MELANIE L. FEIN

601 PENNSYLVANIA AVENUE, N.W.
SOUTH TOWER
SUITE 900 PMB 155
WASHINGTON, D.C. 20004

(202) 302-3874
(703) 759-3912
fein@feinlawoffices.com

Admitted in Virginia and the District of Columbia

October 15, 2009

TO: Board of Governors of the Federal Reserve System
Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation
Office of Thrift Supervision

Re: Request for Public Comment 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

CAPITAL IMPLICATIONS OF BANKING ORGANIZATION SUPPORT FOR AFFILIATED MONEY MARKET FUNDS

Ladies and Gentlemen:

This letter responds to the banking agencies' request for public comment on how the agencies can better align bank capital requirements with the actual risk of certain exposures of banking organizations, particularly in light of Statement of Financial Accounting Standards No.167, Amendments to FASB Interpretation No. 46(R), issued by the Financial Accounting Standards Board earlier this year.

This letter is filed on behalf of Federated Investors, Inc., one of the nation's largest mutual fund managers with over $400 billion in assets under management. We comment on the need for the capital rules to adequately reflect the obligations incurred by banking organizations (including banks and bank holding companies) that provide both explicit and implicit financial support for their affiliated money market funds.

Federated believes that the soundness of the financial system depends on the application of strong capital rules to banking organizations. To be effective,

such rules must reflect the various obligations assumed by banking organizations. Banking organizations assume significant obligations when they provide implicit or explicit financial support to their affiliated money market funds.

BANKING ORGANIZATIONS EFFECTIVELY HAVE GUARANTEED THEIR AFFILIATED MONEY MARKET FUNDS

Periodically in the past, and most recently during the past 18-24 months, nearly all banking organizations that sponsor money market funds have provided financial support to their affiliated funds. This support has taken the form of credit extensions, cash infusions, and purchases of fund assets or shares. This support has been required to prevent affiliated money market funds from "breaking a dollar" due to credit downgrades or other impairments in the funds' portfolios and to prevent reputation risk to banking organizations that sponsor such funds.

The SEC within the past 12-18 months has granted numerous exceptions from the Investment Company Act to allow fund sponsors to provide various forms of financial support to their affiliated funds. The majority of these fund sponsors were banking organizations. The total amount of fund assets supported by banking organizations has been very large and has resulted in significant losses to individual banking organizations.

Public filings with the Securities and Exchange Commission indicate the extent of the obligations incurred by banking organizations on behalf of their affiliated money market funds. What the filings show is that nearly all of the substantial money market fund support arrangements involved bank-affiliated funds and nearly all banking organizations that advise money market funds supported one or more of their funds.

INVESTORS INFER A GUARANTEE

Banking organization support for affiliated money market funds has given rise to a perception among investors—particularly institutional investors—that bank-affiliated money market funds are effectively guaranteed by their banking organization sponsors.

Federated's own anecdotal experience indicates that many institutional investors now view bank-affiliated money market funds as effectively guaranteed by their banking organization sponsors and as "safer" than nonbank-affiliated funds. Some institutional investors recently have revised their list of approved

investments to include money market funds only if they are sponsored by a banking organization.

This perception of a guarantee, and the migration of fund assets to money market funds affiliated with banking organizations, will increase the pressure on banking organizations to support their affiliated funds—both explicitly and implicitly—in the future.

CREDIT RATINGS SUPPORT THE INFERENCE OF A GUARANTEE

The perception that bank-affiliated money market funds are effectively guaranteed by their banking organization sponsors is reinforced by the credit rating agencies which are beginning to rate money market funds based on a sponsor's "ability and willingness" to support its money market funds in times of stress.

On October 5, 2009, for example, Fitch Ratings announced that it will apply new "Global Money Market Fund Rating Criteria" that reflect the likelihood that a money market fund's sponsor will prop up the fund. In addition to assessing the fund sponsor's operational support, infrastructure capabilities, and investment oversight, Fitch stated that it will make a subjective judgment concerning the fund sponsor's "implicit" support for its funds. Fitch's determination of the willingness of a fund sponsor to provide future support "is not based on any explicit guarantee or assurances from the fund sponsor" but rather is "inferred" from the "strategic importance" of the fund to the sponsor.

Unless Fitch can make the inference that a fund sponsor will intervene to prevent the fund from breaking a dollar, the fund will not be assigned the highest rating. Because banking organization sponsors have demonstrated their ability and willingness to support their money market funds in the past, Fitch will be able to infer the likelihood of their support in the future.

Illogical as it may seem, the new rating criteria suggest that a higher rating will be given to money market funds that experienced credit weaknesses and required sponsor support in the past than to money market funds that were well-managed and did not require sponsor support.

Excerpts from Fitch's new money market fund rating criteria follow:

* * * * Consideration is given to the sponsor's ability and willingness to financially support its money market funds, if needed, in times of extreme stress. **The concept of support is implicit rather than explicit**, as Fitch recognizes there is no contractual obligation to support a fund. That said, historically, support has been forthcoming from strategically motivated sponsors that had sufficient financial resources.

* * * * The credit rating of the fund sponsor is one indication of its ability to provide support. At the 'AAAmmf' fund rating level, a fund sponsor typically would be rated solidly investment grade and demonstrate an appropriate level of financial resources.

Fitch's determination of the willingness of a fund sponsor to provide future support is not based on any explicit guarantee or assurances from the fund sponsor, but rather is inferred from an analysis of the strategic importance of the fund to the sponsor. For example, a large footprint in the money market business or a significant number of other businesses that utilize the money market funds (e.g. for prime brokerage, investors in other funds, other corporate clients, private, banking clients, etc.) as well as the broader importance of investment/wealth management operations to the institution may indicate sufficient commercial and reputational incentives to provide support within reason. Fitch notes that implied support is by its very nature subjective, and if the institutional sponsor views the reputational risk stemming from a fund's closure or impairment as being low, financial support is less likely to be forthcoming during periods of stress.

* * * * The role of the sponsor of 'AAmmf' and 'Ammf' rated funds is considered with respect to its ability to provide appropriate internal controls and decision-making processes upon the fund and its management, as well as operational support and infrastructure, including distribution channels. However, the sponsor may not be considered as a potential source of financial support to the fund during periods of heightened credit, market, and/or

> liquidity stress if the fund is rated below 'AAAmmf'. Money market funds sponsored by entities that are viewed by Fitch as lacking sufficient resources and/or an established track record in the investment management industry may not be able to achieve an 'AAAmmf' rating.

