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

RE: International Accounting Standards Board Staff Draft, Consolidated Financial Statements

Dear Mr. Farber:

The Bank of New York Mellon Corporation (BNY Mellon) expresses an interest in being represented in either of the FASB Public Roundtable Meetings on the IASB’s Staff Draft, Consolidated Financial Statements (“Staff Draft”). We regard the roundtable as an important first step in working toward the development of a high quality consolidation standard. Therefore, we are submitting responses to the questions that are included in the roundtable agenda.

BNY Mellon is a global financial institution with $220 billion in assets. We have extensive experience the asset management business model. BNY Mellon has multiple, autonomous investment firms representing a broad spectrum of distinctive asset management styles. We manage over $1,100 billion in assets for institutional and individual investors globally. Our clients include some of the world’s largest pension funds and other retirement plans and institutions, governments and local authorities, treasuries and family offices. We are a leading provider of sub-advisory services and have strong partnerships with financial institutions throughout our major markets. Through our global distribution arm, BNY Mellon Asset Management International, we continue to deepen our position in developed markets — such as Europe, Japan and Australia — with focused expansion in more developing economies.

Our subsidiaries operate in many international markets and they manage funds that are designed to meet local investor needs, the requirements of regulatory regimes and business practices in those areas. In addition, many operate in countries that have already adopted IFRS or are planning to prior to the U.S. adoption. Accordingly, BNY Mellon strongly supports a unified standard in the area of consolidations. Having the businesses in one major economy measured against a different set of rules than businesses in the other world economies will inevitably put one at an advantage (or disadvantage) to the other. We believe the IASB and the FASB should issue the same standard using the same words.

The BNY Mellon’s asset management business acts solely as the asset manager for its clients, through its institutional and retail funds. Fund products offered include equity and
fixed income funds – both actively managed and index funds, alternative investment hedge funds and private equity funds.

BNY Mellon’s business model for all of its funds is that of an agent acting on behalf of the principals, who are the investors in the funds. For its asset management services, BNY Mellon receives fees in the form of both performance and/or fixed asset management fees. Fund fee structures are designed to ensure that the interests of BNY Mellon are aligned with the investor’s interest in the fund. In order to further align investors’ interests with ours, BNY Mellon may also invest in its fund. For example, this is the case when subordinated third-party investors have a substantial interest in a fund and require the asset manager to also invest in the same investment class to be comfortable that the asset manager’s interest is aligned with their own. In addition, we may make a start-up seed capital investment which is withdrawn when a fund’s economies of scale are achieved.

Overall Comments

We support the concept of one control model for all entities. Furthermore, we believe that the various factors in the Staff Draft used to determine whether an investor or decision maker is an agent vs. a principal is an improvement over ASC 810. It is critical that all the factors are well understood as our experience was that prior to the deferral, certain constituents of the FASB were applying a rules based approach to ASC 810 which could have required the consolidation of a significant number of investment funds by asset managers; whereas most knowledgeable industry participants would have concluded asset managers act as agents and should not consolidate such funds. Accordingly, in the “Control” section of the Staff Draft, a new paragraph should be added that states:

An investor who is determined to be an agent under the provisions of this standard does not have control.

However, we do not agree with all of the application guidance included in Appendix B, which is discussed below in our responses to your questions. In addition, an important factor in determining whether an investor should consolidate an entity is the entity’s governing structure and the related source from which the power to direct the entity’s activities emanates; and this should be included in the Staff Draft. Governance structures and the source of power can range from the simple to the complex; and, must be clearly understood before determining whether a party has the “power to control”. Among other matters, the discussion of this factor should include the roles of a Board of Directors and other such governing boards.

While not within the FASB’s purview, in our opinion, the IASB should re-expose the Staff Draft for a robust comment period since it contains significant differences from ED 10, Consolidated Financial Statements, published in December 2008, particularly in determining a principal versus agent. As discussed above, we believe there should be a level playing field and hope that FASB and IASB reach agreement on the application of the principles in the Staff Draft. This can only be achieved if there is a common understanding how the guidance will be applied internationally, as well as in the U.S.
Questions and Responses

1. The Staff Draft provides a single concept of control that is used to evaluate control on a consistent basis for all types of entities (both voting interest entities and variable interest entities). Do you agree that a single-model approach to assess control will provide more consistent financial reporting for all types of entities rather than providing separate models for voting interest entities and variable interest entities? If not, why not?

