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January 5, 2010

VIA EMAIL

Mr. Robert Herz, Chairman Mr. Russ Golden, Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116 director@fasb.org

Re: <u>File Reference No. 1750-100 - Consolidation</u> (Topic 810), Amendments to Statement 167 for

Certain Investment Funds

Dear Messrs. Herz and Golden:

We appreciate the opportunity to provide comment concerning consolidation issues related to the Proposed Amendment to Statement 167 for Certain Investment Funds (the "Exposure Draft").

We are writing on behalf of a bank holding company client that provides diversified financial services through its subsidiaries. Working with this client we have discovered an issue raised by the Exposure Draft that we expect may be an issue for a number of bank holding companies. One of the holding company's subsidiaries is a bank that maintains a collective investment fund for qualified employee benefit plans ("Fund"). The Fund seeks to maintain a stable unit value of \$1.00 and reports the value of the Fund's assets at contract value pursuant to applicable regulations of the Office of the Comptroller of the Currency, 12 C.F.R. Section 9.18 ("OCC Regulations") and generally accepted accounting principles ("GAAP"). See AICPA, FSP AAG INV-1 and SOP 94-4-1 (December 2005). The bank holding company entered into an explicit guarantee in 2008 under which it provides contingent capital support to the Fund up to a specified amount.

We and our client believe that a deferral similar to that proposed for "Certain Investment Funds", such as those that operate under Rule 2a-7 of the Investment Company Act of 1940 for registered money market funds, would be appropriate in situations such as that described above. We suggest amending the proposed exceptions provided by ASC 810-10-65-2 aa.2 by adding at the end the words, "including collective investment funds that (i) are maintained by banks and operated substantially in conformance with applicable regulations of the Office of the Comptroller of the Currency and (ii) seek to maintain a constant unit value and report their assets at contract value rather than at market."

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In addition, we suggest that the Board provide additional guidance on the meaning of the phrase, "that could potentially be significant to the entity" in this context, and provide a deferral to entities that might be affected until such guidance is provided.

There are four principal reasons we hold this view.

- 1. We agree with the conclusions and reasoning of the Exposure Draft and the comment letters submitted in support of the proposed deferral for registered money market funds relying upon implicit or explicit guarantees to fund credit losses. We believe that the same reasoning would suggest that a similar deferral should be applied with respect to stable value funds that are maintained in accordance with GAAP ("qualifying stable value funds") and that rely upon similar guarantees. The financial and reporting characteristics of a qualifying stable value fund are substantially the same as a money market fund, and the reasons that support the proposed deferral would apply with equal force to qualifying stable value funds. Like money market funds, qualifying stable value funds seek to maintain a constant unit value. In addition, qualifying stable value funds, like money market funds, are subject to substantive and material regulatory requirements, including the fiduciary requirements of OCC Regulations, and the fiduciary duty and prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Further, qualifying stable value funds, whether they include traditional guaranteed investment contracts or fixed-income securities that are "wrapped" by insurance agreements, customarily invest in high-quality securities and money market instruments. Because qualifying stable value funds exist primarily to pay benefits to employee benefit plan participants, customarily known as benefit-responsive payments, these funds require stability of asset values in order to be assured that they can fully satisfy their benefit payment obligations in a timely manner. Accordingly, we respectfully request that the Board's inclusion of money market funds with implicit or explicit guarantees in the Exposure Draft's proposed deferral provisions be expanded to include qualifying stable value funds relying upon implicit or explicit guarantees to fund temporary or credit losses. See, Exposure Draft paragraphs BC13-BC16.
- 2. Significant confusion could result from the Exposure Draft's proposed standard for inapplicability of the deferral where amounts due under a contingent capital support agreement "could potentially be significant" to the affiliate providing implicit or explicit credit support. As the Board acknowledged in the Exposure Draft, whether a reporting entity's obligation to fund losses "could potentially be significant" requires "judgment and consideration of all facts and circumstances about the terms and characteristics of the entity." Exposure Draft, BC6. Although the Board may be correct that providing too much detail in this standard could lead to undesirable results, the minimal guidance provided by the proposed standard to date appears to be leading to unintended consolidation events and a lack of uniformity in its application by companies and their accounting firms. The term "could potentially be" seems so open-ended as to be potentially far more inclusive than the Board intended. We believe it would be more appropriate to provide a deferral to a broader group of investment fund entities during the time

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further discussion would take to allow development of a standard that restricts the meaning of "could potentially be" and clarifies the level of significance that would be necessary to trigger a consolidation.

- 3. The Exposure Draft appropriately places an emphasis on the intention and design of the varieties of investment funds that may need to be consolidated. Exposure Draft, BC7-16. It is noteworthy that, as with money market funds, explicit guarantees entered into by qualifying stable value funds are not part of the intention and design of the product, but have been entered into with respect to an existing product solely to address unusual, unexpected or temporary market conditions of the sort the world experienced in the Fall of 2008. In the case of the Fund, the presence of an explicit guarantee that was intended to maintain the ability of Fund participants to enter and exit at a constant unit value does not alter the essential nature of the Fund's assets and operations or warrant consolidation with a bank holding company's financial statements. We believe under these circumstances that the accounting treatment and required disclosures under the Guarantee topic of the codification (Topic 460) will provide investors and other users of financial statements a sufficient level of information to assess the impact of the explicit guarantees on the guarantor's financial position, results of operations and cash flows.
- Finally, we believe consolidation under the circumstances described above at this point in time would lead to unintended and undesirable financial regulatory consequences. At a time when bank regulatory capital levels are under close scrutiny and banks are being urged to expand lending activity, if their financial statements must include consolidation of investment pools such as investment companies and collective investment funds (including qualifying stable value funds) there could be an unintended decrease in lending activity caused by an increase in capital requirements. Absent the deferral relief provided in the Exposure Draft, affected bank holding companies very possibly would be required to increase their Tier 1 regulatory capital by material amounts as of March 31, 2010 in order to recognize the consolidation effects under FAS 167 of bringing a qualifying stable value fund onto their balance sheets. See, Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation and Office of Thrift Supervision, Risk-Based Capital Guidelines: Impact of Modifications to Generally Accepted Accounting Issues (December 15, 2009). The Board has recognized that deferral is necessary to allow the Board time to develop guidance jointly with the IASB. In much the same way, a deferral would allow time for bank regulators to consider the dramatic impact of new consolidations, and perhaps to develop responses that would not lead to such anomalous results.

We would be happy to discuss these comments at your convenience.

Sincerely,
Charles M. Horn