insurance contract written on the most senior debt security should be added to provide guidance on determining the controlling financial interest. Additional guidance addressing initial assessment and subsequent ongoing assessment upon the underperformance of the mortgage loan collateral would be useful to illustrate the controlling financial interest approach. If an example provides guidance on determining the “power to direct matters that most significantly impact the activities of a VIE” when an event of default has occurred, holders of debt securities, financial guarantors, and trustees could benefit in analyzing voting rights, consents, and remedies as they impact ongoing assessments. We would welcome the opportunity to work with the FASB to

provide an illustrative example to articulate the principle to determine the primary beneficiary.

**Example 5.** We acknowledge the implementation guidance are for illustration purposes and are hypothetical transactions, however the “guarantee facility” in Example 5 does not represent the characteristics of a financial guarantee insurance contract. Also, insurance enterprises that issue financial guarantee insurance contracts generally do not sponsor securitization transactions or transfer collateral and service loans. Example 5 should clarify that the guarantee meets the conditions of Interpretation No. 45 to distinguish the type of guarantee or refer to the variable interest as a financial standby letter of credit.

Further, the examples in Appendix A should clarify that the existence of substantive kick-out rights (not held by a single party) is based on the facts and circumstances at the time of the qualitative assessment. The Proposed Statement requires an ongoing reassessment in response to changes in facts and circumstances, which would capture any changes to kick-out rights based on changes to facts and circumstances. For example, a manager of a CDO generally may be replaced by a super majority vote of all classes of outstanding securities or may be replaced based on the manager’s actions or decisions or by prespecified operation of the transaction documents including conditions triggered by the performance of the collateral or bankruptcy. The facts and circumstances may or may not exist to replace the CDO manager, and clarifying that the qualitative assessment is based on existing facts and circumstances (not based on possible facts and circumstances) may eliminate diversity in application of the approach.

The examples should clarify whether servicing fees or base fixed fees that are senior in the cash flow waterfall meet the condition in paragraph 14A.b. Servicers also may receive benefits in the form of float, other fees, and cleanup call options, and the impact on the controlling financial interest qualitative assessment attributable to other benefits received by servicers should be clarified.

- 5. Do you believe that the quantitative analysis is necessary based on the proposed amended guidance for determining the primary beneficiary? Do you believe that the quantitative analysis would be performed in many situations? Why or why not?**

In our view and as discussed above in question 3, the quantitative assessment should be eliminated. In practice, the expectation may exist that if an enterprise determines that power is shared between multiple parties resulting in no one variable interest holder consolidating a VIE based on a qualitative assessment that a quantitative assessment may be needed to validate the qualitative assessment or may be expected for ongoing assessment.

- 6. Do you agree with the Board’s decision to require ongoing assessments? If not, please provide reasons (conceptual or otherwise) as to why you disagree with these requirements considering all of the proposed amendments in the Proposed Statement.**

No, MBIA does not support ongoing assessments of financial guarantee insurance contracts written on obligations issued by VIEs. The conditional rights and remedies assigned and subrogated to MBIA in the event a payment of principal and interest is made to a holder of an insured obligation issued by a VIE is viewed as a protective right that does not result in the power to direct matters of the VIE.

MBIA provides financial guarantee insurance contracts to issuers of municipal obligations that do not involve VIEs, in addition to obligations issued by VIEs. The economic and credit risk profile of a financial guarantee insurance contract written to provide credit protection on a municipal obligation or an obligation issued by a VIE are similar. Ongoing assessments require MBIA to incur incremental work and additional cost to continually assess only certain financial guarantee insurance contracts (written on obligations issued by VIEs), with no perceived benefit to users of our financial statements.

MBIA quantifies the maximum exposure to credit loss in the event of nonperformance by the issuer, including VIEs, of the insured obligations as required by SFAS 5, *Accounting for Contingencies* as disclosed in the net insurance in force. In summary, MBIA is presenting and disclosing a financial guarantee of principal and interest when due on issuer obligations regardless of the type of entity the sponsor or issuer utilizes, VIE, or otherwise, and the ongoing assessment does not improve financial reporting to the users of our financial statements.

In addition, MBIA, through its fixed income asset management business, invests in and holds a significant portfolio of fixed income securities that include beneficial interests issued by securitizations for income and capital appreciation. MBIA presents and discloses the investments as available-for-sale under SFAS 115, *Accounting for Certain Investments in Debt and Equity Securities*. MBIA does not agree that ongoing qualitative assessment of variable interests held in an available-for-sale portfolio or a trading portfolio is appropriate given the remote probability a variable interest of this type will result in meeting the conditions in paragraph 14A.a.

Did the FASB consider the operational burden resulting from ongoing assessment of variable interests held for available-for-sale or trading portfolios where the investor does not act as a sponsor or transferor of financial assets to VIE and has no other contractual or noncontractual involvement with the VIE?

- 7. Do you believe that any exceptions to the Proposed Statement should be made for private or not-for-profit entities? If so, please articulate the conceptual basis and reasons for the exceptions.**

MBIA has no comment.

- 8. Financial statement users indicated that the information disclosed in accordance with Interpretation 46(R) about an enterprise's involvement or involvements with VIEs and the associated risks are often insufficient and untimely. Do you believe the disclosure requirements in the Proposed Statement address those concerns?**

MBIA's involvement with VIEs is primarily limited to providing protection through financial guarantee insurance contracts or credit default swaps, depending on the form of the agreement, generally on the most senior liabilities of structured finance transactions. In other words, MBIA provides the unconditional and irrevocable guarantee of payment of principal and interest when due on the insured obligations which are generally the most senior securities issued by the VIE. MBIA generally does not sponsor or transfer financial assets, and does not provide noncontractual financial or other support to VIEs.

MBIA currently reports or will report and disclose financial guarantee insurance contracts or insured credit default swaps under SFAS 163, SFAS 133, SFAS 5, and FSP FAS 133-1 and FIN 45-4. For example, MBIA discloses ultimate exposure to credit loss in the event of nonperformance by the issuer of insured obligations of municipal, asset-/mortgage-backed and other non-municipal securities represented by net insurance in force. This disclosure is presented by geographic location and by bond type. MBIA reports and discloses estimates of losses associated with credit deterioration on the insured obligations. For insured credit default swaps that do not qualify for the financial guarantee scope exception under SFAS 133, MBIA presents all such transactions at fair value and discloses notional values in addition to the disclosure provisions under FSP FAS 133-1 and FIN 45-4.

The disclosure requirements in the Proposed Statement are confusing and duplicative with the disclosure requirements for financial guarantee insurance contracts and insured credit default swaps described above in our view. We believe the accounting and reporting for financial guarantee insurance contracts, as well as credit default swaps that do not qualify for the financial guarantee scope exception under SFAS 133, issued by insurance enterprises should follow SFAS 163 and paragraph 4 of the Proposed Statement should be expanded to provide a scope exception for such contracts.

In addition, please refer to the comment letter on the Proposed FSP FAS 140-e and FIN 46(R)-e submitted to the FASB by MBIA on October 15, 2008.

**9. *Should the elements of a consolidated VIE be required or permitted to be classified separately from other elements in an enterprise's financial statements?***

Elements of a consolidated VIE should be permitted to be classified separately based on the judgment of the financial statement preparer given the significance of the elements of a consolidated VIE to the enterprise.

With respect to classification in an enterprise's financial statement, MBIA supports the linked presentation proposal submitted by the American Securitization Forum and the Securities Industry and Financial Markets Association.