2011-220 Comment Letter No. 8A

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Via Email: director@fasb.org

February 16, 2012

Susan M. Cosper Technical Director Financial Accounting Standards Board 401 Merritt 7 Post Office Box 5116 Norwalk, Connecticut 06856-5116

Re: File Reference No. 2011-220: Accounting Standards Update, Consolidation (Topic 810)
Principal versus Agent Analysis

Dear Technical Director:

Federated Investors, Inc. (Federated) is a component of the S&P 500 and is one of the largest investment managers in the United States of America with \$370 billion in managed assets as of December 31, 2011. The majority of Federated's revenue is derived from advising and administering registered domestic mutual funds as well as various offshore investment funds and numerous separate accounts in both domestic and international markets.

Federated appreciates the opportunity to comment on the FASB's Proposed Accounting Standards Update regarding Principal versus Agent Analysis (the Proposed Update). We support the efforts of the FASB to develop guidance to evaluate the capacity in which a decision maker uses its decision-making authority and whether it should consolidate another entity. We believe the issuance of Accounting Standards Update No. 2010-10, Consolidation (Topic 810): Amendments for Certain Investment Funds (ASU 2010-10), in February 2010, was a positive step toward avoiding inappropriate consolidation of assets to which asset managers have no claim, title or interest. We strongly disagree with a consolidation model that could require an asset manager to consolidate investment funds in which its economic involvement is limited to earning fees for service and a minor equity interest, if any. We believe consolidation of such funds will ultimately lead to illogical financial statements that do not accurately reflect Federated's operations and financial condition. Over the past few years, users of our financial statements have expressed the same concerns regarding the resulting diminution in the usefulness of the financial statements due to the consolidation of such funds.

We understand that the amendments in this Proposed Update will rescind ASU 2010-10 and we are deeply concerned that, once the deferral is rescinded, unintended interpretations of the Proposed Update may occur resulting in the consolidation of such funds. We have been actively involved in the comment letters prepared and submitted by the Asset Management Industry Accounting Policy Group and the SIFMA Asset Management Group Accounting Committee regarding this Proposed Update. In

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addition to the comments articulated in each of those letters, we wanted to separately articulate a few comments primarily on the topics of the qualitative approach to the Principal/Agent Analysis and money market funds.

Principal/Agent Analysis

We strongly support a qualitative approach for determining whether a decision maker is acting as a principal or an agent. However, the model poses an inherent conflict for the asset management industry. The question has been raised by some as to whether an asset manager's decisions are influenced by the level of equity interest it has in the fund under management. That is, as an example, would an asset manager make different investment decisions in a scenario in which it holds a 5% interest in a fund versus a scenario in which it holds a 45% interest in the fund? As an asset manager registered under the Investment Advisers Act of 1940, we are required as a fiduciary to serve the best interests of the investors of the fund, and are in no way permitted to subordinate their interests to our own. Allowing our economic investment in the fund to alter our investment decisions violates fiduciary law. Regulations under the Investment Company Act of 1940 (the 1940 Act) and other applicable laws are specifically aimed at mitigating conflicts of interest the asset manager may have by either requiring the elimination of the conflict or full disclosure of the matters relating to the conflict. This would include conflicts which may arise as a result of holding investments in the fund.

Consequently, the inherent conflict lies in the reliance on a blended model, one that requires the consideration of equity interests to assess power pursuant to paragraph 810-10-25-38A.a. and suggests therefore, that decisions differ depending on the extent of our holdings in the fund. In our industry, this concept is without merit. Bright lines will necessarily emerge in our industry because the investment service provided and thus the nature of the capacity in which we utilize our decision-making authority does not change with a change in the level of equity held by the asset manager. While we certainly agree that the level of equity interest should be considered for purposes of determining control, we disagree that the extent of a decision maker's equity involvement should alter a conclusion regarding Principal versus Agent. Rather, we believe the extent of an investment in equity interests should be considered to determine whether an entity has benefits.

Based on this inherent conflict, we continue to struggle as an industry to identify and apply the principles that support this model. We believe the determination of agent should be evaluated independent of the level of equity interest that an entity holds in an investee fund. Recognizing this inherent conflict for asset managers, we believe the following recommendations may render the model more operational for our industry:

- We believe the existence of an independent board of directors/trustees governed by the 1940
 Act should be a determinative indicator that the asset manager is acting as an agent for
 purposes of the Principal versus Agent Analysis. We recommend that the wording in paragraph
 810-10-25-39G be adjusted as follows:
 - "...For example, the existence of a board of directors for a fund established in accordance with the Investment Company Act of 1940, which is legally required to have an independent board of directors, is sufficient to conclude that the decision maker is acting in an agency capacity. may be considered substantive and yield significant authority when assessing whether to retain a decision maker."

