



February 15, 2012

Ms. Leslie Seidman, Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Reference #2011-220; Proposed Accounting Standards Update—Consolidation (Topic 810): Principal versus Agent Analysis

Dear Ms. Seidman:

MassMutual Financial Group¹ appreciates the opportunity to submit this letter in response to the request for comment by the Financial Accounting Standards Board (“Board”) regarding the Exposure Draft of a Proposed Accounting Standards Update, “Consolidation (Topic 810): Principal versus Agent Analysis.” We applaud the Board’s efforts to develop an accounting standard in a manner that takes into account the concerns expressed by both preparers and users of financial statements.

We generally support the proposed guidance as it more closely aligns the consolidation assessment for variable interest entities (VIEs) with that of partnerships (and similar entities) by eliminating the inconsistencies in current guidance in the assessment of kick-out and participating rights under the two models. We also support requiring an assessment of the decision maker’s authority when determining control as it will result in a consolidation conclusion that is more consistent between the two models.

¹ MassMutual Financial Group is a marketing name for Massachusetts Mutual Life Insurance Company (MassMutual) and its affiliated companies and sales representatives. MassMutual is headquartered in Springfield, Massachusetts and its major affiliates include: Babson Capital Management LLC; Baring Asset Management Limited; Cornerstone Real Estate Advisers LLC; The First Mercantile Trust Company; MassMutual International LLC; MML Investors Services, LLC, Member FINRA and SIPC; OppenheimerFunds, Inc.; and The MassMutual Trust Company, FSB.

However, in addition to our responses to the Board's questions for respondents, which are attached to this letter, we would like to share the following observations and comments on specific aspects of the proposed guidance.

With the convergence of the VIE and partnership consolidation models, we request that the Board reconsider the disclosure requirements specific to non-consolidating holders of a variable interest in a VIE. These disclosures focus on the risks associated with a reporting entity's involvement with a VIE, regardless of whether the reporting entity consolidates the VIE or not, through the requirement to disclose:

- The nature of, and changes in, the risks associated with an enterprise's involvement with a VIE, and
- How an enterprise's involvement with a variable interest entity affects the enterprise's financial position, financial performance, and cash flows.

We believe that if a company is only a passive investor in the VIE or is a decision maker acting in the capacity of an agent, these disclosures are not necessary. Such involvements with a VIE are not unlike passive investments in other equity, debt or voting interest entities, which do not require these additional disclosures. A passive investor's risk associated with its involvement in a VIE is limited to its carrying value of the investment. The investor would have to disclose any additional guarantees, commitments, contingencies and risks in accordance with other GAAP guidance. Therefore, we believe these disclosures are unnecessary and redundant for a non-consolidating holder of variable interest in a VIE.

We also respectfully request that the Board consider providing additional clarification and guidance on the application of subparagraph ASC 810-10-15-14c (formerly known as the "anti-abuse clause"). This guidance contains two criteria, criterion 1 and 2, both of which need to be met in order for the guidance of this paragraph to apply. Both of these two criteria use the term "investor." In assessing each criterion, it is not clear if and when the assessment should consider the rights, activities and ownership interests of an investor's related party. In practice, when assessing "disproportionate voting rights" criteria of criterion 1, that assessment has not considered the rights, activities and ownership interests held by the investor's related parties. However, when assessing the "substantially all" criteria of criterion 2, that assessment has considered the rights, activities and ownership interests of the investor's related parties. Depending on how the rights, activities and ownership interests of an investor's related parties are to be considered in assessing each of the criteria, substantially different conclusions can be reached. For example, a limited partnership has a general partner, which has a 60% interest, and a limited partner, which has a 40%, non-voting interest. The general partner and the limited partner are related parties. In assessing criterion 1 and 2, various interpretations of the guidance could occur, examples of which are as follows, resulting in very different conclusions.

In assessing criterion 1:

- a. If the related party interests are ignored, since the 40% limited partner has 0% of the voting rights, criterion 1 has been met and, therefore, criterion 2 must be assessed.

- b. If consideration is given to the voting rights of the related party general partner, criteria 1 would not be met and, therefore, this subparagraph does not apply.

In assessing criterion 2:

- a. If the related party interests are ignored, since no single investor owns over 90% (substantially all) of the entity, criterion 2 is not met and, therefore, this subparagraph does not apply.
- b. If consideration is given to the related party interests when assessing this criterion, criterion 2 would be met.