THE INFERENCE OF A GUARANTEE POSES MORAL HAZARD, SAFETY NET CONCERNS, AND COMPETITIVE IMBALANCES

The perception that bank-affiliated money market funds are effectively guaranteed by banking organizations creates moral hazard that affects investors and fund managers alike. It allows portfolio managers of such funds to take risks without bearing the full consequences of their investment decisions, allowing them to earn marginally higher yields and putting pressure on other fund managers to do the same, resulting in incrementally higher risks. It encourages investors to make investment decisions without proper due diligence.

The perception of a guarantee also raises serious questions concerning the scope of the federal safety net. Banking supervisors in the past have sought to limit the scope of the safety net as a matter of policy and have voiced concerns about the expansion of the safety net to cover nonbank affiliates of banks and risks from non-traditional activities. Related to this concern, a bank holding company's support for affiliated funds also may diminish its ability to serve as a source of strength to its subsidiary banks.

The perception of a guarantee also creates potential competitive imbalances to the extent that investors believe that bank-affiliated funds are "safer" than nonbank-affiliated funds.

SUPPORT FOR AFFILIATED FUNDS SHOULD BE REFLECTED IN BANKING ORGANIZATION CAPITAL LEVELS

In order to ensure that the purpose of the capital rules is fulfilled, it is important that the rules reflect the obligations assumed by banking organizations when they provide financial support to their affiliated money market funds. Both explicit and implicit support arrangements should be accounted for.

Under the Basel I capital rules that currently apply to all banking organizations, support for an affiliated money market fund appears to fall within

the definition of a "direct credit substitute." The capital rules require a banking organization to convert all of the assets supported by a direct credit substitute to an on-balance sheet credit equivalent amount and assign a credit conversion factor of 100 percent. Thus, a banking organization that provides financial support to an affiliated money market fund would be required to convert all of the assets supported by the arrangement to an on-balance sheet credit equivalent in an amount equal to all of the assets supported being supported—i.e., all of the assets in the fund.

Moreover, a banking organization that provides credit support to a money market fund beyond the level of support it is legally obligated to provide under an explicit agreement may be deemed to be providing "implicit recourse." When implicit recourse is found in the case of a securitization trust, the regulators require the *entire amount* of securitized assets to be put back onto the bank's balance sheet. The banking organization may be presumed to provide implicit recourse to any new securitization trust it sponsors as well.

Accordingly, even though a banking organization may assume direct liability for a small percentage of a money market fund's assets, the capital rules appear to treat the bank as supporting the *entire fund* for capital purposes. If the banking organization assumes liability beyond that which it is legally obligated to provide, the capital rules may treat the organization as supporting *all of its other affiliated funds as well*.

It is not clear that the banking agencies have applied these rules to banking organizations with respect to their support arrangements for affiliated money market funds. The banking agencies should require banking organizations to maintain appropriate levels of capital in accordance with the existing rules. We believe that the current rules are consistent with GAAP accounting standards as amended by FAS 167, and should be enforced.

FAS 167

As indicated in the attached analysis, we believe that FAS 167 may be read to require an investment adviser to a money market fund to consolidate the fund on its balance sheet for accounting purposes if the adviser provides explicit or implicit support to the fund.

Regardless of whether consolidated accounting is required by FAS 167, the banking agencies' capital rules applicable to direct credit substitutes by banking organizations should be enforced with respect to explicit and implicit

support arrangements provided by banking organizations to their affiliated money market funds.

* * * *

We appreciate your attention to our comments and would be pleased to provide further information or answer any questions you may have.

Sincerely,

Melanie L. Fein

Melanie L. Fein

Attachments

cc: Eugene F. Maloney
Executive Vice President and Corporate Counsel
Federated Investors, Inc.

ATTACHMENTS

FINANCIAL SUPPORT ARRANGEMENTS BY MONEY MARKET FUND SPONSORS

The following are excerpts from filings with the Securities and Exchange Commission by some, but not all, of the bank holding companies and other firms that provided support for their affiliated money market funds during 2007 and 2008. As shown, banking organizations provided substantial amounts of support to their affiliated funds. SEC documents show that nearly every banking organization that advises a money market fund either provided cash support or purchased securities (primarily SIVs) from the funds. J.P. Morgan was the notable exception. Nonbank advisers that did not provide support to their funds include Fidelity, Vanguard, Blackrock, and Federated, among others. The following also includes excerpts showing direct support for SIVs by Citigroup and Morgan Stanley.

BANK OF AMERICA CORPORATION

(pg. 41 of 2008 10-K)

We entered into capital commitments under which the Corporation provided cash to these funds in the event the net asset value per unit of a fund declined below certain thresholds. The capital commitments expire no later than the third quarter of 2010. At December 31, 2008 and 2007 we had gross (i.e., funded and unfunded) **capital commitments to the funds of $1.0 billion and $565 million**. During 2008 and 2007, we incurred losses of $695 million and $382 million related to these capital commitments. At December 31, 2008 and 2007, the remaining loss exposure on capital commitments was $300 million and $183 million.

Additionally, **during 2008 we purchased $1.7 billion** of investments and recorded losses of $366 million related to these securities and $52 million of other-than-temporary impairment losses recorded subsequent to purchase. During 2007, **we purchased $585 million** of certain investments from the funds and subsequently recorded other-than-temporary impairment losses in All Other of $394 million. At December 31, 2008 and 2007, we held AFS debt securities with

a fair value of $698 million and $163 million of which $279 million and $163 million were classified as nonperforming AFS securities. At December 31, 2008, $272 million of unrealized losses on these investments were recorded in accumulated OCI.

WACHOVIA

(pg. 92 of 2007 10-K)

In the third quarter of 2007, the Company purchased and placed in the securities available for sale portfolio **$1.1 billion** of asset-backed commercial paper from Evergreen money market funds, which the Company manages.

WELLS FARGO

(pg. 117 of 2008 annual report)

MONEY MARKET FUNDS. We entered into a capital support agreement in first quarter 2008 for up to **$130 million** related to an investment in a structured investment vehicle (SIV) held by our AAA-rated non-government money market funds. In third quarter 2008, we fulfilled our obligation under this agreement by purchasing the SIV investment from the funds. At December 31, 2008, the SIV investment was recorded as a debt security in our securities available-for-sale portfolio. In addition, at December 31, 2008, we had **outstanding support agreements of $101 million** to certain other funds to support the value of certain investments held by those funds.

US BANCORP

(pg. 25 of 2008 10-K)

The $344 million (4.9 percent) increase in 2007 noninterest income over 2006, was driven by fee-based revenue growth in most fee categories, offset somewhat by **$107 million** in valuation **losses related to securities purchased from certain money market funds** managed by an affiliate in the fourth quarter of 2007.

