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

Re: Exposure draft – Proposed Accounting Standards Update – Consolidation (Topic 810)

GE Asset Management Incorporated (GEAM) is a registered investment advisor with approximately \$115 billion in assets under management. GEAM is a wholly owned subsidiary of General Electric Company (GE). GEAM provides investment management services to a variety of institutional clients, including certain GE employee benefit plans (primarily defined benefit and defined contribution plans). GEAM provides these services through a variety of investment entities and separate accounts based upon the needs of our clients. The GEAM team invests globally with a long term view, across several asset classes including US equities, international equities, fixed income, private equity and real estate.

We appreciate the opportunity to comment on the proposed Accounting Standards Update of Topic 810 on Principal versus Agent Analysis. We support the Board's introduction of a separate qualitative analysis to determine whether the decision maker is using its power in a principal or an agent capacity. However, we are concerned that the focus on certain assessment factors may lead to instances in which the reporting entity would be deemed to be operating in a principal capacity when it substantively is operating in an agent capacity. If the proposed standard is not changed, the requirements would potentially result in GE inappropriately consolidating entities for which it is not a principal and create an issue with double counting assets and liabilities of benefit plans, some of which are already reflected in its financial statements in accordance with GAAP.

Topic 810-10-15-12 (a) provides that an employer is not required to consolidate an employee benefit plan subject to Topic 712 or 715. Employee benefit plan sponsors may create trusts for the benefit of the plan members and appoint investment advisors to manage the benefit trust on their behalf. In circumstances in which an employer appoints a related party to manage the plan assets using an investment company entity, we believe the manner in which the agent principal guidance has been drafted may require a

reporting entity to consolidate the investment company entity, in addition to the recognition of the trust's or plan's assets and liabilities as required by the application of Topic 712 or 715. We do not believe that this outcome is helpful as it will likely confuse investors and analysts. We believe that Topic 810-10-15-12 (a) should be amended to explicitly make reference to both employee benefit plans and investment company entities used by an employee benefit plan.

A defining characteristic of an agent principal relationship is that a principal has the ability to terminate the relationship, under the provisions of the contractual arrangements that created the agency relationship, at any time. In many Investment Company or Investment Property entities, the relationship between the investment advisor and the investors is, in substance, an at-will relationship. The design and management of the entity is designed to facilitate entry and exit from the entity by multiple investors at any point in time. There are defined substantive entry and exit mechanisms. The asset portfolio has sufficient liquidity to enable the investment advisor to provide timely exit proceeds to the investor. When an entity is designed in such a manner, it is the investor's power to exit the investment that demonstrates the investment advisor is an agent. Therefore we believe that, in such instances, individual investor liquidation rights should be considered a determinative factor that indicates that the investment advisor is an agent. In contrast, in entities that are not designed as described, we believe that liquidation rights should not be given weight when performing an agent principal analysis. We, of course, understand that in contrast to open-end funds, those entities that operate as closed-end funds may be subject to different requirements.

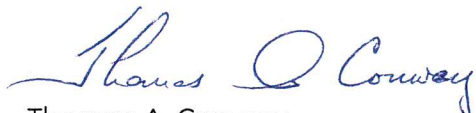
An investment advisor may choose to waive fees (or absorb expenses) it is contractually entitled to collect as part of its overall management strategy. We believe the proposed guidance in Topic 810-10-25-92 should specifically refer to the compensation that the decision maker may receive by design. We do not believe that a decision maker's choice to waive or defer should be considered when evaluating whether the compensation it receives is commensurate with the services provided, as well as evaluating whether the compensation it receives is on an arm's-length basis.

We have provided a more detailed explanation of our views and the basis for them in Appendix A.

We believe that the underlying objective of employee benefit plans is to provide for the participants of such plans. As a result, consolidating these assets under the proposed ASU does not provide useful information to investors in GE, the plans' sponsor. Moreover, given the fiduciary and regulatory obligations that management has to plan participants, the means used by management to meet those obligations should not be a factor in any consolidation evaluation involving the assets that the plan sponsor utilizes to fulfill those obligations.

We appreciate the opportunity to comment on the proposed ASU. Representatives of GEAM are available to discuss the issues raised in this letter with Board members or staff at their convenience.

Sincerely,

A handwritten signature in blue ink that reads "Thomas A. Conway". The signature is written in a cursive style with a large, looped initial "T".

