



February 15, 2012

Ms. Susan M. Cospers
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference Number 2011-220, Proposed Accounting Standards Update, Consolidation (Topic 810): Principal versus Agent Analysis

Dear Ms. Cospers:

Citigroup appreciates the opportunity to comment to the Financial Accounting Standards Board on the proposed Accounting Standards Update (ASU), *Consolidation (Topic 810): Principal versus Agent Analysis*.

Citi supports the efforts of the Financial Accounting Standards Board (FASB) to converge the consolidation guidance with the International Accounting Standards Board (IASB) and to provide consistent guidance for evaluating kick-out and participating rights in the voting interest entity (VOE) and variable interest entity (VIE) accounting models.

Citi believes the Exposure Draft (ED) generally improves the consolidation models and we support the additional qualitative factors for determining whether a decision maker has a principal or agent relationship with an entity. We believe performing a qualitative analysis that considers the design and purpose of the decision making role will result in accounting that better reflects the substance of the transaction.

We do wish to highlight the following observations about the ED that we believe the Board should consider further in its redeliberations:

1. We request that the Board provide further clarification of how the conclusions were reached in the illustrative examples provided to demonstrate the principal versus agent analysis. Without further context on the purpose and design of the entity, we are concerned that some constituents may draw bright lines.

2. We recommend that the Board consider providing an illustrative example that results in a shared-power conclusion similar to the credit default swap transaction noted in the IASB Staff's Effect Analysis on IFRS 10. Depending on the individual facts and circumstances, we believe a shared power conclusion may not be a remote outcome for certain transactions that have no significant future decisions nor significant ongoing activities.
3. We request that the Board revisit the benefit of including indirect interests held through related parties in the decision maker's principal versus agent analysis. We struggle to see the merits of including indirect economic interests without further considering the purpose and design of the related party's role in the investment. If this guidance remains, we ask the Board to restore the employee benefit plan exception and general employee exception within the related party analysis. The exceptions were removed in paragraph 810-10-55-37A without explanation and no exceptions were provided in paragraph 810-10-25-42. We believe a decision maker should not have to consider indirect economic interests held by these parties. Separately, the Board should consider providing explicit guidance for how related parties to a non-VIE should determine the principal party, when related parties determine a principal relationship in combination, similar to the guidance provided in paragraph 810-10-25-44.
4. We are concerned that there is not a requirement to reconsider the principal versus agent determination on an ongoing basis similar to the primary beneficiary determination. Depending on the type of transaction, we believe the two conclusions may be interdependent. We strongly believe the principal versus agent analysis should be reassessed upon changes in facts and circumstances, not only upon changes in the purpose and design of the entity.
5. Certain redemption rights may act as in-substance liquidation rights over an entity. We request that the Board reconsider these rights as an eligible factor in the principal versus agent analysis when facts and circumstances permit.
6. The Board notes that it does not intend for the ED to result in money market funds being consolidated. However, including implicit variable interests in paragraphs 810-10-55-3AY through 810-10-55-3BK (i.e., Case F) and 810-10-55-122 through 810-10-55-133 (i.e., Case C) may lead to an unintended consolidation conclusion for money market funds. In order to achieve the FASB's intention, we recommend that the implicit variable interest references be removed and a full scope exception be provided to money market funds. We believe the current guidance on implicit variable interests is appropriate as it depends on facts and circumstances specific to a transaction and does not generalize to a transaction type.

We believe addressing the above observations would further strengthen the current consolidation models and lead to less diversity in practice.

The above observations and our further comments are outlined in greater detail through responses to the specific questions raised in the ED, included in the following attachment.

We would be pleased to discuss our comments with you at your convenience. Please feel free to call me in New York at (212) 559-7721.

Sincerely,



Robert Traficanti
Deputy Controller and Global Head of Accounting Policy

Attachment

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?

When determining whether a decision maker is a principal or an agent, Citi agrees with the proposed amendments that require a qualitative assessment based on the decision maker's overall relationship with the entity and the other parties involved with the entity. While a qualitative model will require judgment, it is best equipped to deal with a wide variety of transactions in practice.

Similar to the primary beneficiary analysis, Citi believes the principal versus agent analysis should be a qualitative assessment that focuses on the design and purpose of the decision-maker role in the transaction, along with the risks to which each party involved with the entity is exposed.

We believe such an approach, when considering all the facts and circumstances specific to the transaction, will lead to accounting that better reflects the substance of the arrangement.

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 interest 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?

Citi believes the proposed factors for assessing whether a decision maker is a principal or an agent are appropriate and operational. We believe they are practical and direct the analysis towards the purpose and design of the decision-maker role in the transaction.

