THE BANK OF NEW YORK MELLON

Robert P. Kelly
Chairman and Chief Executive Officer

August 18, 2009

Mr. Ben S. Bernanke
Chairman
Federal Reserve Bank
20th & C Street, NW
Washington, DC 20551

Dear Chairman Bernanke:

I am very concerned with the potentially adverse consequences of FAS 167, the Financial Accounting Standards Board's (FASB) new accounting rules with respect to consolidation, which is due to be implemented on January 1, 2010. While intended to correct certain abuses in the securitization arena, if the rules are also applied to bank asset managers, it will have an extraordinarily negative impact with no regard for common sense, economics or risk. The industry would benefit from interpretive guidance very soon that ensures the rules are in line with the original intent.

The new standard could force asset managers to bring a significant number of sponsored funds onto their balance sheets. Under the old rules, FASB Interpretation No. 46(R), asset managers were not required to do so unless they were deemed the primary beneficiary of the fund – meaning they carried the majority of the risks and rewards, which is rarely the case. **The new rules could potentially force asset managers to consolidate trillions of dollars of assets onto their balance sheets, even though there is no associated risk of loss or where risk of loss is limited to a small investment in the fund.**

This rule change will have serious ramifications on bank asset managers:

- **It will reduce capital available for lending,** which will lead to reduced credit extension or increased credit cost. Even though the risks have not changed, investors, analysts and regulators may require asset managers to devote more capital to their asset management segments to maintain leverage ratios or meet debt covenants.
- **It will be procyclical at the worst possible time.** It will reduce lending when it's needed most and lessen investment appetite for the securities providing credit to business.
- **It has the potential to be procyclical in future downturns.**
- **It will result in higher fees to pensions/401(k) plans and other investors or a reduction in the availability of investment offerings.** This will reduce the market demand for securities to fund business activity.

FAS 167 would also be inconsistent with international accounting standards, creating an unfair disadvantage for U.S. firms competing globally.

Lastly, we are also very concerned and disappointed with the lack of transparency and due process on the part of the FASB, especially in an area with such far-ranging consequences on an entire industry and the economy. Certain late changes to the consolidation guidance by the FASB were not subject to broad comment by preparers and have created the issues described above.

Recommended Actions

In addition to the needed interpretive guidance, to address the potentially adverse consequences of FAS 167 and ensure the capital levels reflect economics, the accounting rules should be modified or rescinded as applied to asset managers.

- Asset managers should be required to consolidate only those assets that could create a loss and liabilities should be limited to the value of the guarantees provided by the asset manager.
- Regulators should insist that the FASB issue proper measurement standards; grossing up an asset manager's balance sheet for their sponsored funds does not reflect economics. To the extent the FASB does not issue proper guidance that reflects the actual economics, fund assets should be excluded from risk-weighted assets and the leverage ratio should exclude assets of consolidated funds.
- The SEC should monitor the quality of financial reporting. In 2008, the SEC's Office of the Chief Accountant issued rules interpreting FIN 46(R), which was helpful in preventing inappropriate consolidation of money market funds when fund sponsors stepped up to protect the $1 NAV for investors. We recommend the SEC extend this interpretation to FAS 167.
- If the FASB is unable or unwilling to modify these rules to avoid fund assets and liabilities from being swept onto asset managers' balance sheets, we recommend that the SEC issue interpretive guidance to ensure FAS 167 produces common sense results that reflect actual economics and risk.

I urge you to review this issue, weighing the potential costs to our economy, and consider the actions I have outlined.

Sincerely,

Bob Kelly