(pg. 78 of 2008 10-K) Included in available-for-sale investment securities are structured investment vehicle and related securities (SIV) purchased in the fourth quarter of 2007 from certain money market funds managed by FAF

Advisors, Inc., an affiliate of the Company. During 2008, the Company exchanged its interest in certain SIVs for a pro rata portion of the underlying investment securities according to the applicable restructuring agreements. The carrying amounts of exchanged SIVs were allocated to the investment securities received based on relative fair value. . . . .During 2008 the Company recorded $**550 million** of impairment charges on SIV-related investments subject to SOP 03-3. . . .

HSBC NORTH AMERICA

(pg. 90-91 of 2008 10-K)

Money Market Funds. We have established and manage a number of constant net asset value (CNAV) money market funds that invest in shorter-dated highly-rated money market securities to provide investors with a highly liquid and secure investment. . . . At December 31, 2007, one of these sponsored CNAV funds, which had total net assets of $7.6 billion, held $558 million of investments issued by SIVs. As a result of the market conditions, those SIV investments experienced declines in market value. We have no legal obligation to offer financial support to this fund in the event that it is unable to maintain a constant net asset value as a result of becoming unable to value its assets at amortized cost. This fund, however, has received financial support from an affiliate, which provided a letter of limited indemnity in relation to certain SIV investments held by the fund.

SUNTRUST

(pg. 119-120 of 2008 10-K)

RidgeWorth Family of Mutual Funds. RidgeWorth Capital Management, Inc., (RidgeWorth), formerly known as Trusco Capital Management, Inc., a registered investment advisor and wholly-owned subsidiary of the Company, serves as the investment advisor for various private placement and publicly registered investment funds (collectively the Funds). . . . While the Company does not have any contractual obligation to provide monetary support to any of the Funds, the Company did elect to provide support for specific securities on one occasion in 2008 and two occasions in 2007. In September 2008, the Company purchased, at amortized cost plus accrued interest, a Lehman Brothers Holdings, Inc. (Lehman Brothers) security from the RidgeWorth Prime Quality Money Market Fund. This fund received a cash payment for the accrued interest and a $70 million SunTrust-issued note which will mature on September 30, 2009. The

Lehman Brothers security went into default when Lehman Brothers filed for bankruptcy in September.

In December 2007, the Company purchased, through a combination of cash and SunTrust-issued notes, approximately **$1.4 billion** in SIV securities from the RidgeWorth Prime Quality Money Market Fund and the RidgeWorth Institutional Cash Management Money Market Fund at amortized cost plus accrued interest. . . . RidgeWorth is the investment adviser to these funds. The Company took this action to protect investors in these funds from possible losses associated with these securities. . . .The Company recorded a pre-tax mark to market valuation loss of $250.5 million in the fourth quarter of 2007 as a result of purchasing these securities. During 2008, the Company recorded $40.4 million of net market valuation losses, sold approximately $359.0 million in securities, and received over $613.8 million in payments from paydowns, settlements, and maturities from these securities.

NORTHERN TRUST

(pg. 22 of 2008 annual report)

Client Support Related Charges

Pre-tax charges totaling **$314.1 million** ($198.8 million after tax, or $.88 per common share) in connection with support provided to cash investment funds under capital support agreements.

CREDIT SUISSE

(pg. 77-79 of 2008 annual report)

Securities purchased from our money market funds. In the second half of 2007, we repositioned our money market funds by purchasing securities of CHF 9,286 million from these funds with the intent to eliminate SIV, ABS, CDO and US subprime exposure. The securities transactions were executed in order to address liquidity concerns caused by the US market's challenging conditions. We had no legal obligation to purchase these securities. We lifted out CHF 269 million of corporate securities and CHF 108 million of ABS from our money market funds in 2008. As of the end of 2008, the fair value of our balance sheet exposure from these purchased securities was CHF 567 million, down CHF 3,354 million, or 86%, from 2007. Of the CHF 567 million balance sheet exposure, CHF 5 million was US subprime, compared to CHF 419 million as of the end of

2007, and CHF 356 million were securities issued by SIVs, of which the largest position was CHF 319 million. Net losses on securities purchased from our money market funds were CHF 687 million in 2008, compared to CHF 920 million in 2007. In the third quarter of 2008, one of the money market funds advised by us was under redemption pressure due to the deteriorating money and credit markets. In order to provide liquidity, we invested USD 2.2 billion (CHF 2.5 billion) in units issued by the fund. With redemptions totaling USD 0.7 billion (CHF 0.7 billion) in the fourth quarter, we decreased our investment in this money market fund to USD 1.5 billion (CHF 1.6 billion) as of the end of 2008. This fund is an SEC-registered Rule 2a-7 fund invested in commercial paper and other short-term securities rated at least A1/P1. At the end of 2008, in line with our strategy to focus on higher margin, scalable businesses, we decided to close these money market funds. Accordingly, these funds were consolidated as of December 31, 2008.

CITIGROUP

(pg. 11 of 2008 10-K)

Structured Investment Vehicles (SIVs). On December 13, 2007, Citigroup announced a commitment to provide support facilities to its Citi-advised SIVs for the purpose of resolving the uncertainty regarding the SIVs' senior debt ratings. As a result of this commitment, the Company consolidated the SIVs' assets and liabilities onto Citigroup's Consolidated Balance Sheet as of December 2007. This resulted in an increase of assets of **$59 billion**.

On February 12, 2008, Citigroup finalized the terms of these support facilities, which took the form of a commitment to provide $3.5 billion of mezzanine capital to the SIVs. The mezzanine capital facility was increased by $1.0 billion to $4.5 billion, with the additional commitment funded during the fourth quarter of 2008. During the period to November 18, 2008, Citigroup recorded **$3.3 billion of trading account losses on SIV** assets.

To complete the wind-down of the SIVs, **Citigroup committed to purchase all remaining assets out of the SIV legal vehicles at fair value**, with a trade date of November 18, 2008. Citigroup funded the purchase of the assets by assuming the obligation to pay amounts due under the medium-term notes issued by the SIVs as the notes mature. The assets purchased from the SIVs and the liabilities assumed by the Company were previously recognized at fair value on the Company's balance sheet due to the consolidation of the SIV legal vehicles in December 2007.

The net cash funding provided by Citigroup for the asset purchase was $0.3 billion. As of December 31, 2008, the balance for these repurchased SIV assets totaled $16.6 billion, of which $16.5 billion is classified as held to maturity. See "Structured Investment Vehicles" on page 15 for a further discussion.

