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February 15, 2012

Ms. Leslie Seidman
FASB Chairman
401 Merritt 7
PO Box 5116
Norwalk, CT 06856

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

Dear Ms. Seidman:

Goldman Sachs appreciates the opportunity to provide comments on the Financial Accounting Standards Board's ("FASB" or the "Board") exposure draft on Consolidations: Principal versus Agent (PVA) Analysis (the "Exposure Draft" or the "ED"). We have followed this project, along with three other related projects (Real Estate – Investment Property Entities, Financial Services -- Investment Companies[1] and Leases) with much interest.

Overall, we support the ED's principles-based model and offer the following comments for your consideration:

1. The ED states that removal rights held by a single party are conclusive evidence that the fund manager is acting as an agent, most likely on behalf of that single party. We believe that a related and equally important factor should be considered – how much relative and absolute "skin in the game" that single party has. For example, if the single party held an insignificant investment in a fund and the fund manager had a very large investment, we would not automatically conclude the manager was acting as agent.

2. In the context of removal rights held by more than one party, the ED states "consideration shall be given to situations in which a general partner has such a significant exposure to the limited partnership's variability that the holders of those rights have a small exposure to the limited partnership's variability. As the disparity

[1] *See separate letters to the Board with reference to Real Estate – Investment Property Entities and Financial Services – Investment Companies).*

between a general partner's economic interests in a limited partnership and the economic interests of those holding the rights increases, the kick-out rights become presumptively less relevant, and the likelihood that the general partner is a principal increases."

We agree with this principle and would be troubled by fact patterns where the general partner is exposed to more than 50% of losses, even if the parties holding removal rights had significant exposure. When the general partner is exposed to less than 50% of losses, further analysis is necessary. As part of our analysis, we would consider the general partner's exposure to losses, how many unrelated parties are needed to remove the general partner and how much relative and absolute skin in the game those parties have. We have discussed fact patterns with the FASB Staff where the general partner has more exposure than the 20% level in Case D, but a small group of investors with substantial skin in the game hold kick-out rights that are indicative of an agency relationship. We believe adding a similar example would provide constituents with a more nuanced framework to evaluate all three criteria within the principal-agent model.

3. The Board should coordinate with the investment management industry and the Securities Exchange Commission (SEC) while the SEC considers proposing new rules that may require managers to provide guarantees or "capital buffers" to money market funds. The Board should monitor the proposals in the context of the ED to determine whether the consolidation model leads to the accounting conclusion that the Board considers appropriate in the circumstances.

Finally, since the ED is a principles-based standard, the ED will require constituents to exercise reasoned and sound professional judgment. We are concerned that some constituents might request the Board provide – or otherwise seek to establish – "bright-lines" for implementing the final standard. In our experience, fact patterns are rarely the same. The presence or absence of certain facts often can influence the final analysis. We therefore urge the Board to resist calls for "bright lines" and to stress the importance of reasoned and sound professional judgment when applying the standard.

These and other detailed comments on the questions in the ED are included in the Appendix to this letter. If you have any questions or would like to discuss any of these comments further, please contact me at 212-357-8437.

Sincerely,

Matthew L. Schroeder

Appendix – Responses to questions

Principal versus Agent Analysis

Question 1: *When determining whether a decision maker is a principal or an agent, the proposed amendments require the analysis to consider the decision maker's overall relationship with the entity and the other parties involved with the entity. This analysis would be based on a qualitative assessment. Do you agree with this approach? If not, why?*

Response: We agree with the principle underlying this approach and agree that the analysis should be based upon a qualitative assessment. However, we are concerned that, in practice, constituents might establish "bright-lines" from the examples in the ED that were not intended by the Board. See further discussion in the responses to questions 2 and 3 below.

Question 2: *The evaluation of a decision maker's capacity would consider the following factors:*
a. The rights held by other parties
b. The compensation to which the decision maker is entitled in accordance with its compensation agreement(s)
c. The decision maker's exposure to variability of returns from other interests that it holds in the entity.
Are the proposed factors for assessing whether a decision maker is a principal or an agent appropriate and operational? If not, why? Are there any other factors that the Board should consider including in this analysis?

Response: The following are comments on areas of application of these factors:

a. The rights held by other parties:

- The ED proposes that a substantive kick-out right held by a single party is sufficient to conclude that the decision maker is an agent. We believe that such a right may not be substantive if the party holding the right does not have a significant economic interest in the entity (i.e., the party holding the right does not have "skin-in-the-game") and we recommend that the ED state this explicitly. In current practice, participating rights held by investors are generally only considered if the parties holding such rights also have a significant financial interest.
- See response to question 4 below for discussion of kick-out rights held by multiple parties.

b. The compensation to which the decision maker is entitled in accordance with its compensation agreement(s)

- We agree with the guidance outlined in paragraphs 810-10-25-39I-J.

c. The decision maker's exposure to variability of returns from other interests that it holds in the entity.