Based on the above possible assessments, including the related party general partner's ownership interest in the assessment of "substantially all" (criterion 2) but not including that same related party's interest in assessing the proportionality of voting rights (criterion 1) would lead to the conclusion that the entity is a VIE. Whereas including the related party general partner's ownership in the assessment of both criteria, the entity would be a voting interest entity. We believe that the related party interests should be consistently considered in each, and within each, assessment. We do not believe that rights associated with ownership held by a party are separable. Additionally, further confusion arises as to what is considered an activity for the purpose of this assessment.

Another area of inconsistent application of current GAAP relates to the interpretation of subparagraph ASC 810-10-25-44, which contains guidance on the "Most Closely Associated" decision (formerly known as the "tie-breaker" guidance). This subparagraph applies when a reporting entity concludes that neither it nor one of its related parties has the characteristics in paragraph 810-10-25-38A but, as a group, the reporting entity and its related parties (including de facto agents) have those characteristics. In that situation, the party within the related party group that is most closely associated with the VIE is the primary beneficiary. Due to the limited language and examples around the "most closely associated" analysis, we are concerned that uniform application of this guidance has not occurred. We urge the Board to clarify the "most closely associated" guidance and to provide implementation examples specific to this item.

For example, a parent company invests in Entity A, which is directly controlled by an asset manager subsidiary of the parent that does not hold an investment in Entity A. In this example, regardless of the amount of the parent's or asset manager's investment in Entity A, some have interpreted that, since the asset manager has direct control over the decision making, the asset manager would be most closely associated with Entity A. However, others have interpreted that, since the asset manager is ultimately controlled by the parent (or due to the asset manager not having an investment in Entity A), that the parent is most closely associated with Entity A. Determining that the asset manager is most closely associated with the entity in this situation is even more important if the parent company lacks the expertise to manage the entity being assessed.

We believe it is logical to have the entity with decision making authority that is at the lowest level within a vertical organization structure consolidate an entity in the case of a tie breaker. In the example in the previous paragraph this would mean that the asset manager would consolidate Entity A. By consolidating at the lowest level of decision making control, the related party group will achieve full transparency such that audited standalone subsidiary financial statements properly reflect their involvements with both variable interest entities and voting interest entities. If this is the intent of the Board, we suggest adding specific language and examples to the guidance to clarify its intent.

We would also like to highlight our concerns regarding the attribution of net income, comprehensive income and net assets to the controlling and the noncontrolling interests within the financial statements of a parent company that consolidates an entity that issues no or a very minor amount of equity (i.e. a CLO or CDO). In this type of ownership structure, the entity's income and net assets is attributable to the debt holders as the equity holders, if any, do not participate in the economics of the entity. In many cases, the investment manager is required to consolidate this type of entity even though they hold a minimal, if any, investment in the entity. As current guidance implies that the attribution of income and net assets can only be to noncontrolling interests and that noncontrolling interests can only be represented by an ownership interest classified as equity by the entity, in consolidation, these investment managers show all of the economics of the entity as being attributable to the controlling interest even though the investment manager has no rights or obligations to the entity's economics. We believe that this presentation is misleading. For this reason, we recommend that the Board provide additional guidance that allows the attribution of income and net assets to owners that have rights to that income or net assets regardless of whether those rights are obtained through the ownership of a financial instrument classified as equity or not. This attribution methodology would provide financial statement users with information that is more transparent, intuitive, informative and consistent with the legal claims the entity's investors have to its assets.

Technical corrections:

Paragraph 810-10-25-85 states, that when reassessing a general partner decision maker's authority over a non-VIE partnership, the general partner should use the guidance of paragraph 810-10-35-6, which is the reassessment guidance for variable interest entities. We believe the intended reference is to paragraph 810-10-35-7, which is the reassessment guidance for non-VIE partnership and similar entities.

If you have any questions on our comments above or on our responses to the Questions for Respondents, feel free to contact us. We would be pleased to discuss our comments further with the FASB staff.

Sincerely,

Richard Barnhart
Vice President, Corporate Accounting Policy
Phone: (413) 744-7955
Email: rbarnhart@massmutual.com

Daniel Allen
Consultant, Corporate Accounting Policy
Phone: (413) 744-3114
Email: danielallen@massmutual.com

Questions for Respondents

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?

Yes, we believe it is appropriate to primarily use a qualitative assessment to determine if a decision maker is a principal or an agent.

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?

Yes, along with considering the entity's purpose and design, we believe the factors are appropriate and operational, without creating any bright lines, for assessing whether a decision-maker is a principal or an agent. As noted in Question #1, we also agree the primary analysis should be a qualitative assessment. However, we believe that criteria b and c lend themselves to a quantitative analysis. If it is the Board's intent that the evaluation of criteria b and c are not intended to be quantitative but should be evaluated based on the type (positive and/or negative) of exposure and whether the compensation agreement is commensurate with services provided and only contains customary terms, conditions and amounts, the guidance should specifically state this.

