The Bank of New York Mellon Corporation
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October 8, 2009

Office of the Comptroller of the Currency
250 E Street SW
Mail Stop 2-3
Washington, DE 20219
Docket ID: OCC-2009-0012
RIN 1557- AD26

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1368

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
3064- AD48

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2009-0015
RIN 1550-AC36

RE: Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues

Ladies and Gentlemen:

We are writing in response to the agencies' Notice of Proposed Rulemaking published in the Federal Register on September 15, 2009. The Bank of New York Mellon Corporation (BNY Mellon or the Company) is pleased to be part of the comment process.

We have reviewed the Notice of Proposed Rulemaking and strongly recommend that the agencies consider excluding sponsored fund assets consolidated as a result of applying FAS 167, *Amendments to FASB Interpretation 46(R),* (FAS 167) in determining minimum risk based capital requirements.

BNY Mellon is a global financial institution with over $200 billion of assets and $1.2 trillion of assets under management, including securities lending assets. BNY Mellon's asset servicing and asset management sectors act as the asset manager for its customers through its securities lending, retail, alternative investment and institutional funds, which include collective defined benefit and defined contribution investment funds. Performance fees and/or asset management fees are earned for providing asset management services. In some instances, BNY Mellon invests "seed capital" in a new fund to begin the investment process. These investments are generally intended to be withdrawn when the fund achieves a critical mass of outside investors. In certain funds, the seed capital is retained in the fund as the outside investors prefer the fund sponsor to also have an investment at risk.

Asset Manager Sponsored Funds Were Not Intended to be Consolidated

We reviewed the FASB's September 2008 exposure draft and concluded that performance fees or fee sharing arrangements would not be considered variable interests because the following conditions in paragraph B22 would be met:

e. The total amount of the expected fees is ***not large*** relative to the total amount of the variable interest entity's expected return to its variable interests.
f. The expected variability in the fees is ***not large*** relative to the potential variability in the variable interest entity's economic performance.

As a result of this determination, BNY Mellon's Supervisory Capital Assessment Program analysis excluded the potential consolidation of any assets of our sponsored asset management funds.

Furthermore, we believe the amendments outlined in the September 2008 exposure draft were made mainly to address the consolidation of asset-backed commercial paper conduits and securitization special purpose entities. We determined that an entity transferring assets to a qualifying special purpose entity and retaining a subordinate interest in the securitized loans or the servicing rights is at risk of consolidation. This conclusion is supported by the views in the agencies' Notice of Proposed Rulemaking, Section II.- The 2009 GAAP Modifications, which states: "A preliminary analysis of the 2009 GAAP modifications, as well as analysis derived from the agencies' supervisory information, indicates that the categories of off-balance sheet exposures likely to be subject to consolidation on an originating or servicing banking organization's balance sheet include:

- Certain asset-backed commercial paper (ABCP) conduits;
- Revolving securitizations structured as master trusts, including credit card and home equity line of credit (HELOC) securitizations;
- Certain mortgage loan securitizations not guaranteed by the U.S. government or a U.S. government-sponsored agency;

- Certain term loan securitizations in which a banking organization retains a residual interest and servicing rights, including some student loan and automobile loan securitizations; and
- Other SPEs, such as certain tender option bond (TOB) trusts that were designed as QSPEs."

Unexpected Changes in Final Rule Would Cause Asset Manager Sponsored Funds to be Consolidated

When FAS 167 was issued in June 2009, the language in paragraphs B22e and B22f was changed to the following:

e. The total amount of anticipated fees are ***insignificant*** relative to the total amount of the variable interest entity's anticipated economic performance.
f. The anticipated fees are expected to absorb an ***insignificant*** amount of the variability associated with the entity's anticipated economic performance.

These changes were not re-exposed by the FASB for comment before FAS 167 was issued. The change from the term "not large" (in the exposure draft) to "insignificant" (in the final FAS 167) when determining whether or not fees are variable interests in a VIE has prompted asset managers to determine that its investment funds with performance fees or fee sharing arrangements are likely to be consolidated. This issue is compounded by the change in the voting rights requirements (FIN 46(R), paragraph 5b1), which previously were considered to be met if investors had simple majority kick-out rights. FAS 167 changed this to require that kick-out rights only exist if a "single equity holder has the unilateral ability to exercise such rights". Therefore, entities previously considered to not be subject to potential consolidation under FIN 46(R), will now be included in the scope of FAS 167.

Risk Based Capital Requirements Should Exclude Asset Manager Sponsored Fund Assets

If it is determined that asset management fund assets must be consolidated in accordance with FAS 167, we strongly believe that these assets should be excluded from the Company's risk weighted assets. Any asset management fund assets consolidated due to FAS 167 are not BNY Mellon's assets and will not provide any future economic benefits to the Company. Additionally, there is no associated risk of loss related to these assets, except for small invested seed capital amounts, which are already recorded as assets and risk weighted accordingly.

We strongly believe that the current risk based capital guidelines should exclude any changes to generally accepted accounting principles that when applied, do not represent the actual risks and rewards of the Company. However, if consolidation of these assets is required and the assets are to be included in risk weighted assets, we propose the following solutions:

i) application of a zero percent risk weight to these assets; and
ii) a separate and distinct disclosure item should be created on Call Report and FR Y-9C reports.

We believe that the potential consolidation of asset management investment fund structures is an unintended consequence of FAS 167. The rule change will result in higher fees to pension and 401(k) plans and other investors or a reduction in the availability of investment offerings. The rule change will also be procyclical at the worst possible time by reducing the capital available for lending, which will lead to reduced credit extensions or increased credit costs. These outcomes will further suppress economic growth and likely increase credit losses, which will further reduce capital.

FAS 167 has the potential to add significant assets to the balance sheet of banks involved in the asset management business. We urge you to make sure the capital rules reflect the true economics, which is that these assets have little, if any, risk to the Company and should not require capital.

To ensure transparency, any assets consolidated under FAS 167 should be shown as a single line item in the Call Report and FR Y-9C. Commingling these assets in other individual line items will destroy the usefulness of these regulatory reports and make it impossible to do meaningful analysis.

ALLL Provision should Exclude Consolidated Securitized Assets

Although BNY Mellon is not currently originating and securitizing loans, we believe consolidated loan securitization assets should not be subject to the same ALLL provisioning process. Losses on securitized assets would be absorbed by any subordinated beneficial interest holders and then by the trust's debt holders.

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

John A. Park
Controller