We support a single concept approach which would lead to better comparability of financial statements. The current multiple-model approach results in different accounting for transactions that are similar in nature. As an asset manager, a key component of the single concept approach is to ensure the criteria established to analyze various governance structures (e.g., mutual funds, partnerships, limited liability companies and collective investment funds), which function and provide similar products to its customers, are applied consistently to determine if an investor or decision make is an agent vs. a principal.

The criteria need to recognize that judgment will be required particularly where asset management services are related to asset classes requiring unique skills and where multiple investor classes exist with interests in different risk/returns profiles. The remuneration and other interest held by asset manager are almost always structured with a goal of ensuring the AM interests are aligned with those of the other investors.

2. The Staff Draft does not incorporate the U.S. GAAP concept of a variable interest entity or a structured entity. Rather, the Staff Draft provides that the way in which control is assessed will vary depending on how the activities that significantly affect the entities’ returns are directed. For example, how control is assessed will depend on whether the decisions that significantly affect the returns of an entity are made through voting rights. Without an explicit definition of a variable interest entity, do you believe that (ignoring the differences when analyzing decision making relationships and the effect related party arrangements have on the analysis) the Staff Draft will produce the same consolidation conclusions as the recently issued U.S. GAAP guidance for consolidating variable interest entities (FASB Accounting Standards Codification™ Subtopic 810-10, Consolidation)? If not, what are the situations that produce a different conclusion and why? Do you think it is sufficiently clear how to assess power and control for all types of entities in the Staff Draft?

Although we have not had sufficient time to fully review the differences with Subtopic 810-10, we believe that the Staff draft and Subtopic 810-10 would not lead to substantially similar conclusions. Any similarity with our conclusions would be solely the result of our application the ASU 2010-10 deferral. Without the deferral many more funds would be consolidated under Subtopic 810-10 due to the traditional fee

1 Originally issued as FASB Statement No. 167, Amendments to FASB Interpretation No. 46(R).
structures and “skin-in-the-game” investments, which have evolved in an intensely competitive market. The consolidation of these funds would have resulted from different interpretations of the consolidation criteria. The traditional fee structures along with asset manager’s investments in the funds are in place to ensure the alignment of the asset manager’s interests with those of the investors. We believe the IASB Staff draft more effectively considers those factors than does Subtopic 810-10.

3. The Staff Draft proposes that in order to control an entity, the reporting entity must have the power to direct the activities of that entity. Power is defined as having existing rights that give the reporting entity the current ability to direct the activities that significantly affect the entity’s returns. Do you agree with the control principle as articulated in the Staff Draft? Do you agree that there are situations when a reporting entity can have control of an entity controlled through voting rights with less than a majority of voting rights? Why or why not?

We agree that control arises from existing rights to direct the activities that significantly affect the returns of any entity. In an entity where the power emanates from voting rights, barring any observable exercise of power other than through such voting rights, an investor with less than a majority should not consolidate the entity. When the rights to control activities are proportional to the ownership interest or other source power, consolidation should be based on that proportionate ownership or source of power. In those cases, a majority of ownership should be presumed to be required to consolidate the investee.

We disagree with the requirement to consider “potential” voting rights when determining if an investor has the power to control via voting rights. If these criteria are retained, we believe that a probability of exercising those potential rights should be permitted, including scenarios in which there is a remote likelihood of exercising the potential rights.

4. The Staff Draft states that if the activities that significantly affect an entity’s returns are directed through voting rights, a reporting entity holding less than a majority of the voting rights (assuming no potential voting rights or other contractual rights exits) has power when it can unilaterally direct the activities of the entity that significantly affect the entity’s returns. This assessment requires judgment. The Staff Draft provides application guidance to determine when a reporting entity holding less than a majority of the voting rights in an entity controlled through voting rights has power. Specifically, the Staff Draft provides that, in some cases, a determination can be made about whether a reporting entity has power by just considering the absolute size of the reporting entity’s holding of voting rights, the size of its voting rights relative to the size and dispersion of holdings of the other vote holders, the voting patterns at previous shareholders’ meetings, and other arrangements. Do you believe that there are circumstances when, considering only

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2 A reporting entity controls another entity when the reporting entity has (1) power over the other entity, (2) exposure, or rights to variable returns from their involvement with the other entity, and (3) the ability to use its power over the other entity to affect the amount of the reporting entity’s returns.
these factors, an assessment could be made about whether a reporting entity has power? Why or why not?