- 2. Paragraphs 810-10-25-39D 39L should include a discussion that states that the existence of a legal fiduciary responsibility on the part of an asset manager to act in the best interest of the investors in a fund should overcome the existence of an asset manager's pro-rata equity investment in the fund for purposes of the Principal versus Agent Analysis. In other words, in a non-1940-Act fund where a 1940-Act-like Board does not exist, we should still be able to get to an agent conclusion based on the legal requirement for the asset management to act in accordance with our fiduciary duty. This would be the case for many offshore regulated funds that are often analogized to 1940-Act mutual funds.
- 3. The Board should clarify that the Principal versus Agent conclusion is determinative in terms of identifying whether the entity is a Variable Interest Entity or a Voting Interest Entity. That is, assuming an entity does not meet the criteria in paragraph 810-10-15-14(a) or (c), if a decision maker concludes they are acting in an agency capacity then the entity is deemed to be a Voting Interest Entity and consolidation would be required in the event of a majority voting interest in the entity.

We believe these three recommendations, if implemented, will improve the Proposed Update by promoting consistency in application of the model for asset managers considering their involvement with regulated investment funds. By being specific to 1940-Act funds and asset managers acting as legal fiduciaries, we do not believe such changes to the Proposed Update would render the model vulnerable to potential abuses. Further, the implementation of these recommendations may also serve to minimize and perhaps even resolve the potential impact of two other areas of potential flaws in the Proposed Update: (1) the fact that the model would seem to permit a scenario where two entities may conclude they are each controlling financial interest holders and thus consolidators of a fund, and (2) paragraph 810-10-15-14(b)1 may be interpreted to cause 1940-Act funds set up in Series Companies to be deemed VIEs. These potential flaws in the Proposed Update are further discussed below.

Multiple Consolidators

Consider the following example: If an investor holds a majority interest in the outstanding pro-rata equity interests of a 1940-Act fund, one would conclude under current U.S. GAAP that the investor has a controlling financial interest in and thus should consolidate the fund. However, under the consolidation model in the Proposed Update, if the asset manager serving as investment advisor to the fund holds a minority pro-rata equity interest in the fund, the asset manager may be required to conclude, after considering all relevant criteria in the Principal versus Agent Analysis and the examples provided therewith, that it is using its decision-making authority in a principal capacity. If the asset manager concludes that it is a Principal, then a fund investor would not be deemed to be the consolidator of the fund in which it holds a majority interest. Thus, under the proposed consolidation model, an investor must correctly consider whether the fund's investment advisor is a Principal in order to determine whether its majority investment in the fund should result in consolidation and avoid having two parties consolidate the same investee. This exercise will be extremely challenging for a fund investor, if not impossible in cases where the asset manager and the investor are not related parties.

By implementing the recommendation that the presence of a 1940-Act Board be a determinative factor for concluding that a decision maker is using its decision-making authority in an agency capacity, this potential for multiple parties consolidating the same fund would be resolved because all parties would acknowledge the existence of the board and conclude that any decision maker is an agent. Thus, the fund would be deemed a Voting Interest Entity and only the party with a majority voting interest would be required to consolidate. The implementation of the second recommendation listed above would

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enable a similar analysis and conclusion for non-1940-Act mutual funds that are regulated by offshore regulators, such as UCITS, for example.

Series Company Funds

In most cases, Federated uses the Series Company structure permitted by the Investment Company Act of 1940 (the 1940 Act) to organize its mutual funds (see the diagram included at Appendix A). This structure is very typical of most 1940-Act funds in the industry and can be viewed as an accommodation permitted by the 1940 Act to help alleviate the administrative and financial burden associated with forming a new legal entity for each mutual fund. Under the Series Fund structure, Federated forms a legal entity (e.g. the Series Company), the primary purpose of which is to hold assets. The assets being held by the Series Company are legally segregated into individual portfolios which are commonly referred to as mutual funds.

The mutual funds are not in and of themselves legal entities. They have no legal status of their own. They cannot enter into legal contracts or perform any transactions on their own. Rather, they are components of a legal entity, the Series Company. Each underlying mutual fund is a reporting entity recognized by the SEC, however, and is also recognized by the IRS as a separate and distinct entity for tax reporting purposes. Shares are issued by the Series Company in respect of a particular mutual fund and a shareholder's interest is limited to the mutual fund to which the shares are designated. As required by the 1940 Act, the day-to-day activities of the Series Company and each underlying portfolio of assets are governed by a Board of Directors that is comprised of a majority of independent directors. The Board of Directors presides at the legal-entity level however, and as such, the equity investors at risk in all mutual funds (or underlying portfolios of assets) must vote together to remove or replace a member of the Board. The equity investors at risk for each mutual fund do not have the unilateral ability to cause a member of the Board to be removed or replaced.

