

February 15, 2012

Ms. Susan M. Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 2011-220

Dear Ms. Cospers:

We are pleased to comment on the proposed Accounting Standards Update (ASU) *Consolidation (Topic 810)—Principal versus Agent Analysis*. Overall, we support the efforts of the Financial Accounting Standards Board (FASB) and International Accounting Standards (IASB) (together, the Boards) to provide consistent guidance for a reporting entity to use when determining if it (or the entity's decision maker) is an agent or a principal. Additionally, we support the Boards' efforts to address the inconsistencies which exist in the evaluations of kick-out and participating rights that arose out of FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)*.

In general, we agree that an assessment of whether a decision maker is acting in a principal or agent capacity is a necessary step, and we believe that the factors articulated in the proposed ASU represent an improvement over the criteria that currently exist in U.S. GAAP for variable interest entities (VIEs). However, we believe that the proposed guidance may give rise to certain challenges that we point out in the discussion below.

Responses to specific questions posed in the proposed ASU

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?

We do agree with a qualitative approach, and believe that it represents an improvement over current U.S. GAAP. However, as we point out in subsequent responses, we do have some concerns related to the proposed approach.

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?

We believe that the factors listed in the proposed ASU for evaluating a decision maker's capacity are relevant and appropriate. However, we note that the consideration of other parties' rights (factor (a)) could be separated from evaluations of the decision maker's economic involvement (factors (b) and (c)).

We believe that the rights held by other parties (for example, kick-out rights) should be evaluated first and suggest using a "step-by-step" process in evaluating the capacity in which the decision maker is acting. If those rights held by other parties are determinative, additional analysis of compensation and variability would not need to be considered and applied.

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?

Please see our response to Question 2 above for recommended changes to the guidance.

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?

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. We also agree that such rights can be substantive when held by more than one party but they should not in and of themselves be determinative.

We believe additional guidance (and examples) should be included addressing how such rights held by multiple parties should be considered when determining whether they are substantive. Intuitively, it would seem that, in order to be substantive, the rights should be held by a relatively small number of parties. We would suggest meaningful examples of situations in which the rights are "widely dispersed" and not widely dispersed.

We also recommend that the Board reconsider its position that redemption rights would not be considered in the principal versus agent analysis. Paragraph BC21 of the proposed ASU indicates that "While redemption rights do not provide an investor with the power to remove a decision maker, investors could theoretically withdraw 100 percent of an entity's capital (assuming there are no restrictions in place) and effectively "kick out" the decision maker."

We believe that if the redemption rights function in a manner that is substantively the same as liquidation rights, those redemption rights should be considered in the principal versus agent analysis. We believe that such instances would be limited to situations in which there are a relatively small number of significant investors, and the redemption rights are structures such that exercise would result in liquidation of the entity.

Other examples that we believe would be beneficial would be examples that show the interaction of various rights held by general and limited partners in real estate entities.

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?

We agree that the seniority of a fee relative to the entity's other operating liabilities would not, by itself, be solely determinative of a decision maker's capacity (although we do believe it is a factor that should be considered).

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 believe that exposure to negative returns should have more emphasis placed upon it.

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.

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?

We agree that an entity that determines that its fee arrangement is not a variable interest would not be required to continue the consolidation assessment.

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?

We are concerned that instances may arise in which the application of the proposed ASU would not meet the Board's objectives. The proposal places a significant amount of emphasis on subordinated interests in determining whether a decision maker is acting as a principal. Therefore, we believe that if an investment manager has provided implicit or explicit subordinated support (or has an obligation to provide support), it is quite likely that the investment manager would be considered a principal.

We recommend that the Board clarify the guidance.

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?

We do not agree with the requirement that a decision maker include its proportionate indirect interest held through related parties when determining whether the decision maker (or general partner) is acting as a principal or an agent. We believe that related party considerations are quite challenging, and therefore recommend that the final ASU provide adequate examples.

We are concerned that the examples in the proposed ASU (specifically paragraphs 810-10-25-42 and 810-10-25-96) appear to oversimplify considerations that might exist, and recommend that more "real-world" examples be provided. For example, the examples alluded to previously in this paragraph presume that the rights held by the general partner and the rights held by the related

party are similar in nature. We believe the Board should provide guidance to address situations in which related parties have interests that have different rights associated with them.

Additionally, we note that the examples alluded to in the prior paragraph relate to a situation in which a general partner holds a 40 percent interest in a related party that, in turn, owns 60 percent interest in the limited partnership being evaluated. The general partner is considered to have an interest that is equivalent to a 24 percent direct interest in the limited partnership being evaluated. We agree with this, but question if, in the reverse situation, when determining a limited partner's position, would it be appropriate to include the decision-making authority of an unconsolidated related party general partner.

Another potential application difficulty would arise in situations in which the interest in question does not contain ownership rights. We request that the Board include examples in which the guidance is applied to situations in which the related party holds debt of, rather than an equity interest in, the entity being evaluated.

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. However, due to the complexities organizations will have in evaluating and implementing systems to effectively evaluate the impact of the new standard, we suggest that adequate time be given for entities to prepare. We believe the new standard should be effective for fiscal years beginning on or after January 1, 2014.

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.

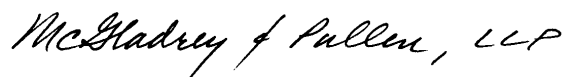
We believe that there should be different requirements for nonpublic entities. We believe that, in many instances, the consolidation of variable interest entities does not necessarily improve financial reporting for nonpublic entities, and that the cost of performing the VIE analysis exceeds the benefits derived from performing the analysis. We believe that in many instances, nonpublic entities could provide disclosures that would contain sufficient information to satisfy the needs of users of financial statements of nonpublic entities.

Other Comments

We request that the Board consider including examples on the application of the principal-versus-agent analysis in situations in which the general partner receives an equity-based performance fee allocation. Many general partners of investment funds organized as limited partnerships receive their performance fees in the form of an equity interest. Accordingly, at a particular point in time during the life of the fund, this may increase the general partner's exposure to variability of the investment fund. Although the purpose and design of the fund at formation has not changed, we are concerned that some may interpret the general partner's exposure to variability as a result of the allocation that has not been withdrawn by the general partner, to change the nature of their relationship. If this is the case, at what point in time does the general partner need to reconsider the principal versus agent analysis?

We would be pleased to respond to any questions you may have concerning our comments. Please direct any questions to Rick Day (563-888-4017) or Richard Stuart (203-905-5027).

Sincerely,



McGladrey & Pullen, LLP