Citi believes the Board should reconsider including redemption rights held by other parties as a factor in the principal versus agent analysis. We disagree with the Board's

view expressed in BC22 that a decision maker can avoid the loss of its decision-making abilities by obtaining additional investors for the entity.

Depending on the specific facts and circumstances of a transaction, we believe a redemption right held by a significant investor could act substantively as a liquidation right without requiring an actual liquidation.

An entity with a specific type of investment may not be readily able to offset a significant redemption by remarketing to new investors. If such a redemption were to occur, the entity may be forced to liquidate all or a significant portion of its investments to pay the redemption, which may eventually lead to a closing or merger of the fund. When such a fact pattern exists, we do not believe a redemption right should be evaluated any differently than a liquidation right.

Finally, we note that IFRS 10 includes the scope of the decision maker's authority over the investee as a factor to consider in the principal versus agent analysis. To ensure greater convergence and consistency in application between US GAAP and IFRS reporters, we recommend that the Board consider explicitly including this factor in the final standard. To the extent the factor is not explicitly included, the Board should specifically address why and what effect, if any, excluding the factor is expected to have on convergence between the standards.

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?

We appreciate the Board providing illustrative examples to demonstrate the principal versus agent analysis. However, we request that the Board provide further clarification about how the conclusions were reached in the illustrative examples. Without further context on the purpose and design of the entity, we are concerned that some constituents may draw bright lines.

For example, paragraphs 810-10-55-3L through 810-10-55-3T (i.e., Case B) and 810-10-55-3U through 810-10-55-3AC (i.e., Case C) provide the same fee structure. In Case C, the fund manager also has a twenty percent pro rata interest in the fund that is designed to align the fund manager's interests with those of the third-party investors. Case C results in a principal determination while Case B results in an agent determination. We request that the Board provide further context on the purpose and design of the twenty percent investment in Case C. In some transactions, such a pro rata investment may only be temporary (e.g., seed money in a fund) and, if temporary, we question whether the Board would have reached an agent determination in both fact patterns.

We believe a more detailed discussion of how the purpose and design of the entity were considered in the overall assessment would improve the application of the proposed ASU.

Citi also recommends that the Board consider providing an illustrative example which results in a shared-power conclusion similar to the credit default swap transaction noted in the IASB Staff's Effect Analysis on IFRS 10. Depending on the individual facts and circumstances, we believe a shared power conclusion may not be a remote outcome for certain transactions that have no significant future decisions nor significant ongoing activities.

We would be happy to work with the Staff to add or further clarify examples in the Exposure Draft.

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?

Citi agrees 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. We agree that when those rights are held by multiple unrelated parties, they should not in and of themselves be determinative. However, we request that the Board provide further clarification on how the guidance should be implemented.

Paragraphs 810-10-25-41(D), 810-10-25-8, and 810-10-25-103 provide clear guidance that the "likelihood" that participating rights will be exercised by the interest holders shall not be considered when determining whether a participating right is substantive. Citi understands that kick-out rights and participating rights should be consistently evaluated; however, the guidance for kick-out rights does not (but should) clearly state that the "likelihood" of the kick-out right being exercised should not be considered.

Specifically, paragraphs 810-10-25-39E and 810-10-25-89 state the "likelihood" that the decision maker is a principal increases when the disparity between a decision maker's economic interest in an entity and the economic interest of those holding the kick-out right increases. We request that the Board amend the proposed language to note that when the disparity between a decision maker's economic interest in an entity and the economic interest of those holding the kick-out right is significant, the kick-out right may not be determinative of an agent relationship.

Paragraphs 810-10-55-3AD through 810-10-55-3AM (i.e., Case D) include a fact pattern similar to paragraphs 810-10-55-3U through 810-10-55-3AC (i.e., Case C), except Case D has an independent board of directors with a simple-majority kick-out right. An agent determination is reached for Case D but not for Case C. The Board notes the decision maker in Case D would be acting as a principal if kick-out rights held by the board of directors were not substantive. We request that the Board provide further guidance on what may cause the kick-out rights of the board of directors to be considered not substantive. In addition, we disagree with the Board's view that if the fact pattern was changed such that the decision maker's equity investment was now subordinated, a principal determination would be reached. We believe that subordination of an equity investment does not change the substantive nature of a kick-out right held by an independent board. Therefore, we request further clarification from the Board about how such a change in a factor results in a significant change in conclusion.