(pg. 15 of 2008 10-K)

STRUCTURED INVESTMENT VEHICLES (SIVs)

On December 13, 2007, Citigroup announced its decision to commit to provide a support facility that would resolve uncertainties regarding senior debt repayment facing the Citi-advised Structured Investment Vehicles (SIVs). **As a result of the Company's commitment, which was not legally required, Citigroup consolidated the assets and liabilities of the SIVs as of December 31, 2007. This resulted in an increase of assets of $59 billion**.

MORGAN STANLEY

(pg. 79-80 of 8/31/08 10-Q)

Money Market Funds and Structured Investment Vehicles. In September 2008, the Company purchased approximately **$23 billion** of securities from the funds, which are included in the Company's condensed consolidated statement of financial condition. The securities were purchased by the Company to fund investor redemptions amidst illiquid trading markets for a wide range of money market instruments. Securities purchased included commercial paper, municipals, certificates of deposit and notes. All of the securities were short term in nature and rated A1 / P1 or better. These purchases were funded primarily through various available stabilization facilities.

In the second half of fiscal 2007, widespread illiquidity in the commercial paper market led to market value declines and rating agency downgrades of many securities issued by SIVs, some of which were held by the funds. As a result, the Company purchased at amortized cost approximately **$900 million** of such securities from the funds during fiscal 2007 and **$217 million** of such securities during the nine month period ended August 31, 2008. During the quarter and nine month period ended August 31, 2008, the Company recorded losses of $10 million and $283 million, respectively, on these securities.

SEI

(pg. 21 of 2008 10-K)

Our earnings during 2008 were adversely affected by a non-cash charge of **$148.9 million** related to the ongoing support we are providing in the form of the Capital Support Agreements for two of our money market funds that hold senior notes issued by SIVs. . . . We also recognized a loss of $9.3 million in 2008 from the decline in fair value of SIV securities purchased directly from the one of our funds. Total charges in 2008 from the Capital Support Agreements and the SIV securities were **$158.2 million** .

(pg. 22 of 2008 10-K) We recorded a non-cash charge of $25.1 million in the fourth quarter 2007 related to agreements that provide capital support to money market funds holding investments that are exposed to liquidity and credit risk (See Money Market Fund Support later in this discussion).

(pg. 24-26 of 2008 10-K) Money Market Fund Support. In late 2007, we entered into Capital Support Agreements with the SEI Daily Income Trust Prime Obligation Fund (the SDIT PO Fund), the SEI Daily Income Trust Money Market Fund (the SDIT MM Fund), and the SEI Liquid Asset Trust Prime Obligation Fund (the SLAT PO Fund) (each a Fund or, together, the Funds). We are the advisor to the Funds. The **sub-advisor to the Funds is Columbia Management**, which is the primary investment management division of **Bank of America Corporation**. Many of our clients are investors in the Funds. . . .

Since the time we entered into the Capital Support Agreements in late 2007, significant illiquidity issues persisted in the credit markets which caused the market values of the collateral underlying the SIV securities to decline. This triggered ratings downgrades on the SIV securities from the principal rating agencies which required us to post additional capital support to the SDIT PO Fund in order for it to maintain a AAA rating by S&P. In late 2008, we amended the Capital Support Agreements with the SDIT PO Fund and the SLAT PO Fund. We also amended our credit facility to increase the aggregate amount available for borrowings up to **$300.0 million** (See Liquidity and Capital Resources section later in this discussion and Note 8 to the Consolidated Financial Statements).

On September 30, 2008, we purchased the Gryphon (formerly Cheyne) notes directly from the SDIT MM Fund. The Gryphon notes were the last remaining SIV securities held by this Fund. The cash purchase price paid to the

SDIT MM Fund of **$15.3 million** was equal to the amortized cost of the Gryphon notes. The market value on that date was $8.7 million and as of December 31, 2008 was $5.7 million. The total loss recognized through December 31, 2008 was $9.3 million. . . .

. . . . As of December 31, 2008, the amount of our obligation to commit capital to the Funds was **$174.0 million**, but this amount was not required to be paid since the Funds did not realize any loss from the sale of the SIV securities. The amount of our obligations recognized is reflected in Net loss from investments on the Consolidated Statements of Operations.

The obligations under the Amended Capital Support Agreements are secured by letters of credit of a third party bank rated A-1 by S&P. The letters of credit were issued under our existing credit facility that provides for borrowings up to $300.0 million. The letters of credit have a term of one year. As of December 31, 2008, we have $190.0 million of letters of credit outstanding (See Liquidity and Capital Resources section later in this discussion).

. . . . Our total risk of loss from SIV securities is limited to the aggregate remaining par value held by the Funds and on our balance sheet. As of February 20, 2009, the aggregate par value of these securities totaled **$336.5 million**. We do not engage in any lending activities or any other activity that exposes us to a risk of loss associated with the illiquidity issues in the credit markets.

The Amended Capital Support Agreements are considered derivative contracts in accordance with applicable accounting guidance and are categorized as Level 3 liabilities as specified by SFAS No. 157 (SFAS 157), Fair Value Measurements (See Fair Value Measurements section later in this discussion). These Level 3 liabilities comprise 53 percent of our total current liabilities at December 31, 2008.

LEGG MASON

(pg. 35 of 2008 annual report)

[W]e entered into several transactions during the fiscal year to provide support to liquidity funds that are managed by our asset managers that had invested in SIV-issued securities. These transactions resulted in aggregate charges during fiscal year 2008 of **$608.3 million** ($313.7 million, net of income taxes and compensation related adjustments).

JANUS

(pg. 14 of 2008 10-K)

During 2007, . . . JCG recognized impairment charges of **$21.0 million and $18.2 million** in 2008 and 2007, respectively, associated with structured investment vehicle ("SIV") securities acquired from money market funds advised by Janus.

(pg. 21-23 of 2008 10-K) Money Market Funds Advised by Janus. . . . JCG's recently announced **plan to exit the institutional money market business** is expected to substantially reduce the likelihood of the Money Funds holding a distressed security. Institutional money market portfolios typically hold higher yielding assets, and therefore have a higher risk, as compared to retail money market portfolios.

Given recent market events impacting liquidity for mutual funds, including money market funds, JCG has enhanced its emphasis on managing the Money Funds for capital preservation and liquidity while remaining in line with their investment objectives.