We believe that the use of significant judgment in assessing the decision makers' authority in the application of principles-based guidance is appropriate. While we are not currently aware of any other specific factors or criteria to be included, we believe that this assessment should include all relevant facts and circumstance surrounding the decision maker's involvement with the entity. For example, consideration of how closely the decision maker's decision making authority is aligned with other variable interests held by related parties.

Additional clarification is needed around the consideration of an entity's purpose and design. For instance, many entities are designed with a fluid purpose that changes in the future based on meeting certain thresholds (i.e. development entities). Should the decision making assessment be based on current circumstances, probability of the future event happening or when the actual event transpires?

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?

As with any principles-based guidance, we believe there is always a potential for varying interpretations and outcomes. However, the illustrative examples provide additional interpretive guidance which should promote a relatively consistent application of the proposed guidance and minimize inconsistency in practice. In addition, we believe that the proposed guidance and illustrative examples will result in a consistent assessment of a decision maker's authority whether applied to a variable interest entity or voting interest entity.

However, to fully achieve consistency in application, we request the Board to include examples involving partnerships and similar entities. These examples should include various situations, including those situations where it may be appropriate for a limited partner to consolidate a limited partnership.

We do not believe it was the Board's intent to have the illustrative examples create bright lines but rather to have the assessment of a decision maker's authority include all relevant facts and circumstances surrounding the decision maker's involvement with the entity, together with the implementation guidance and illustrative examples. To that end, the Board may want to consider adding a paragraph similar to subparagraph ASC 810-10-55-94 to the very top of the "Implementation Guidance and Illustrations" section (page 59).

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?

Yes, we agree that all rights held by others, including kick-out and participating rights, should be considered when assessing a decision maker's authority. However, we believe that if the kick-out or participating rights are deemed substantive, the decision maker is acting as an agent. The proposed guidance (subparagraph ASC 810-10-25-8) states the likelihood that participating rights will be exercised by the holder should not be considered when assessing whether that right is substantive. However, this explicit language is not included within the guidance for assessing kick-out rights. Due to the inconsistency in the drafting of the language, we

recommend that the Board clarify that the likelihood of (or intention to) exercise is also not a consideration in assessing the substance of kick-out rights.

The proposed guidance states that for kick-out and participating rights to be considered substantive, the parties holding the rights shall have the ability to exercise those rights without significant barriers and that this assessment, at least for participating rights as currently written, should not consider the likelihood that the rights will be exercised. The proposed guidance also states that when assessing substantive rights “[i]f more than one party holds such rights (and no single party can exercise those rights without the agreement of other parties), those rights are not, in isolation, conclusive in determining that a decision maker is not a principal.”² We fail to see the difference in the substantiveness of these rights based on the number of holders needed to exercise them. If kick-out or participating rights held by others are determined to be substantive, whether held by one or more parties, we believe they should be determinative that the decision maker is acting as an agent. We recommend that language be added to the guidance stating that if kick-out or participating rights are determined to be substantive, the decision maker is acting as an agent and does not need to continue the consolidation assessment.

In addition, we believe that if an entity is required to have an independent board of directors, which has substantive kick-out or participating rights, it should be determinative that the decision maker is acting as an agent. For example funds registered under the Investment Company Act of 1940 (1940 Act) are required to have an independent board of directors and voting shareholders similar to other voting interest entities. Therefore, for entities registered under the of 1940 Act, a decision maker’s capacity would always be assessed as an agent based on the requirements of the Act.

Additionally, we suggest including an illustrative example that clarifies whether or not a limited partner investor would consolidate a limited partnership if it is determined that the general partner is using its decision making authority as an agent and the limited partner(s) held certain rights or a majority interest. For example, a limited partnership has a single limited partner and a general partner who is acting as an agent, when, if at all, would it be appropriate for the limited partner to consolidate the limited partnership?

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?

Yes, we agree that the subordination of a decision maker’s fee should not be a determinative factor in the assessment of whether that decision maker is acting as a principal or an agent. We further agree that a subordinated fee should not automatically be considered a variable interest

² 810-10-25-39F.

in an entity. The elimination of this criterion will reduce the number of entities consolidated by a decision maker solely due to the decision maker having a subordinated fee arrangement (for example, collateralized debt obligations).