Paragraphs 810-10-55-3AN through 810-10-55-3AX (i.e., Case E) describe an asset-backed collateralized debt obligation where the decision maker earns fees (both a fixed base fee and an incentive fee), holds a thirty-five percent subordinated equity tranche, and may be removed by a simple-majority decision of the AAA-rated debt holders. The conclusion reached was that (1) the decision maker was acting as a principal given its fee structure and exposure to losses through the subordinated equity investment, and (2) that the kick-out rights were not substantive as they were widely dispersed among the AAA-rated debt holders. We request the Board to consider alternatives to the fact pattern, as considered in Case C, and explore further whether the conclusion would be changed if the AAA-rated debt holders were not widely dispersed or if the kick-out right was held by the equity investors that are typically more limited in number. Depending on the fact pattern, kick-out rights held by a limited number of investors, that have aligned financial interests, may be determinative.

We believe the above clarifications, the additional explanations, and the further transparency into the Board's rationale for the conclusions would enhance the consistency of the ED's application.

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?

Citi agrees that a criterion focusing on the level of seniority of a decision maker's fees when evaluating the decision maker's capacity should not be determinative in a principal versus agent determination. We 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.

We agree with the Board that a decision maker should consider whether its compensation is commensurate with, and that the compensation agreement is customary, for similar services negotiated on an arm's-length basis.

Fee structures vary by industry and it is not uncommon to have fees that are variable or subordinate to the entity's operating liabilities. Such fee structures may be considered market terms for the particular transaction type.

When a decision maker's primary economic relationship with an entity is through its market-based compensation arrangement, we believe an agent determination may be appropriate and that the seniority of fees should not directly result in a principal determination.

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?

We do not object to differentiating 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 in the principal versus agent determination.

Overall, we agree with the Board's views in BC25 that exposure to negative returns (or both negative and positive returns) is indicative of a principal relationship.

However, we note that in some transactions (e.g., some real estate partnerships) the general partner may have unlimited exposure to losses. We request that the Board clarify whether, in those situations, the general partner would generally be presumed to be acting as principal given the requirement to consider the general partner's maximum exposure to loss. If that is the case, we also request that the Board clarify whether the principal versus agent determination would also need to consider the substance of the general partner, including its ability to absorb potential losses.

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.

Citi disagrees with the proposal that a reporting entity would be required to evaluate whether there has been a change in the decision maker's capacity only when there has been a change in the purpose and design of the entity.

We believe that the principal versus agent determination is an integral part of the overall consolidation analysis and should be reassessed on an ongoing basis consistent with the primary beneficiary determination.

A decision maker should reconsider its agent determination when additional exposure to an entity is obtained, and similarly, should reconsider its principal determination when exposure is transferred to a third party. Such a change in exposure is a change in the overall relationship between the decision maker, the entity being managed, and the other parties involved with the entity, which the Board indicated is the focus in the evaluation of the decision maker's capacity (BC32).

Without an ongoing assessment of the principal versus agent analysis for changes in facts and circumstances, the same fact pattern could result in different principal versus agent determinations. We do not believe this result is what the Board intends.

For example, as expressed in our response to Question 3, paragraphs 810-10-55-3L through 810-10-55-3T (i.e., Case B) and 810-10-55-3U through 810-10-55-3AC (i.e., Case C) provide fact patterns with the same fee structure, but in Case C the fund manager has a twenty percent pro rata interest in the fund. Case C results in a principal determination while Case B results in an agent determination. Assuming the purpose and design of Case C's pro rata fund interest led to an appropriate principal determination for the fund manager, we believe the subsequent sale of the fund interest should cause a reconsideration of the fund manager's principal versus agent determination. Citi believes the fund manager's determination as an agent, given the revised fact pattern, which is now consistent with Case B, should be deemed appropriate.

We do not believe that similar fact patterns should result in different principal versus agent determinations. We believe this inconsistency would lead to an inappropriate application of the proposed ASU and would result in misleading information to investors.

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?

Citi agrees with the Board's decision that a decision maker should not be required to continue the consolidation assessment when its fee arrangement does not meet the definition of a variable interest.

However, elements of paragraph 810-10-55-37 appear to overlap with the compensation guidance applicable to the principal versus agent determination, specifically the magnitude and variability of the decision maker fees. Given the consistent terminology, we request that the Board clarify how the two evaluations are separate and distinct such that application of paragraph 810-10-55-37 captures the Board's intent.

In addition, we request that the Board clarify the illustrative examples in paragraphs 810-10-55-3B through 55-3BK which already assume the reporting entity has concluded its decision-making arrangement is a variable interest. As written, it is not clear whether the decision maker had first determined that its arrangement meets the definition of a variable interest.

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?

Citi agrees the consolidation conclusions may change for those entities previously consolidated as a result of the decision maker having a subordinate fee arrangement.

Otherwise, we believe the proposed amendments may not significantly affect our consolidation conclusions for securitization entities, asset-backed financing entities, and entities formerly classified as qualifying special-purpose entities, which were not subject to the deferral in ASU 2010-10.

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?

Citi does not agree that the application of the proposed ASU will meet the Board's intention for a money market fund not to be consolidated by its investment manager.