Significant debate is currently underway among preparers and auditors regarding how the Series Company structure should be evaluated under the Proposed Update. Some have raised the issue that the criterion in paragraph 810-10-15-14(b)1 may be met in the case of a mutual fund in a Series Company structure based on a view that the equity holders at risk for a given mutual fund do not have substantive voting rights given their lack of unilateral voting rights regarding the Board of Directors. A purely technical interpretation of the criterion of 810-10-15-14(b)1 might further question whether the asset manager is acting as an agent of the equity holders as required by 810-10-15-14(b) 1 or of the Board of Directors of the Series Company that is not unilaterally controlled by the equity investors at risk in the mutual fund. In this case, a 1940-Act fund structured as part of a Series Company may be deemed to be a Variable Interest Entity which could ultimately be subject to consolidation by an asset manager with less than a majority holding of equity interest. We do not share this interpretation but rather raise it in this letter as evidence of the fact that the Proposed Update is not sufficiently clear and may result in unintended interpretations for our industry. We believe it was not the Board's intent to require 1940-Act funds to be consolidated as Variable Interest Entities. By implementing the recommendations articulated above, we would conclude first that an asset manager is an Agent and second that the fund is a Voting Interest Entity (assuming neither paragraph 810-10-15-14(a) or (c) apply). This would alleviate any further debate on the issue of applying the Proposed Update to Series Company mutual funds.

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Money Market Funds

We strongly support the view and stated intent of the Board that money market funds should not be consolidated as a general rule as a result of applying the proposed consolidation model. In acknowledgment of paragraphs BC15 – BC17 of ASU 2010-10 and in light of ongoing deliberations by regulators of the design and operation of money market funds, we believe a scope exception would be the only way to ensure that this result is achieved and maintained even in the event additional regulatory reform is promulgated.

Using the words of ASU 2010-10, we believe the following exception should be added to 810-10-15-17 to exclude money market funds from the scope of the Variable Interest Entities Subsections of the Codification: "A reporting entity's interest in an entity that is required to comply with or operate in accordance with requirements that are similar to those included in Rule 2a-7 of the Investment Company Act of 1940 for registered money market funds."

Other

We strongly urge the Board to consider enhancing the format of future proposed updates to the Codification. The format of this Proposed Update is extremely difficult to review making an already complex accounting topic significantly more challenging for constituents to consider. Given that only the amended sections (with some exceptions) were included in the Proposed Update, a constituent is forced to read from both the current Codification and the Proposed Update piecing the literature together paragraph by paragraph in order to fully appreciate how the amended paragraphs will fit into and modify the current literature for consolidation. This disjointed format is distracting and makes the content of the Proposed Update incrementally and unnecessarily more challenging to comprehend. At a minimum, the FASB should provide a full version of the Codification marked for proposed changes. That way, constituents could read the proposed revision in its entirety without needing to constantly skip between the current Codification and the Proposed Update.

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Thank you for your consideration of our comments. Federated has been closely following the FASB's project on consolidation and commends the FASB for the extent of their outreach on this topic. We will continue to stay tuned to those discussions and will look for additional opportunities to participate in the comment and outreach process. We would be happy to discuss any questions the Board or Staff may have. Please contact Stacey Friday at 412-288-1244.

Sincerely,

/s/ Denis McAuley III

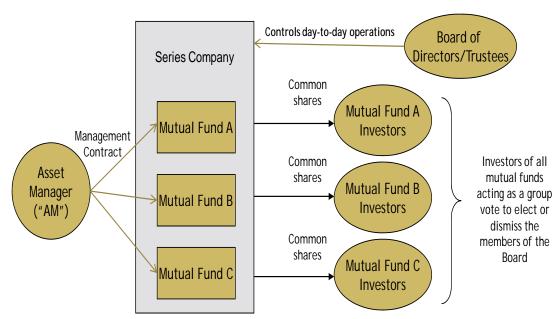
Denis McAuley III
Principal Accounting Officer

/s/ Stacey H. Friday

Stacey H. Friday
Director, Accounting Policy

Appendix A

1940 Act Investment Company Organized as a Series Company*



- Under the Series Company structure, AMs form a legal entity, typically a corporation or business trust, the primary purpose of which is to
 hold assets. The assets being held by the Series Company are legally segregated into individual portfolios which are commonly referred to
 as mutual funds.
- The directors/trustees have full power and authority to carry out all actions necessary in connection with the management of the Series
 Company and its underlying mutual fund. In addition, the shareholders have certain rights including simple majority rights to remove the
 investment manager and approve significant changes to the investment objective of the fund.
- The investors of a mutual fund, as a group, do not control the directors/trustees. Rather, the investors of a mutual fund must vote together
 with the investors of all of the other mutual funds within a Series Company in order to elect or dismiss directors/trustees of the Company.
- Debate Some argue that even though each mutual fund within a Series Company is not a legal entity, a separate consolidation evaluation
 must be conducted for each mutual fund and that the equity holders at risk of each portfolio do not have substantive decision making as
 required by paragraph 810-10-15-14b1. of the ED; they argue under this interpretation, each mutual fund would qualify as a VIE. However,
 others argue that the existence of a BOD coupled with the conclusion that the manager is acting in the capacity of an Agent would not make
 the entity a VIE.

^{*} As permitted by Rule 18f-2 of the Investment Company Act of 1940, this structure is widely used by money market, equity and fixed income funds alike.