Financial Support Provided to the Funds. On December 21, 2007, Moody's Investors Service, Inc. downgraded securities issued by certain SIVs including those issued by Stanfield Victoria Funding LLC ("Stanfield securities") to a rating below what is generally permitted to be held by the Money Funds. The Money Funds held $105.0 million of Stanfield securities plus $3.5 million of accrued interest at the time of the downgrade. In connection with this downgrade, JCG determined that it was in the best interests of the applicable Money Funds and their shareholders for JCG to purchase the Stanfield securities from the Money Funds at amortized cost plus accrued interest. Subsequent to purchase, JCG has recognized impairment charges totaling $39.2 million (including $3.5 million of purchased accrued interest), reflecting the difference between the low end of the range of estimated fair value and the purchase price of the Stanfield securities. In addition, JCG received a cash distribution totaling $17.1 million which reduced the carrying value of the Stanfield securities. Included in JCG's estimate of fair value is the assumption that no interest income payable on the securities will be received. JCG's total additional risk of loss with respect to the Stanfield securities at December 31, 2008 is limited to the $52.2 million carrying value of its investment.

August 14, 2009

TO: **Eugene F. Maloney**

FROM: **Melanie L. Fein**

RE: **FASB Interpretation No. 46(R)—**
Consolidated Accounting for Money Market Fund Advisers

The Financial Accounting Standards Board ("FASB") recently amended its interpretations in a way that could require an investment adviser to a money market fund to consolidate its advised funds on its own balance sheet if the adviser provides explicit or implicit financial support to the fund.

Consolidation may be required as a result of changes adopted by FASB in June of 2009 and announced in Statement of Financial Accounting Standards No. 167 which amends FASB Interpretation No. 46(R), entitled "Consolidation of Variable Interest Entities." The Interpretation becomes effective for a company's first reporting period after November 15, 2009.

The Interpretation seems aimed at special purpose entities such as "SIVs" and similar investment vehicles that are controlled by the fund sponsor through nonvoting means. It does not appear to be aimed at money market funds specifically, and money market funds are not mentioned in the Interpretation. Nevertheless, the Interpretation is broad enough to encompass money market funds and their advisers.

The Interpretation appears to conflict with a position taken last year by the SEC's Chief Accountant who stated that consolidated accounting is not required when an investment adviser provides financial support to an affiliated money market fund, provided the adviser does not absorb a majority of the expected future risk associated with the money market fund's assets. FASB operates independently of the SEC, however, and the Interpretation would appear to take precedence over the Chief Accountant's position. Moreover, the Chief Accountant's statement appears to be inconsistent with applicable bank capital rules which are within the jurisdiction of the federal banking agencies.

Requirement for Consolidation

Interpretation No. 46(R), as amended, requires consolidated accounting for any entity in which a company holds a "variable interest" that gives it a "controlling financial interest" in the entity.

"Variable Interest"

Advisory fees paid to a money market fund investment adviser may be deemed "variable interests" that could give the adviser a controlling financial interest in the fund, requiring consolidation. The term "variable interests" with respect to an entity is defined in the Interpretation to mean:

> "contractual, ownership, or other pecuniary interests in an entity that change with changes in the fair value of an entity's net assets exclusive of variable interests."

Asset-based fees of the type paid by a money market fund to its investment adviser would appear to meet this definition.

Service Fees as "Variable Interests"

Asset-based fees are not treated as "variable interests" if they meet all of the following requirements:

- The fees are compensation for services provided and are commensurate with the level of effort required to provide those services.

- Substantially all of the fees are at or above the same level of seniority as other operating liabilities of the entity that arise in the normal course of the entity's activities, such as trade payables.

- The decision maker or service provider and its related parties, if any, do not hold other interests in the variable interest entity that individually, or in the aggregate, would absorb more than an insignificant amount of the entity's expected losses or receive more than an insignificant amount of the entity's expected residual returns.

- The service arrangement includes only terms, conditions, or amounts that are customarily present in arrangements for similar services negotiated at arm's length.

- The total amount of anticipated fees are insignificant relative to the total amount of the variable interest entity's anticipated economic performance.

- The anticipated fees are expected to absorb an insignificant amount of the variability associated with the entity's anticipated economic performance.

Fees paid to a fund adviser would not necessarily meet all of these requirements, particularly if the adviser waives fees to protect the fund's yield.

Requirement 1 might not be met to the extent that a fund adviser's fees are determined on the basis of the *Gartenberg* factors rather than on "the level of effort required to provide those services."

Requirement 2 might not be met if a fund's investment adviser waives fees in order to absorb expenses to maintain the fund's yield. The adviser's fees in that case would not be at or above the same level of seniority as other operating liabilities of the entity (such as legal fees or 12b-1 fees, for example).

Requirements 3 and 4 mostly likely would be met.

Requirement 5 might not be met if the adviser's fees are viewed as not "insignificant" relative to the total amount of the fund's anticipated performance. An adviser's fee of 10 basis points, for example, might be considered significant if the fund's anticipated yield is 50 basis points. The comments to the Interpretation suggest that "insignificant" means trivial.

Requirement 6 might not be met if the adviser's fees are adjusted significantly to improve the fund's yield.

Guarantees as "Variable Interests"

Guarantees of the value of the assets of an entity—such as liquidity commitments or agreements (both explicit and implicit) to replace impaired assets held by the entity—are variable interests if they protect other interest holders from suffering losses.

Thus, an agreement by a money market fund adviser to purchase impaired assets or provide other financial support to the fund would be a variable interest.

"Controlling Financial Interest"

A variable interest does not require consolidation unless it results in a "controlling financial interest." As relevant to a money market fund, a "controlling financial interest" may result if the fund's adviser has both:

> the power to direct the activities of the fund that most significantly impact the entity's economic performance, and
>
> either the obligation to absorb losses of the fund that could potentially be significant to the entity or the right to receive benefits [e.g., fees] from the fund that could potentially be significant to the fund.

Accordingly, to the extent a fund adviser is deemed to have a variable interest in a fund (based on its receipt of fees) and both has the power to direct the fund's portfolio investment activities (through its advisory agreement) and is obligated to absorb significant losses or is entitled to receive significant fees, it must be consolidated with the adviser for accounting purposes.

Requirement to Assess Whether a Controlling Interest Exists

A company with a variable interest in an entity is required to periodically assess whether it has a controlling financial interest in the entity and thus is the entity's "primary beneficiary." A fund adviser would be required to make this assessment periodically with respect to its advised funds, assuming its fees constitute a "variable interest." As noted below, the adviser also would be required to make certain disclosures.

The assessment must examine the characteristics of the adviser's variable interest in the fund as well as the fund's purpose and design, including the risks that the fund was designed to create and pass through to its variable interest holders (including fund shareholders).

