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January 6, 2010

Via email

Russell G. Golden, Technical Director
File Reference No. 1750-100
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Re: File Reference: No. 1750-100 *Consolidation (Topic 810) – Amendments to Statement 167 for Certain Investment Funds*

Dear Mr. Golden:

Wells Fargo & Company (Wells Fargo) is a \$1.2 trillion diversified financial services company providing banking, insurance, trust and investments, mortgage banking, investment banking, retail banking, brokerage and consumer finance. We appreciate the opportunity to comment on the Exposure Draft of proposed Accounting Standards Update to Topic 810, *Amendments to Statement 167 for Certain Investment Funds* (proposed Exposure Draft).

The amendment to paragraph 810-10-65-32 (pre-codification par. 4) defers the adoption of the standard indefinitely for certain investment funds directed by investment managers. The amendments to paragraph 810-10-55-37 (pre-codification par. B22) clarify how to consider related parties and how variability should be considered in analyzing whether or not decision maker fee are variable interests.

Comments

We support the Board's deferral of the application of FAS 167 by investment fund managers to certain investment funds. We also appreciate the Board's attempt to clarify its intentions regarding the analysis of decision maker fees and power. However, we have a number of suggestions for the Board to consider, which would better clarify the issues that have arisen during implementation of the standard. Specifically, we believe the Board should consider the following additional items:

1. **Deferral for investment fund managers** - We applaud the Board for its decision to defer indefinitely the implementation of FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), for certain investment fund entities through the issuance of the proposed Exposure Draft. However, we understand the deferral may be temporary based upon the outcome of the joint FASB/IASB convergence efforts on consolidation. We believe this deferral should be permanent.

We fail to understand how the consolidation of investment funds by fund managers improves financial reporting. We understand the FASB attempted to assuage investor concerns regarding the limited

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disclosure requirements of fund managers. Rather than require consolidation of these funds, it would seem more appropriate to address investor concerns through increased disclosures about assets under management.

We encourage the Board to consider the potential unintended consequences of requiring consolidation. For many fund managers, the on-balance sheet economics simply may not support the long-term viability of this business model due to the capital intensive nature of the business. Fund managers and investors engage in a symbiotic relationship whereby fund managers, through their compensation arrangements, are incented to maximize returns for investors. The existence of a management fee should not require the consolidation of a fund, even if the fee is based upon the performance of the assets in the fund.

2. **Notion of a fiduciary** - The Board should provide additional guidance to clarify its intention regarding the notion of a fiduciary, the prominence of the analysis of decision maker fees within the standard, as well as the interplay with the analysis of power. Because this analysis explicitly considers variability, the guidance provided in paragraph 810-10-55-37-c (pre-codification par. B22c) may allow decision makers to hold variable interests at a level that would be inconsistent with the notion of a fiduciary.

As currently written, the determination of whether or not a decision maker's fee is considered a variable interest is contained in paragraph 810-10-55-37 (pre-codification par. B22), which is in Appendix B of the standard. In implementing the standard, the industry has generally agreed that the decision maker fee analysis is being used to determine whether or not a decision maker is acting as a principal or an agent. If a decision maker meets the criteria, the decision maker is deemed to be acting in a fiduciary capacity, i.e., as an agent. Accordingly, the decision maker does not have power over the entity. If it was the Board's intention that this guidance be applied prior to the application of the power and significance tests in paragraph 14.A, we encourage the Board to prominently discuss how the determination of a decision maker as a fiduciary obviates the need for consolidation in the body of the standard rather than the appendix.

We also encourage the Board to better define the notion of a fiduciary. Based on criteria in par. 810-10-55-37-c (pre-codification par. B22c), we believe a decision maker could hold a large portion of securities issued from a securitization and conclude that those interests will not absorb more than an insignificant amount of the entity's expected losses and expected residual returns. This is because highly rated securities would not be expected to absorb a significant amount of variability. In a typical securitization structure often over 90% of the securities have original investment grade ratings. Accordingly, it is conceivable that a decision maker could hold the entire investment grade tranche of a securitization and conclude it would not absorb more than an insignificant amount of the variability of the variable interest entity. While we believe this level of interest would indicate the decision maker may be acting in the capacity of a principal rather than a fiduciary, we believe further guidance is warranted.

3. **Definition of significance** - We believe the Board needs to provide clear interpretive guidance regarding how to properly assess the significance of variable interests. Considerable diversity in practice is emerging, which could result in a competitive disadvantage for certain companies as they re-enter the securitization market. Securitization is often an important part of a company's liquidity and capital planning. The nature and level of participation that may be retained is an important determinant in the success of a company's asset-liability management strategy and its ability to go to market. We appreciate the fact that the Board is attempting to migrate to a more principals based

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approach to standard setting; however, we believe it would be appropriate for the Board to provide a more clear understanding of what constitutes significance.

4. **Consideration of probability of outcomes** – The guidance in par. 14.A.b states “the quantitative approach ... is not required and should not be the sole determinant” when assessing the significance of variable interests. This language has been interpreted by some to mean that probability may not be considered in this determination. Because the quantitative approach described above is based on variability, we believe probability may be considered. This notion is consistent with the guidance in par B22c. We encourage the Board to clarify that probability may be considered when assessing significance of variable interests in either par 14.A.b or B22c.
5. **Other matters to consider in connection with the joint FASB/ IASB convergence efforts** –
 - **Reconsideration of kick-out rights** - Under FAS 167 as originally issued, many entities were considered variable interest entities, while these same funds were considered voting entities under FIN 46(R). This change was due to the modifications made to the consideration of kick-out rights and the fact that those rights must be held by a single party rather than the holders of the equity at risk in order to be considered substantive under FAS 167. We understand the Board is concerned that these rights are not substantive and simply present easy structuring alternatives. However, we simply do not agree with the Board’s conclusion as these rights are legally binding and such power and control is not surrendered lightly. We strongly urge the Board to reconsider its conclusion during its redeliberation of this guidance with the IASB.
 - **Significance of implicit support** - Additionally, the banking and investment management industry have struggled to interpret the guidance as it pertains to the significance of implicit interests in investment funds that have been supported, as well as addressing whether or not support of one fund results in an implicit interest in all funds managed by a particular investment manager. We do not believe that support provided to one fund necessarily results in a significant implicit interest in that fund nor does that implicit interest extend to funds that have not been supported. We believe this issue should also be addressed by the FASB and IASB in convergence.

Conclusion

We strongly recommend that the Board approve the scope deferral for investment funds and consider whether the changes to the decision maker fee guidance proposed provides the intended level of clarity over the: 1) notion of a fiduciary, 2) definition of significance, and 3) consideration of variability. We also strongly encourage the Board to reconsider its previous conclusions on kick-out rights and to provide clear guidance on the evaluation of the significance of implicit support. Lastly we strongly urge the effective date of the proposed Exposure Draft coincide with the effective date of the standard.

We appreciate the opportunity to comment on the issues contained in the FASB’s invitation. If you have any questions, please contact me at (415) 222-3119.

Sincerely,

/s/ Richard D. Levy

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cc: Financial Accounting Standards Board Members
Kathy Murphy – Office of the Comptroller of the Currency
Art Lindo – Federal Reserve Board
Robert Storch – Federal Deposit Insurance Corporation
Donna Fisher – American Bankers Association
Gail Haas – New York Clearing House Association