We agree that, as outlined in paragraph 810-10-25-39L, the magnitude and variability of a decision maker's interest in a fund can indicate that the decision maker is a principal if the magnitude and variability is very large. However, this will be difficult to operationalize. For instance, investors in the market may require that decision makers invest along side them to demonstrate that their interests are aligned. This arrangement is consistent with an agency relationship. Therefore, the large size of a decision maker's interest can result from both

investor demands for alignment of interests (an indicator of an agency relationship) and the decisions maker's own desire to invest in the fund (an indicator of a principal relationship). As a practical matter, it will be very difficult to determine which factors weighed more significantly in the determination of the amount invested by the decision maker.

Additionally, we believe that, this determination will require significant judgment based on individual case facts and circumstances. We hope that practitioners will not establish "bright-lines" to be applied to all cases. We believe that the overarching principal should be to evaluate whether the economic interest motivates the decision maker to make decisions differently than it would if its role was merely that of an agent.

Are there any other factors that the Board should consider including in this analysis?
We believe that the legal/fiduciary responsibilities of the manager should be an additional factor to consider in the principal-agent analysis. If the decision-maker is required by agreement, law, regulation or fiduciary responsibility to act in the best interests of investors, (and is, therefore, limited in its ability to generate returns primarily for itself) that should be an indicator of an agency relationship.

Question 3: *The proposed Update would require judgment in determining how to weigh each factor in the overall principal versus agent analysis. Do you agree that the proposed amendments, including the related implementation guidance and illustrative examples, will result in consistent conclusions? If not, what changes do you recommend?*

Response: We support principles-based accounting and agree that management should apply judgment when determining how to weigh each factor in the overall principal versus agent analysis. We are concerned, however, that the examples provided will be used in practice to establish "bright-lines" which we do not believe the Board intends to create. For example, constituents may infer from Case D that a 20% ownership interest is a bright-line indicator of consolidation in the absence of an active board of directors. Furthermore, constituents may infer from Case D that broad rights held by a board of directors, including an affirmative annual approval right to appoint the manager and other rights typically held by corporate boards are necessary to overcome a presumption of consolidation. We believe that, notwithstanding a 20% or greater ownership interest held by the general partner, kick-out rights held by a small group of investors with substantial skin in the game are indicative of an agency relationship.

Consequently, we are concerned that the examples may detract from the application of the factors in a principles based manner and believe that an additional example would provide constituents with a more nuanced framework to evaluate all three criteria within the principal-agent model.

Question 4: *Should substantive kick-out and participating rights held by multiple unrelated parties be considered when evaluating whether a reporting entity should consolidate another entity? If so, do you agree that when those rights are held by multiple unrelated parties, they should not in and of themselves be determinative? If not, why? Are the guidance and implementation examples illustrating how a reporting entity should consider rights held by multiple unrelated parties in its analysis sufficiently clear and operational?*

Response: We agree that substantive kick-out and participating rights held by multiple unrelated parties should be considered when evaluating whether a reporting entity should

consolidate another entity but should not always be determinative. As noted above, we believe such rights are more substantive when held by a small group of investors with substantive "skin-in-the-game."

We note that paragraph 810-10-25-41D states that, with regard to participating rights, "The likelihood that the participating rights will be exercised by the interest holder shall not be considered when assessing whether a participating right is substantive." It is not clear in the ED whether this principle also applies to kick-out rights. We agree with this principle and believe that the ED should specifically state that, "The likelihood that kick-out rights will be exercised by the interest holder shall not be determinative when assessing whether a kick-out right is substantive."

Question 5: *The proposed Update would not include a criterion focusing on the level of seniority of a decision maker's fees when evaluating the decision maker's capacity. Do you agree that the seniority of the fee relative to the entity's other operating liabilities that arise in the normal course of the entity's activities should not be solely determinative of a decision maker's capacity? If not, why?*

Response: We agree with the Board's decision that the seniority of a decision maker's fee should not be solely determinative of a decision maker's capacity.

Question 6*: The evaluation of a decision maker's capacity places more emphasis on the decision maker's exposure to negative returns (for example, an equity interest or a guarantee) than interests that only expose the decision maker to positive returns. When performing the principal versus agent analysis, should the assessment differentiate between interests that expose a decision maker to negative returns (or both negative and positive returns) from interests that expose the decision maker only to positive returns? If not, why?*

Response: We agree that the assessment should differentiate between interests that expose a decision maker to negative returns (or both negative and positive returns) from interests that expose the decision maker only to positive returns.