The adviser must identify which activities most significantly impact the fund's economic performance and determine whether it has the power to direct those activities. The management of the fund's investment portfolio would

most significantly impact the fund's economic performance and the adviser would have the power to direct this activity through its advisory agreement. The ability of shareholders in the fund to remove the adviser for breach of contract (or otherwise) will not affect the determination.

If the adviser determines that its variable interest gives it a controlling financial interest in a fund, it must consolidate the fund on its balance sheet for accounting purposes.

Required Disclosures

A company with a variable interest in an entity must make the following disclosures, even if it does not have a controlling financial interest in the entity and thus is not the entity's primary beneficiary:

> Its methodology for determining whether it is the primary beneficiary, including, but not limited to, significant judgments and assumptions made. A company can meet this disclosure requirement by providing information about the types of involvements it considers significant, supplemented with information about how the significant involvements were considered in determining whether the company is the primary beneficiary.
>
> Whether the company has provided financial or other support (explicitly or implicitly) to the variable interest entity that it was not previously contractually required to provide or whether the company intends to provide that support, including the type and amount of support and the primary reasons for providing the support.
>
> Qualitative and quantitative information about the company's involvement (giving consideration to both explicit and implicit arrangements) with the entity, including the nature, purpose, size, and activities of the variable interest entity, and how the entity is financed.

Conflict with SEC Position

The SEC's Chief Accountant took a position in September of 2008 that conflicts with Interpretation 46(R) with respect to money market fund advisers that support their advised funds. The Chief Accountant stated:

> The Office of the Chief Accountant believes that on-balance sheet accounting for supported money market funds is not required if the sponsoring financial institution does not absorb the majority of the expected future risk associated with the money market fund's assets, including interest rate, liquidity, credit and other relevant risks that are expected to impact the value of the money market fund assets. However, SEC staff would expect adequate disclosure of the nature of the support provided.
>
> In an unusual situation where the nature of the support results in exposing the sponsoring financial institution to a majority of the expected future risk, the Office of the Chief Accountant would encourage consultation on issues associated with presenting money market money market funds in the financial statements, including consideration of acceptable presentation and disclosure models.

FASB Interpretation 46(R) does not mention or refer to the Chief Accountant's position.

The SEC has statutory authority to establish financial accounting and reporting standards for publicly held companies but historically has relied on FASB for this function. The SEC oversees FASB's process for adopting financial accounting standards but generally respects FASB's independence and does not control the content of its standards:

> The occasions where the Commission has not accepted a particular FASB standard have been rare due, in part, to our recognition and support of FASB's independence. As noted elsewhere in this release, the Commission and its staff do not prohibit the FASB from addressing a particular topic and do not dictate the direction or outcome of specific FASB projects

provided that the conclusions reached by the FASB are in the interest of investor protection.

Conclusion

FASB Interpretation No. 46(R), as amended by FASB Statement of Financial Accounting Standards No. 167 in June of 2009, requires consolidated accounting for a company's interests in other entities in which it has "variable interests" if the company has a "controlling financial interest" in the entity. Money market fund advisory fees may be "variable interests" unless they are deemed to be "insignificant" relative to the fund's performance and are not waived in a significant amount.

The Interpretation could require an investment adviser to a money market fund—especially one that has waived all or part of its investment adviser fees—to assess whether it has a controlling financial interest over its advised funds and to make disclosures concerning its assessment. A controlling financial interest will be present if the adviser has provided explicit or implicit financial support to the fund or has a right to receive significant fees from the fund. A waiver of advisory fees possibly could be found to be a form of financial support, in addition to a guarantee.

EXCERPT FROM INTERPRETATION 46(R)
EXAMPLE

The following example is included in FASB Interpretation 46(R) and illustrates how the Interpretation will operate with respect to certain funds and their sponsors. Important distinguishing factors between this example and the case of a money market fund are that, in the example, the investors have no voting rights and the sponsor provides credit enhancement to the fund. These distinctions may not be significant, however, to the extent that, in the case of a money market fund, the sponsor controls the management of the fund's portfolio irrespective of shareholder voting rights. And, consolidation is required even if the fund sponsor does not absorb losses when the sponsor has the right to receive significant fees.

Facts and Circumstances

C40. An entity is created by an enterprise (the Sponsor) and financed with $98 of AAA-rated fixed-rate short-term debt with a 3-month maturity and $2 of subordinated notes. The entity uses the proceeds to purchase a portfolio of medium-term assets with average tenors of three years. The asset portfolio is obtained from multiple sellers. The short-term debt and subordinated notes are held by **multiple third-party investors**. Upon maturity of the short-term debt, the entity will either refinance the debt with existing investors or reissue the debt to new investors.

C41. The **Sponsor of the entity provides credit enhancement** in the form of a letter of credit equal to 5 percent of the entity's assets and it provides a liquidity facility to fund the cash flow shortfalls on 100 percent of the short-term debt. Cash flow shortfalls could arise due to a mismatch between collections on the underlying assets of the entity and payments due to the short-term debt holders or to the inability of the entity to refinance or reissue the short-term debt upon maturity.

C42. A credit default of the entity's assets resulting in deficient cash flows is absorbed as follows:

a. First by the subordinated note holders

b. Second by the Sponsor's letter of credit

c. Third by the short-term debt holders.

The Sponsor's liquidity facility does not advance against defaulted assets.

C43. The entity is exposed to liquidity risk because the average life of the assets is greater than that of its liabilities. The entity enters into a liquidity facility with the Sponsor to mitigate liquidity risk.

C44. The transaction was marketed to potential debt investors as an investment in a portfolio of highly rated medium-term assets with minimal exposure to the credit risk associated with the possible default by the issuers of the assets in the portfolio. The subordinated notes were designed to absorb the first dollar risk of loss related to credit. **The entity is marketed to all investors as having a low probability of credit exposure due to the nature of the assets** obtained. Furthermore, the entity is marketed to the short-term debt holders as having protection from liquidity risk due to the liquidity facility provided by the Sponsor.

C45. The Sponsor of the entity performs various functions to manage the operations of the entity. Specifically, **the Sponsor**:

a. Establishes the terms of the entity

b. Approves the sellers permitted to sell to the entity

c. Approves the assets to be purchased by the entity

d. Makes decisions regarding the funding of the entity including determining the tenor and other features of the short-term debt issued

e. Administers the entity by monitoring the assets, arranging for debt placement, compiling monthly reports, and ensuring compliance with the entity's credit and investment policies.

C46. For providing credit and liquidity facilities and management services, the **Sponsor receives a fixed fee calculated as an annual percentage of the asset value**.