Also, we do not believe that an incentive fee, even if subordinated, should cause a decision maker's fee arrangement to be a variable interest. Paragraph 810-10-55-37 provides additional criteria for determining if a decision maker's fee is a variable interest. Criterion f. of this paragraph states that the fee is not a variable interest if "[t]he anticipated fees are expected to absorb an insignificant amount of the variability associated with the VIE's anticipated economic performance." We believe that this may be interpreted that an incentive fee, which only has positive returns to a decision maker, may be considered a variable interest as the term "insignificant" is not defined nor is it clear what the fee should be compared to in determining overall significance. For instance, should significance of the fee be based on the entity's current performance, past and current performance, or its anticipated total return? Most incentive fees are designed such that they are only paid after a hurdle return has already been paid (100%) to the investors – then the decision maker participates in receiving a small portion (e.g. 10-20%) of the excess performance while the investors receive the other 80-90%. Both criterion e. ("[t]he total amount of anticipated fees are insignificant relative to the total amount of the VIE's anticipated economic performance") and criterion f. make a complex quantitative calculation unavoidable at a time when the Board is moving toward more qualitative assessments.

Also, while the proposed principal versus agent analysis differentiates between interests that expose the decision maker to negative returns (for example, an equity interest or a guarantee) from interests that expose it to only positive returns (for example, a performance-based fee), the Fees Paid to Decision Makers or Service Providers section of the guidance, paragraphs 810-55-37 through 55-38, has not been updated to reflect this thinking.

We would recommend the Board remove criteria e. and f. altogether as criterion a. assures that the fees are commensurate with the services provided and criterion d. requires that the compensation arrangement include only customary arm's length terms, both of which would prevent fees from being anything but insignificant as the market place will only place a certain value on the services provided. We believe that criteria e. and f. have and will lead to inconsistent application of the guidance based on the lack of definition around the term insignificant. If the Board continues to prefer including criteria e. and f., a framework is needed under which the "insignificant" assessment can be made to ensure consistent application.

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?

Yes, we agree that more emphasis should be placed on a decision maker's potential for negative returns. However, we also believe that the non-receipt of a subordinated fee should not be considered a negative return. We also believe that positive returns through an incentive fee should not be determinative that the decision maker is acting as a principal or cause that decision maker to have a variable interest in an entity. Interests that expose the decision maker to negative returns (or both negative and positive returns) are more likely to indicate a principal relationship than those interests that only expose the decision maker to the potential for positive returns. Therefore, interests that expose the decision maker to only negative or both negative and positive returns, rather than fee arrangements, are a better indicator of the decision maker's authority and should be assessed when determining if the decision maker is acting as a principal or agent. Overall, we believe the decision maker must be exposed to more than an insignificant negative return to be considered a principal.

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.

No, we do not agree with this requirement as we believe it is too restrictive. We do not believe the assessment should be limited to a change in the purpose and design of the entity as there are many other factors that could potentially change a decision maker's capacity. For example an increase or decrease in the number of third party investors and changes in ownership percentages can occur without changing the purpose and design of the entity, which could provide or eliminate third party investor(s) substantive kick-out and/or participating rights or reduce the decision maker's exposure to variability.

We are concerned with the inconsistency in the reconsideration requirement of a primary beneficiary, which is reassessed continuously as facts and circumstances change, versus that of a principal versus agent assessment, which is only reassessed upon changes in the purpose and design of the entity. We believe a reconsideration of the principal versus agent assessment should occur any time the facts and circumstances change and not only upon a change in the purpose and design of the entity.

We encourage the Board to clarify when kick-out/participating rights should be reconsidered. Based on current GAAP, the rights are only reconsidered when there is a change in the design of the entity and not when investors are added or removed. We believe it is the Board's intention and expectation that these rights would need to be reassessed as the number and type (i.e. active or passive) of investors change.

Consequently, we believe that a decision maker should reassess its decision making capacity, including a reconsideration of kick-out and participating rights, on a continuous basis.

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?

Yes, we agree that if a decision maker's fee arrangement is not a variable interest in the entity; the decision maker should not be required to continue the consolidation assessment. However, we do not understand why this analysis is necessary. In determining whether a decision maker is acting as a principal or agent, the decision maker is required to consider the purpose and design of the entity along with:

- 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.

As currently proposed, for the decision maker's fee to be a variable interest, the decision maker's fee would not be commensurate with the services provided or the decision maker, or a related party, would have to "hold other interests in the VIE that individually, or in the aggregate, would absorb more than an insignificant amount of the VIE's expected losses or receive more than an insignificant amount of the VIE's expected residual returns."³ These criteria are consistent with the criteria b. and c. for assessing the capacity of a decision maker's authority. Therefore, we suggest eliminating the required assessment in paragraph 810-10-55-37.