Question 7: *A reporting entity would be required to evaluate whether there has been a change in the decision maker's capacity by considering whether there has been a change in the purpose and design of the entity. For example, the purpose and design of the entity may change if the entity issues additional equity investment that is at risk to the decision maker. Do you agree with this proposed requirement? If not, please specify when this relationship should be reassessed and why.*

Response: We agree with the proposed requirement.

Question 8: *The Board decided to include the principal versus agent assessment as a separate analysis within the overall consolidation assessment, rather than replacing the current guidance for evaluating whether a decision-making arrangement is a variable interest (and accordingly, a principal) with the revised principal versus agent analysis. The Board believes that if an entity's fee arrangement does not meet the definition of a variable interest (for example, a nominal performance-based fee), the decision maker should not be required to continue the consolidation assessment. Do you agree? If not, why?*

Response: We agree with the Board's conclusion.

Question 9: *The Board expects the proposed principal versus agent guidance may affect the consolidation conclusions for entities that are consolidated as a result of the decision maker having a subordinated fee arrangement (for example, collateralized debt obligations). However, the Board does not otherwise expect the proposed amendments to significantly affect the consolidation conclusions for securitization entities, asset-backed financing entities, and entities formerly classified as qualifying special-purpose entities. Do you agree? If not, why?*

Response: We agree with the Board's conclusion.

Question 10: *Update 2010-10 was issued to address concerns that some believe that the consolidation requirements resulting from Statement 167 would have required certain funds (for example, money market funds that are 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) to be consolidated by their investment managers. The amendments in this proposed Update would rescind the indefinite deferral in Update 2010-10 and would require money market funds to be evaluated for consolidation under the revised guidance. The Board does not intend the application of the proposed Update to result in money market funds being consolidated. Do you agree that the application of the proposed Update will meet this objective? If not, why and what amendments would you recommend to address this issue?*

Response: We note that the SEC is currently reviewing whether to impose rules on investment managers that could potentially require managers to provide guarantees or "capital buffers" to money market funds. Any new proposal will need to be evaluated in the context of the ED generally and paragraph 810-10-25-39Lb in particular since they may be, in substance, subordinated investments or forms of credit enhancement. We agree with the Board's intention to not require the consolidation of money market funds by managers and encourage the Board to work closely with the investment management industry and the SEC to provide appropriate input and guidance as the new rules are proposed.

Interests Held by Related Parties

Question 11: *For purposes of applying the proposed principal versus agent guidance, the proposed amendments would require a reporting entity to include the decision maker's direct and indirect interests held in an entity through its related parties. Do you agree with the requirement that a decision maker should include its proportionate indirect interest held through its related parties for purposes of applying the principal versus agent analysis? Why or why not?*

Response: We agree that the decision maker's direct and proportionate indirect interests held through related parties should be included in the principal versus agent analysis.

Evaluation of Partnerships and Similar Entities

Question 12: *The amendments in this proposed Update would require a general partner to evaluate its relationship with a limited partnership (or similar entity) by applying the same principal versus agent analysis required for evaluating variable interest entities to determine whether it controls the limited partnership. Do you agree that the evaluation of whether a*

general partner should consolidate a partnership should be based on whether the general partner is using its decision-making authority as a principal or an agent?

Response: We agree, in principle, that the guidance should be conformed. (See response to question 4 above for additional discussion.)

Effective Date and Transition

Question 13: *Do you agree with the proposed transition requirements in paragraph 810-10-65-4? If not, how would you propose to amend those requirements, and why? Please provide an estimate of how long it would reasonably take to implement the proposed requirements.*

Response: The Board has issued several related exposure drafts that interrelate (this ED, Real Estate – Investment Property Entities and Financial Services – Investment Companies) and should therefore become effective concurrently. Taken together, the impact of these statements may be significant and would impose an incremental burden on all stages of the financial statement preparation including compiling the data (often from third parties that are not accustomed tom providing the information), internal management review for reliability and external auditing. Furthermore, systems reengineering projects may be needed to facilitate processing the incremental data. Therefore, we believe that if the Board implements this proposal, a minimum of 18 months would be necessary to allow sufficient time to implement this proposal.

Please note that a timeline for implementing the proposed amendments assumes implementation of only the proposed amendments to Topic 810, Topic 946 and Topic 973 at a specified effective date. Decisions made by the Board relating to the timing of implementation for other projects currently under deliberation could affect our estimate.

Question 14: *Should early adoption be permitted? If not, why?*

Response: We believe that early adoption should be allowed for those entities that are able and desire to comply with the proposals early.

Nonpublic Companies

Question 15: *Should the amendments in this proposed Update be different for nonpublic entities (private companies or not-for-profit organizations)? If the amendments in this proposed Update should be applied differently to nonpublic entities, please provide a rationale for why.*

Response: We believe that the amendments should be applied to all entities.