C47. The short-term debt holders and subordinated note holders have **no voting rights**.

Evaluation

Design of the Entity

C48. 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 provide investors with the ability to invest in a pool of highly rated medium-term assets, to provide the multiple sellers to the entity with access to lower-cost funding, **to** earn a positive spread between the interest that the entity earns on its asset portfolio and its weighted-average cost of funding, and to **generate fees for the Sponsor**.

b. The transaction was marketed to potential debt investors as an investment in a portfolio of highly rated medium-term assets with minimal exposure to the credit risk associated with the possible default by the issuers of the assets in the portfolio. The subordinated debt is designed to absorb the first dollar risk of loss related to credit and interest rate risk. **The entity is marketed to all investors as having a low probability of credit loss due to the nature of the assets obtained.** Furthermore, the entity is marketed to the short-term debt holders as having protection from liquidity risk due to the liquidity facility provided by the Sponsor.

c. The principal risks to which the entity is exposed include credit, interest rate, and liquidity.

Determination of Primary Beneficiary

C49. The short-term debt holders, the third-party subordinated note holders, and the Sponsor are the variable interest holders in the variable interest entity. The **fees paid to the Sponsor represent a variable interest** on the basis of a consideration of the conditions in paragraphs B22 and B23 of this Interpretation.

C50. 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 significantly impacted by the performance of the entity's portfolio of assets and by the terms of the short-term debt. Thus, the activities that significantly impact the entity's economic performance are the activities that significantly impact the performance of the portfolio of assets and the terms of the short-term debt (when the debt is refinanced or reissued). The **Sponsor manages the operations of the entity**. Specifically, the Sponsor establishes the terms of the entity, approves the sellers

permitted to sell to the entity, approves the assets to be purchased by the entity, makes decisions about the funding of the entity including determining the tenor and other features of the short-term debt issued, and administers the entity by monitoring the assets, arranging for debt placement, and ensuring compliance with the entity's credit and investment policies. **The fact that the Sponsor was significantly involved with the creation of the entity does not, in isolation, result in the Sponsor being the primary beneficiary of the entity.** However, the fact that the Sponsor was involved with the creation of the entity may indicate that the Sponsor had the opportunity and the incentive to establish arrangements that result in the Sponsor being the variable interest holder with the power to direct the activities that most significantly impact the entity's economic performance.

C51. The short-term debt holders and subordinated note holders of the entity have no voting rights and no other rights that provide them with power to direct the activities that most significantly impact the entity's economic performance.

C52. If an enterprise has the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance, then that enterprise also is required to determine whether it has the obligation to absorb losses of the entity that could potentially be significant to the variable interest entity or the right to receive benefits from the entity that could potentially be significant to the variable interest entity. The **Sponsor, through its fee arrangement, receives benefits from the variable interest entity that could potentially be significant to the variable interest entity**. The **Sponsor, through its letter of credit and liquidity facility, also has the obligation to absorb losses** of the variable interest entity that could potentially be significant to the variable interest entity.

C53. On the basis of the specific facts and circumstances presented above and the analysis performed, the **Sponsor would be deemed to be the primary beneficiary of the variable interest entity because**:

a. It is the variable interest holder with the power to direct the activities of the variable interest entity that most significantly impact the entity's economic performance.

b. Through its letter of credit and liquidity facility, the Sponsor has the **obligation to absorb losses** that could potentially be significant to the variable interest entity, and, through its fee arrangement, the Sponsor has the **right to receive benefits** that could potentially be significant to the variable interest entity.

EXCERPT FROM INTERPRETATION 46(R)
FEES AS VARIABLE INTERESTS

A73. In addition to the concerns about the inconsistent application of kick-out rights, some respondents questioned whether separate guidance was needed for determining whether a decision maker's fee represents a variable interest and whether a service contract represents a variable interest. Other respondents asked the Board to provide additional guidance for determining whether an enterprise acts solely as a fiduciary or agent as opposed to a principal. Those respondents cited the example of a trustee of an irrevocable trust who may have a variable interest in an entity solely because it is not subject to substantive kick-out rights. In addition, representatives from the money management industry indicated that the fee paid to an investment manager often is considered a variable interest under Interpretation 46(R) because the fund shareholders do not hold substantive kick-out rights over the investment manager.

A74. In its redeliberations, the Board considered those concerns and agreed that the guidance for determining whether decision-making fees or service contracts represent variable interests should be similar in Interpretation 46(R). Consequently, the Board consolidated, with certain changes, the guidance in paragraphs B19, B21, and B22 (absent the kick-out rights and cancellation provisions requirements of paragraphs B19(d) and B22(c)) of Interpretation 46(R) under the heading "Fees Paid to Decision Makers or Service Providers."

A75. The Board also decided to amend the guidance on the evaluation of a decision maker's or service provider's fees in paragraph B22 of Interpretation 46(R) to replace the terms *trivial* and *not large* with the term *insignificant*. Some respondents expressed concern that the phrase *more than trivial* has been applied in practice as *anything more than zero,* and that no evaluation of the facts and circumstances related to the interest or the enterprise's involvement with the entity is considered when making this determination. In addition, constituents noted that the multiple terms used to refer to the size of an entity's interest add complexity to this evaluation. The Board decided that the term *insignificant* should be used consistently in paragraph B22 to allow for a consistent evaluation of an enterprise's interest within that paragraph. In addition, the Board believes that determining whether an item is *trivial* or *insignificant* requires judgment and consideration of all facts and circumstances.

A76. The Board also concluded that the revised guidance for determining whether decision maker fees and service provider fees represent a variable interest in a variable interest entity in paragraphs B22 and B23 of Interpretation 46(R), as amended by this Statement, is sufficient for determining whether an enterprise is acting in a fiduciary role in a variable interest entity, particularly because the

Board removed the consideration of kick-out rights and cancellation provisions from those paragraphs. In other words, the Board expects that the fees paid to an enterprise that acts solely as a fiduciary or agent should typically not represent a variable interest in a variable interest entity because those fees would typically meet the conditions in paragraph B22 of Interpretation 46(R), as amended by this Statement. If an enterprise's fee did not meet those conditions, the Board reasoned that an enterprise is not solely acting in a fiduciary role. If the enterprise has (a) the power to direct the activities that most significantly impact the economic performance of the entity and (b) the obligation to absorb losses or the right to receive benefits of the entity that could potentially be significant to the variable interest entity, that enterprise would be the primary beneficiary of the entity. The Board observed that the conditions in paragraph B22 would allow an enterprise to hold another variable interest in the entity that would absorb an insignificant amount of the entity's expected losses or receive an insignificant amount of the entity's expected returns. The Board concluded that an enterprise holding such an interest would still be acting in a fiduciary role as long as the other conditions in paragraph B22 were met and that enterprise would not be the primary beneficiary of the entity.