If the Board decides to keep the assessment of whether a decision maker's fee is a variable interest, we suggest revising the first sentence of paragraph 810-10-55-37 to specifically state the Board's intention as follows:

Fees paid to a legal entity's decision maker(s) or service provider(s) are not variable interests, and, therefore, the decision maker or service provider is not required to continue the consolidation assessment and would not consolidate the entity, if all of the following conditions are met:

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

³ ASC 810-10-55-37.c

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?

We agree that a decision maker should not be required to consolidate an entity solely based on a subordinated fee. As this criterion has been removed from the assessment of whether or not the decision maker's fee arrangement is a variable interest, we believe that decision makers will no longer consolidate entities solely due to subordinated fees as the decision maker will be able to conclude they don't hold a variable interest, and therefore are acting as an agent. We also agree that the consolidation conclusions for securitization entities, asset-backed financing entities, and entities formerly classified as qualifying special-purpose entities would not change when decision makers are exposed to other variable interests (i.e. have more than a subordinated fee).

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?

No, we believe that the proposed guidance as currently written may result in consolidation of money market funds. This is due to the requirement to assess implicit financial responsibilities. For instance, in the examples, Case F: Commercial Paper Conduit (contained in the Assessing a Decision Maker's Capacity section of examples) requires the decision maker to consider its implicit financial responsibilities. Many believe this consideration would lead to consolidation of a money market fund by its decision maker as they may have an implicit obligation to make the fund whole if it breaks the \$1 share price in order to manage the reputational risk in the marketplace.

As a result of variations in interpretation, we believe the Board should make a clear and concise statement that all funds registered under the Investment Company Act of 1940 are voting interest entities, since they are required to have an independent board and voting shareholders.

We continue to agree with the Board's intention that money market funds and similar entities should not be consolidated by a decision maker. Consequently, it is important that the intent of the Board be made clear by a specific exclusion for these types of entities, together with further explanation in the Basis for Conclusions.

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?

Under current GAAP guidance, ASC Subparagraph 810-10-25-38A requires that involvements of related parties and de facto agents be included in the primary beneficiary assessment. It is unclear if the Board is providing a clarification of how related party interests should be assessed through the consolidation rules, including the primary beneficiary assessment, or if the Board is providing new and different related party guidance to be used solely in the principal versus agent analysis. The definition of an indirect interest is also unclear. Further clarification of the Board's intent along with a definition of indirect interests is needed to ensure consistent application of this guidance. The examples provided in subparagraph ASC 810-10-55-37A appear to be items that would already be included in the assessment under the current consolidation guidance, albeit, maybe not on a proportionate basis. If it is the Board's intent to clarify using the proportionate ownership in the assessment process throughout the guidance further modifications to other sections of the guidance are needed, or the guidance should specifically establish that it is only for the purpose of evaluating a decision maker's capacity as either an agent or a principal.

We do agree that, when included in the assessment, related party interests in the entity that are included in the decision maker's analysis should be proportionate.

Within the context of insurance companies, we are also concerned that certain separate accounts may be considered related parties requiring their interests to be included as indirect interests of the insurer. For example, where an insurance company allows policy holders in a separate account to invest in a mutual fund in which the company also owns a minority interest, the proposed exposure drafts working together could be interpreted to require the insurance company or the separate account to consolidate the mutual fund. Accordingly, we urge the Board to make clear that the guidance of ASU 2010-15⁴ would continue to apply.

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

⁴ ASU No. 2010-15, Financial Services—Insurance (Topic 944): How Investments Held through Separate Accounts Affect an Insurer's Consolidation Analysis of Those Investments—a consensus of the FASB Emerging Issues Task Force.

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?

Yes, we agree that this requirement will result in more consistent consolidation conclusions for decision makers by aligning the evaluation process of partnerships and similar entities with that of VIEs. We believe that there should be a single model for determining if a decision maker has a controlling financial interest in an entity.

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.

Although complex and time consuming, we agree with the transition guidance. Due to the complexity of the principal versus agent assessment along with the process for gathering information and processing consolidation decision changes, we believe that significant effort and resources will be required to assess, document and implement conclusions based on the proposed guidance. Based on this, and our past experience in implementing FIN 46R and FAS 167, we believe a minimum of 18 to 24 months should be allowed for implementation. Also, when the Board is assessing an implementation timeframe, we request that consideration be given to other guidance, mainly the proposed guidance on investment company entities and investment property entities that may be adopted during the time period.

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

No, we do not believe early adoption would be beneficial as it would create a lack of comparability between similar entities.

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.

No, the guidance should be the same for public and private companies.