As noted in the response to question 3, in an entity where the power emanates from voting rights, barring any observable exercise of power other than through such voting rights, an investor with less than a majority should not consolidate the entity. When the rights to control activities are proportional to the ownership interest or other source power, consolidation should be based on that proportionate ownership or source of power. In those cases, a majority of ownership should be presumed to be required to consolidate the investee. On the other hand, when an investor has substantial minority interests, it should be determined whether other evidence of the exercise of power that is inordinately large in relation to its proportional interest.

When an investor has a majority of voting rights, it would generally be presumed that the investor would have the power to direct the significant activities of the entity. However, as pointed out in the Staff Draft, there may be situations where that power is not substantive and other investor may need to consider whether they should review for consolidation.

5. In other circumstances the Staff Draft provides that additional evidence may be needed in order to conclude that a reporting entity holding less than a majority of the voting rights in an entity controlled through voting rights has power. The Staff Draft includes indicators that may provide additional evidence in these circumstances to assist in determining whether the reporting entity has power. Do you believe that these indicators provide sufficient guidance to conclude that a reporting entity has power in situations where it is unclear as to whether a reporting entity has power solely based on the absolute size of the reporting entity’s holding of voting rights, the size of its voting rights relative to the size and dispersion of holdings of the other vote holders, the voting patterns at previous shareholders’ meetings, and other arrangements? If not, what additional indicators should be included or which of these indicators should be removed?

As indicated in our responses to questions #3 and #4, we do not agree that an entity holding less than a majority of the voting rights can be determined to have the power to control and be required to consolidate an entity. Power to control, based on voting rights, should be determined based on holding a majority of the voting rights.

The FASB should add indicators of power that consider an entity’s governance structure and sources of power and how that power is exercised. We recommend examples be included that address the composition and activities of boards of directors and other governing board structures including independence considerations and how the role and power of the governing board was established. The examples should also address power granted through contractual arrangement, and any provisions of the entity’s governance documents.
Additionally, the prior employment of key management personnel should not be an indicator that minority investors have power.

6 The Staff Draft requires a reporting entity to consider its rights to obtain additional voting rights of another entity, as well as such potential voting rights (options or convertibles, for example) held by other parties, to determine whether the reporting entity has power. Do you believe the guidance in the Staff Draft is appropriate and operational? Specifically, do you believe that the guidance for determining when potential voting rights are considered substantive is operational? If not, what additional guidance would you suggest?

We disagree that rights to obtain additional voting rights of another entity should be considered in determining consolidation. See response to question 5.

7. When determining whether a reporting entity acts as an agent, the reporting entity must consider the overall relationship between it and other parties involved with the entity, considering the following factors:
   a. The scope of its decision-making authority over the entity
   b. The rights held by other parties
   c. The remuneration the reporting entity is entitled to in the arrangement
   d. The reporting entity’s exposure to variability in returns as a result of other interests that it holds in the entity.

Do you believe the guidance related to assessing decision-making arrangements in the Staff Draft is appropriate and operational? Do you believe the Staff Draft would lead to appropriate consolidation conclusions?

We generally believe the determination of whether or not an entity is acting as an agent will require judgment and bright lines are not effective in making those judgments. The approach taken whereby the Staff Draft provides factors to consider in making those judgments is reasonable. However, we have certain areas where we recommend changes.

As noted above we believe an additional criterion that should be considered is governance structure and source from which power emanates. Fund Boards of Directors (BOD) and other governing boards are empowered to represent the entities investors and generally have the power to direct the activities of the entity by setting operating policies hired managers must follow. Even when the asset manager is responsible for the day to day operations and investment management, the fund BOD is responsible for the oversight of the asset manager.

We believe the example in B59 is too simplistic and does not appropriately reflect the source of decision making power. In certain instances, investment guidelines, which the asset manager must follow and the triggering criteria that require the asset manager to either take or constrain action are established through active negotiation between an investment bank, which underwrites and markets the fund, and the asset manager. The
goal of all parties involved in establishing an investment fund is to establish a fund that meets external investor needs and ensures their interests are properly looked after.