Thomas A. Conway  
GE Asset Management Inc. Controller

## **APPENDIX A**

### **Background**

The use of investment funds by employee benefit plans is common for both defined benefit plans and defined contribution plans. Plan sponsors seek investment funds that meet the investment objectives of the plan and include fair value accounting of the investment fund. We believe plan sponsors seek an investment advisor who can deliver on these objectives. An employee benefit plan is required to use fair value accounting under Topic 960-325-35-1 for defined benefit plans and Topic 962-325-35-1 for defined contribution plans.

It is important to distinguish the role a plan sponsor plays with respect to employee benefit plans from the role an investment advisor plays with respect to employee benefit plans. Plan sponsors have the following responsibilities: plan fiduciary, oversight of plan investments, selection of investment options for defined contribution plans, funding for the plans, determining the funded status of defined benefit plans, selecting and changing investment advisors, as well as evaluating service providers (which include investment advisors). Investment advisors have the following responsibilities: manage investments based on investment objectives of the investment fund, as well as tactical execution of plan investments. It is also important to note that the objectives of the investment advisor are no different for related employee benefit plan clients and third party employee benefit plan clients.

### **Rights of others**

Under the proposed Topic 810-10-25-39D amendment, substantive rights held by other parties may affect the decision maker's ability to direct the activities that most significantly impact an entity's economic performance. Substantive kick-out rights or participating rights may indicate that the decision maker is an agent rather than a principal. In addition, under the proposed Topic 810-10-25-40B amendment, an investor's unilateral right to withdraw its investment in whole or in part (withdrawal right) that does not require dissolution or liquidation of the entire entity is not deemed to be a kick-out right. We disagree with these amendments.

For investors of pooled fund investment entities, the concept of providing investors with substantive participation rights is counterintuitive to the pooling objective currently under Topic 946 and as proposed under ASU 2011-200 – Financial Services – Investment Companies (Topic 946) – Amendments to the Scope, Measurement, and Disclosure Requirements which requires that funds of an investment company's investors must be pooled together to provide the investor with professional investment management.

We believe that the key objective for investors seeking professional investment management is to meet the desired investment objectives in an efficient and economic

manner. Investors utilize investment company entities to achieve this objective. Investors choose professional investment management primarily as a result of not being able to achieve the investment objectives on their own. Prospectuses / offering documents for these investment company entities also discuss the pooling of funds and the use of fair value accounting to meet the investment objectives of the investors. This concept would suggest that investors in pooled investment entities are passive investors who invest their assets with an investment advisor for the advisor to make decisions as to the specific investments included within the portfolio. The investors desire to be passive investors as they do not have the expertise to make investment management decisions which is a primary factor in the investment decision by the investor. The investor's decision making ability is generally limited to the selection of the appropriate investment fund which meets their investment strategy mandate as well as the purchase and sale of the unit of equity ownership consistent with the objectives of the investor.

We also disagree with the Board's conclusion that liquidation rights should be considered equivalent to kick-out rights as these rights provide the holders the ability to dissolve the entity and thus effectively remove the decision making authority while concluding that redemption rights are inherently different from liquidation or kick-out rights, because the decision maker can avoid the loss of its decision making abilities by obtaining additional investors for the entity. Redemption rights in investment entities offered to large institutional investors could be the same as liquidation rights. In addition, depending on the investment entity's investment strategy, market conditions, as well as the investment advisor's performance and distribution capabilities; additional investors may not be obtained in a timely manner.

The investment company entities that our investors seek are generally for open-end investment vehicles which are designed to have asset and customer inflows and outflows. We recommend that redemptive rights should be considered similar to kick-out rights specifically when factors such as the time period in which an investor may redeem is short and investments in the entity are generally liquid. Redemption rights give the investor the ultimate power in their ability to exit the investment company entity at will and should be determined to be an initiation right.

Consideration of the rights held by other parties shall include an assessment of any rights exercisable by an entity's board of directors (or other governing body) and their effect on the decision maker's authority. We agree with Board's assessment that a board of directors whose members are independent of the decision maker may serve as a mechanism to facilitate numerous parties to act collectively in exercising their rights. We would however suggest that weighting of this factor should only be taken into consideration when a board of directors is legally required. Investment company entities which are not registered investment companies (U.S. mutual funds) generally do not have boards associated with these investment vehicles as they are not required. While boards have a fiduciary obligation to the investors of the investment company entity, boards traditionally have not relieved an investment manager from its duties without cause. Where no such requirement is in place, this factor should not be a consideration.

