

From: [Listman, Doug](#)
To: [Director - FASB](#)
Subject: Proposed ASU - Consolidation
Date: Monday, November 28, 2011 11:00:09 AM

First I would like to note that this response letter outlines my personal views on the proposed ASU as an accounting practitioner in the financial services and investment management industry. It does not necessarily reflect the views of my employer.

I would like to first thank the board for reconsidering the existing consolidation guidance especially in regards to consolidation by outside decision makers. I believe the current guidance does not provide the most useful data to investors especially as it applies to the investment management industry. Although I will propose certain improvements below, I believe the proposed ASU would be a significant improvement to current practice as it is written now.

First, I will address the questions presented by the board and then add our commentary and questions below:

1. Yes. The qualitative nature of the analysis is sound and superior to a quantitative analysis which would provide opportunities to structure around the requirements depending on the reporting entity's desire to consolidate or not.
2. Yes. Specifically other interests should be factored into the analysis. In practice, an entity makes decisions based on the totality of its interests rather than narrowly on one interest or another.
3. Yes, I agree with the qualitative approach. Subject to the comments below, I believe this guidance should result in consistent conclusions.
4. Yes, I agree with the approach in general. Unilateral kick out rights held by a single party should be sufficient to conclude the decision maker is acting as an agent. Furthermore, I agree in concept that the kick out rights held by multiple unrelated parties can be indicative of an agency relationship. I agree with the emphasis on a removal without cause in the definition of kick out rights.
5. Yes. I strongly agree with this concept.
6. Yes. I strongly agree with this concept.
7. Yes.
8. I am concerned with the overall complexity of the consolidation analysis. See the comments below.
9. Yes; and I think that the resulting conclusions result in a better and more transparent outcome.

10. I have no opinion on this question as I am not familiar with all the arrangements in money funds.
11. I agree. However, I note that the guidance includes employees “who are related parties”. In practice, it seems that some preparers have concluded employees are always related parties or are, by default, related parties. However, others have concluded that employees are only related parties if they have a significant voting interest in the reporting entity or are officers or directors. I request that the board provide more guidance (or at least a cross reference to other authoritative support) in this regard. I would like to highlight that this issue regularly comes to the surface in the investment management industry. Often, an investment manager will compensate the staff personnel who are providing the specific management services by granting them a portion of the investment manager’s interest in an entity. For example, an investment manager that is a general partner in a hedge fund may grant its employees a portion of the general partner interest itself as compensation and to provide for more tax efficient compensation. If these employees are not directors of the investment manager or do not have a significant voting interest in the investment manager itself, would they be considered related parties for this analysis?
12. Yes. See simplification commentary below.

Second, I would like to make several specific comments.

- A. Can the consolidation analysis be simplified further? Possibly something like this:
 - a. First determine who has the “power to direct” (i.e. the equity holders as a group, an outside decision maker, etc.)
 - b. If it’s the equity holders as a group, then follow the proposed voting interest entity rules.
 - c. If it’s an outside decision maker, follow the principal vs. agency analysis. If the outside decision maker is functioning as a principal, it should consolidate. If an agent, it should not.

This type of approach could eliminate the entire variable interest entity analysis. In summary, if the entity is not a voting interest entity, then whoever has the “power to direct” consolidates the entity so long as they are acting as a principal. In other words, under this approach I would have two models: (i) voting interest entities; and (ii) everything else.

In addition, it would seem that this approach would result in the same conclusions as the existing framework. In almost every case, if one concluded the decision maker were a principal, they would also conclude they had a significant interest and therefore would conclude the decision maker was the primary beneficiary under the proposed variable interest entity rules.

- B. If we can't simplify as described in comment A, can we eliminate the separate model for partnerships? If a partnership is a voting interest entity, then it would seem the voting interest guidance would rule. If the partnership is a variable interest entity, it would seem the variable interest entity guidance would be appropriate. I believe that eliminating the specific set of rules for partnerships would be quite helpful as there are other organization structures like LLCs and offshore entities that can be governed in some cases like partnerships; in some cases like corporations; and in some cases having characteristics of both. By having this additional model for partnerships and similar entities, it may be difficult for practitioners to determine which model to apply.
- C. The proposal is a bit confusing in regards to partnerships as it seems to imply that a general partner of a voting interest entity partnership would consolidate if it "has the ability to use its decision making authority as a principal". Is it the ability to use the authority or how that authority is used in practice? It would seem every decision maker has the ability to use its authority as a principal. The variable interest entity analysis seems to focus on how the authority is being used rather than whether the decision maker has the ability to use it in one way or the other. Can this be clarified or simplified?
- D. See the comment in #11 above. Please clarify when employees are considered related parties for this analysis.
- E. In regards to question #6, I strongly agree that the exposure to negative returns is a good indicator of a principal relationship (where as the lack of such exposure is a good indicator of an agency relationship). I would ask the board to consider if a further distinction can be made regarding the mechanism whereby the decision maker is potentially exposed to negative returns. In my view, exposure to negative returns through a small equity investment in the entity is less an indicator of a principal relationship then exposure to negative returns via guarantees or providing the subject entity's lenders recourse to the decision maker. I believe the latter (guarantees and recourse) are much stronger indicators of a principal relationship then the former.

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