EXCERPT FROM INTERPRETATION 46(R)
ANALYSIS OF CONTROLLING FINANCIAL INTEREST

14A. An enterprise with a variable interest in a variable interest entity shall assess whether the enterprise has a controlling financial interest in the entity and, thus, is the entity's primary beneficiary. This shall include an assessment of the characteristics of the enterprise's variable interest or interests and other involvements (including involvement of related parties and de facto agents), if any, in the variable interest entity, as well as the involvement of other variable interest holders. Additionally, the assessment shall consider the entity's purpose and design, including the risks that the entity was designed to create and pass through to its variable interest holders. An enterprise shall be deemed to have a controlling financial interest in a variable interest entity if it has both of the following characteristics:

a. The power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance

b. The obligation to absorb losses of the entity that could potentially be significant to the variable interest entity or the right to receive benefits from the entity that could potentially be significant to the variable interest entity. The quantitative approach prescribed in paragraph 8 of this Interpretation is not required and shall not be the sole determinant as to whether an enterprise has these obligations or rights.

Only one enterprise, if any, is expected to be identified as the primary beneficiary of a variable interest entity. Although more than one enterprise could have the characteristic in paragraph 14A(b), only one enterprise, if any, will have the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance.

14B. 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. An enterprise's ability to direct the activities of an entity when circumstances arise or events happen constitutes power if that ability relates to the activities that most significantly impact the economic performance of the entity. An enterprise does not have to exercise its power in order to have power to direct the activities of an entity.

14C. An enterprise's determination of whether it has the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance shall not be affected by the existence of kick-out rights or participating rights unless a single enterprise (including its related parties and de

facto agents) has the unilateral ability to exercise those kick-out rights or participating rights. A single enterprise (including its related parties and de facto agents) that has the unilateral ability to exercise kick-out rights or participating rights may be the party with the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance. ["Kick-out rights" are the ability to remove the enterprise with the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance.] Protective rights held by other parties do not preclude an enterprise from having the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance. Protective rights are designed to protect the interests of the party holding those rights without giving that party a controlling financial interest in the entity to which they relate. They include, for example:

a. Approval or veto rights granted to other parties that do not affect the activities that most significantly impact the entity's economic performance. Protective rights often apply to fundamental changes in the activities of an entity or apply only in exceptional circumstances. For example:

(1) A lender might have rights that protect the lender from the risk that the entity will change its activities to the detriment of the lender, such as selling important assets or undertaking activities that change the credit risk of the entity.

(2) Other interests might have the right to approve a capital expenditure greater than a particular amount or the right to approve the issuance of equity or debt instruments.

b. The ability to remove the enterprise that has a controlling financial interest in the entity in circumstances such as bankruptcy or on breach of contract by that enterprise.

c. Limitations on the operating activities of an entity. For example, a franchise agreement for which the entity is the franchisee might restrict certain activities of the entity but may not give the franchisor a controlling financial interest in the franchisee. Such rights may only protect the brand of the franchisor.

14D. If an enterprise determines that power is, in fact, shared among multiple unrelated parties such that no one party has the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance, then no party is the primary beneficiary. Power is shared if two or more unrelated parties together have the power to direct the activities of

a variable interest entity that most significantly impact the entity's economic performance and if decisions about those activities require the consent of each of the parties sharing power. If an enterprise concludes that power is not shared but the activities that most significantly impact the entity's economic performance are directed by multiple unrelated parties and the nature of the activities that each party is directing is the same, then the party, if any, with the power over the majority of those activities shall be considered to have the characteristic in paragraph 14A(a).

14E. If the activities that impact the entity's economic performance are directed by multiple unrelated parties, and the nature of the activities that each party is directing is not the same, then an enterprise shall identify which party has the power to direct the activities that most significantly impact the entity's economic performance. One party will have this power, and that party shall be deemed to have the characteristic in paragraph 14A(a).

14F. Although an enterprise may be significantly involved with the design of an entity, that involvement does not, in isolation, establish that enterprise as the enterprise with the power to direct the activities that most significantly impact the economic performance of the entity. However, that involvement may indicate that the enterprise had the opportunity and the incentive to establish arrangements that result in the enterprise being the variable interest holder with that power. For example, if a sponsor has an explicit or implicit financial responsibility to ensure that the entity operates as designed, the sponsor may have established arrangements that result in the sponsor being the enterprise with the power to direct the activities that most significantly impact the economic performance of the entity.

14G. Consideration should be given to situations in which an enterprise's economic interest in a variable interest entity, including its obligation to absorb losses or its right to receive benefits, is disproportionately greater than its stated power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance. Although this factor is not intended to be determinative in identifying a primary beneficiary, the level of an enterprise's economic interest may be indicative of the amount of power that enterprise holds.

SEC ISSUES CLARIFICATION ON ACCOUNTING ISSUES RELATING TO BANK SUPPORT FOR MONEY MARKET MONEY MARKET FUNDS

FOR IMMEDIATE RELEASE
2008-205

Washington, D.C., Sept. 17, 2008 — The Securities and Exchange Commission's Office of the Chief Accountant clarified that bank support of money market money market funds generally does not result in a requirement to present the fund on-balance sheet. As a result of recent market events, it is possible that some money market funds could become exposed to declines in the credit worthiness of troubled assets. To protect investors' principal investment in these funds, sponsoring financial institutions can provide various types of financial support.

The Office of the Chief Accountant has received questions related to whether the actions by these sponsoring financial institutions may result in on-balance sheet accounting for supported money market funds. The Office of the Chief Accountant believes that on-balance sheet accounting for supported money market funds is not required if the sponsoring financial institution does not absorb the majority of the expected future risk associated with the money market fund's assets, including interest rate, liquidity, credit and other relevant risks that are expected to impact the value of the money market fund assets. However, SEC staff would expect adequate disclosure of the nature of the support provided.

In an unusual situation where the nature of the support results in exposing the sponsoring financial institution to a majority of the expected future risk, the Office of the Chief Accountant would encourage consultation on issues associated with presenting money market money market funds in the financial statements, including consideration of acceptable presentation and disclosure models.

For more information, please contact James Kroeker, Deputy Chief Accountant, at 202-551-5360, or Robert Malhotra, Professional Accounting Fellow, at 202-551-5305.