We believe including the implicit variable interests in paragraphs 810-10-55-3AY through 810-10-55-3BK (i.e., Case F) and 810-10-55-122 through 810-10-55-133 (i.e., Case C) may lead to an unintended consolidation conclusion for money market funds.

In order to achieve the FASB's intention, we recommend a full scope exception be provided to money market funds that comply (or have similar characteristics) with Rule 2a-7 under the Investment Company Act of 1940.

The implicit variable interest references should also be removed as existing guidance is deemed appropriate. An analysis of implicit variable interests is dependent on the facts and circumstances specific to a transaction and does not generalize to a transaction type.

The inability to provide implicit support may become more transparent for certain financial institutions when such actions may become prohibited under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

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?

Citi requests that the Board reconsider the merits of automatically including all proportionate indirect interests held through related parties when performing the principal versus agent analysis.

Similar to the principal versus agent analysis itself, Citi believes a decision maker should first consider the design and purpose of a related party's role in holding an indirect interest.

We agree indirect interests held by consolidated or sister entities should be included in the decision maker's analysis. However, the inclusion of indirect interests held by nonconsolidated related parties should be required only after a robust evaluation of the purpose and design of the related party's involvement with the entity indicates including the indirect interest would better reflect the substance of the transaction.

For example, we request the Board to consider the following fact pattern:

Company A has a twenty percent equity method investment in Company F.

Company F is a voting interest entity and maintains an available-for-sale security portfolio used to invest excess cash liquidity from its operating business. Company F's treasury department determines security purchases and sales which Company A has no control.

Independent of the twenty percent equity method investment in Company F, a consolidated subsidiary of Company A, Company B, purchases mortgage servicing contracts covering mortgage loans in securitization trusts. Company B has no other economic interests in the MBS trusts, and earns servicing income from a fixed percentage fee that is computed from the unpaid principal balance of the mortgage loan portfolios.

Based on the fact pattern above, Company A may have to review each available-for-sale security held by Company F to determine whether Company B's decision maker role in the MBS trusts is as a principal.

Company A's investment occurred prior to the purchase of the mortgage servicing contract. The primary risk of the investment in Company F is the failure of Company F's business product and strategy, not the performance of its investment portfolio. Company F holds AFS securities to manage its excess liquidity and has full control over its portfolio investments. Given the purpose and design of the related party, we don't believe MBS investments held by Company F should be considered by Company A in its principal versus agent analysis.

If the proposed guidance remains, we ask the Board to restore the employee benefit plan exception and the general employee exception within the related party analysis. The exceptions were removed in paragraph 810-10-55-37A without explanation and no exceptions were provided in paragraph 810-10-25-42. We believe a decision maker should not have to consider indirect economic interests held by these parties. Separately, the Board should consider providing explicit guidance for how related parties to a non-VIE should determine the principal party, when related parties determine a principal relationship in combination, similar to the guidance provided in paragraph 810-10-25-44.

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?

Citi agrees 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. Whether the partnership is a VIE or VOE, we believe the general partner should apply the principal versus agent analysis consistently.

Similar to our response to Question 6, we request that the Board provide further clarification about how the principal versus agent analysis should be applied to certain types of limited partnerships.

Paragraph 810-10-25-95(d) of the proposed ASU states that when evaluating its exposure to variable returns from other interests in the limited partnership, a general partner should consider, among other things, the general partner's "maximum exposure to losses of the limited partnership, which would include guarantees of the partnership's obligations (through a contract or a legal requirement) that may be inherent in a general partner's ownership interest."

In certain limited partnerships (e.g., real estate partnerships), the general partner may have unlimited exposure to losses. However, the general partner may be legally structured such that its risk of loss is limited to its capital investment in the limited partnership. We believe the Board's intent was to consider further the design and purpose of the general partner such that the general partner should not be presumed to be a principal even if the general partner has apparently unlimited exposure. We request the Board to provide further clarification of its intent.

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.

We agree with the proposed transition requirements in paragraph 810-10-65-4. The transition requirements are consistent with those in Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)*, and we are unaware of any significant practice issues for either preparers or users.

In consideration of the proposed amendments to Topic 946, Financial Services – Investment Companies, and the proposed new Topic 973, Real Estate – Investment Property Entities, Citi recommends the Board align the effective date of this proposed

ASU with the other proposals and requests that the effective date of all three proposals begin no earlier than the beginning of the second annual reporting period after the Board finalizes the proposals. For example, if the Board completes deliberations for this project and issues a final ASU by September 2012, we believe application should first begin January 1, 2014.

Question 14:

Should early adoption be permitted? If not, why?

Early adoption should be permitted.

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.

Citi does not believe the amendments in this proposed Update should be different for nonpublic entities.