The decision maker’s risk of loss should be an attribute which should be considered. A decision maker’s variability from it other interests should not be a factor in the considering the power to control. Consideration should be given to the decision maker’s risk of loss (e.g., its obligation to losses of other investors or lose its own principal). Therefore, if investors in an entity are exposed to all of the losses and the asset manager has no obligation of funding losses, that fact pattern would be a strong indicator that the asset manager is an agent. Fees which are not earned do not represent a loss which the asset manager funds but are generally reflective of the fact that the fees are structured to give the investors assurance the asset manager’s interests are aligned with theirs.

In paragraph B65 of the Staff Draft, we believe the following insert after the first sentence would provide a meaningful example: For example, where some investors have returns that are longer term or have interests that are more at risk than more senior investors, fees to the decision maker are frequently structured to ensure that at least a portion of those fees is aligned to interests of subordinated investors, which would be an indicator that the asset manager is acting as an agent.

We believe that paragraph B67 of the Staff Draft should be amended. In the asset management business other interests held by the asset manager typically are seed capital or “skin-in-the-game” investments. These investments can be required by the market to align the asset manager’s interests with those of the other investors. As it relates to BNY Mellon’s business, we strongly disagree that the decision maker may make decisions different from those it might make if it did not hold those other interests. To the extent we would make decisions different from those we might make if we did not hold those other interests, it would be for the benefit of the other members of the investment class in which the decision maker hold its other interest, this would be a very strong indicator the decision maker is an agent, not a principal. However, we recognize that if the asset manager holds a large portion of the investment class, this fact needs to be considered to determine whether or not the investment motive was as a principal rather than to align the asset manager’s interest to the investment class investors.

We believe paragraph B68 of the staff draft should be modified to indicate the maximum exposure should be maximum loss exposure. A requirement of the decision-maker to fund losses is a strong indicator that the decision maker is a principal rather than an agent. As indicated above, fees that are not paid are not actual losses to the asset manager. In lieu of this modification, consideration should be given to a statement as follows: However, the more a decision maker’s variable returns are aligned to the interests of investors, the more likely it is that the decision maker is an agent.

ASC 810-10-55-37A excludes the interests of employees and employee benefit plans of the decision-maker from the decision-maker’s overall interests unless they were intentionally used
to circumvent the provisions of the guidance. The Staff Draft should include the same provisions.

8. *When evaluating a decision-maker’s role, rights held by other parties are considered when determining whether a decision-maker is an agent.* Specifically, situations in which a single party holds substantive removal rights and can remove the decision-maker without cause, in isolation, would be sufficient to conclude that the decision-maker is an agent. However, if numerous parties hold such rights, those rights would not, in isolation, be conclusive in determining whether a decision-maker is an agent. In such a situation, those rights would be considered together with the other factors included in question 7 above, to determine whether the decision-maker is an agent. Do you believe that removal rights held by numerous parties should be a factor when evaluating whether a decision-maker is an agent? If so, do you agree that it should be one factor but not in and of itself determinative, when evaluating whether a decision-maker is an agent?

We believe substantive removal rights over a decision maker, which have no substantive barrier to exercise, even if held by broad group of investors, and may be exercised by a simple majority of investors should be a strong indicator that the decision maker is an agent. We do not believe this conclusion should be limited to unilateral substantive removal rights. Our experience in the asset management business is that substantive removal rights are aggressively negotiated and reluctantly granted, which indicates the asset managers consider them a substantive source of power.

Simple majority substantive removal rights held by a broad group of investors should be a significant factor in determining if an investor or decision make in an agent, since they are acting at the discretion of the other investors. Such removal rights would be consistent with the current US GAAP voting interest model.

9. *The Staff Draft requires a reporting entity to reassess whether it controls another entity if facts and circumstances indicate that there are changes to one or more of the three elements of control. Do you believe this principle, and the related guidance in the Staff Draft, is sufficiently clear and operational?*

We agree with the requirements to reassess whether or not a reporting entity controls another entity if the facts and circumstance suggest there have been changes to the elements of control. This provision is generally consistent with current US GAAP and is considered operational.
Thank you for considering our participation in the Roundtable. If you have any questions or require further information, please contact me at 1-212-635-7080.

Sincerely,

[Signature]

John A. Park
Executive Vice President and Controller

cc: Leslie Seidman
    Sir David Tweedie
    Alan Teixeira
    Jana Streckenbach