## **Decision maker's compensation**

As proposed, the assessment of a decision maker's capacity would include the evaluation of the decision maker's fee. The evaluation places more emphasis on the decision maker's exposure to negative returns than interest that only expose the decision maker to positive returns. The assessment of the magnitude and variability of the compensation received relative to the entity's anticipated economic performance would consider whether 1) compensation of the decision maker is commensurate with the services provided and 2) its compensation agreement includes terms, conditions, or amounts that are customarily present in arrangements for similar services negotiated on an arm's-length basis. We would recommend that amendments be made to take into consideration market circumstances. Facts and circumstances must be taken into consideration in the evaluation of the arm's-length basis consideration above as discussed below.

GE is a fiduciary with respect to certain employee benefit plans and is the sole shareholder of GEAM. As a result of the fiduciary relationship and pursuant to ERISA regulations, GEAM is not permitted to earn a profit for investment advisory services provided to these plans. This regulatory requirement should not be a factor in the compensation assessment of arm's-length.

A business may choose to reduce or waive fees and/or cap expenses to be competitive in the marketplace. A current example is many investment advisors are currently waiving some or all of its management fees of money market funds in order to remain competitive due to the low interest rate environment. This fee waiver does not change the activities of the investment advisor in meeting the investment objectives of a money market fund. The exposure to negative returns due to the decision maker action should not make it more likely that the decision maker is a principal. Companies make pricing decisions in the best interest of operating their company. If the company chooses to be less profitable, this is not an indication of acting in a principal capacity.

Compensation arrangements may also be different depending upon the stage of the investment entity life cycle. In the case of startup entities or investment entities in liquidation, the decision maker may lower fees and absorb more expenses than normal. In both cases, the decision maker is performing their fiduciary duty to act in the best interest of the investors. This is another example of an arrangement that should not cause conflict in the arm's-length determination.

## **Relationship with other parties**

Under the proposed amendment, for purposes of determining whether the decision maker is a principal or an agent, a decision maker would include its direct economic interest in the entity and its indirect economic interests in the entity held through related parties.

The use of an investment advisor for employee benefit plan assets that is related to the plan sponsor should not be a determinative factor of the investment advisor being assessed as acting in a principal capacity under the proposed standard. In addition, an investment advisor who is able to provide the professional investment management services in an efficient and economic manner for related employee benefit plan assets should not be viewed any differently than providing the same professional investment management services for a third party investor when assessing principal versus agent. We believe there are limited companies in the position of having an investment advisor subsidiary who manages employee benefit plan assets for its affiliates.

Under Topic 850-10-20, related parties include trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management. We believe that there is an unintended consequence which may result in an investment advisor for investment vehicles which include employee benefit plan assets that are related to the plan sponsor to end up having to consolidate assets of the related employee benefit plan. This result would be a direct contradiction to the guidance provided under Topic 810-10-15-12 (a) which provides a scope exception where an employer shall not consolidate an employee benefit plan subject to the provisions of Topic 712 or 715. This scope exception should apply to investment vehicles. As a result, we recommend that investment vehicles which contain related employee benefit plan assets would exclude those employee benefit plan assets in the evaluation of related party investors under the assessment of the relationship with other parties. ASC 715 requires employers to record the funded status of certain employee benefit plans on the face of the statement of financial position. The potential inclusion of employee benefit plan assets for a principal of its own related employee benefit plans would result in a double count that creates an additional challenge to determine the proper method to eliminate the double booking that would occur as a result of this principal consolidation.

We would recommend that the proposed amendment clarifies the guidance of this Topic in the circumstances indicated under Topic 810-10-15-12 (a). We would also recommend that under Topic 810-10-25-43 that the term "related parties" be amended to exclude trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management.

## **Conclusion**

In summary, we would recommend that the proposed standard be revised to:

1. Include the redemption rights as these rights provide the investor the ultimate power in their ability to exit the investment company entity at will and should be determined to be an initiation right.
2. Revise the evaluation of the decision maker's fee to take into consideration market circumstances. Professional judgment should be permitted to determine whether

nature of the fee arrangement meets the concept of being on an arm's-length basis.

3. With respect to related parties, a scope exception consistent with that contained in Topic 810 (Consolidation) should also be utilized in the determination of which investors to assess under the related party evaluation.

The role of the investment advisor in providing investment advisory services to related employee benefit plans is not any different than the services provided to third party employee benefit plans in the same investment entity. We believe the effect of the inclusion of the considerations above would result in factors that determine the decision maker is an agent rather than a principal. We do not believe making such qualifications to the standard would preclude the objective of providing comprehensive guidance for assessing whether an entity is acting in a principal capacity or in an agent capacity.

We believe that the proposed standard must permit the result to be that the investment advisor is truly acting in a principal capacity for consolidation to make economic sense and be in the best interest of the investors of the entity required to consolidate these investment vehicles.