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January 5, 2010

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

File Reference No. 1750-100
Re: Proposed Accounting Standards Update, Consolidation (Topic 810), ***Amendments to Statement 167 for Certain Investment Funds***

Dear Mr. Golden:

Rothstein, Kass & Company, P.C. appreciates the opportunity to comment on the Proposed Accounting Standards Update, Consolidation (Topic 810), *Amendments to Statement 167 for Certain Investment Funds* (the "Proposed ASU"). For Rothstein Kass, a leader in providing auditing, tax and accounting and advisory services to the alternative investment industry, including hedge funds and private equity funds, this guidance affects many of our clients, and we are therefore very interested in the progress of this project.

We support the FASB's efforts to defer Statement 167 for certain investment funds so both the FASB and the IASB could develop consistent guidance on principal and agent relationships as part of the joint consolidation project. However, we have significant concerns with the Proposed ASU and do not support the issuance of it as currently drafted because it does not achieve the Board's stated expectations. We do not believe the second condition in paragraph 4.aa.1.ii. will allow investment funds structured as limited partnerships to qualify for the deferral of Statement 167. We also have additional comments on the proposed amendments to clarify the guidance and avoid any misinterpretations when applying it in practice.

Prior to the FASB issuing the Proposed ASU, the Board should consider it in accordance with our specific comments and suggestions below.

Obligation to Fund Losses – Limited Partnerships

The Proposed ASU states that "[t]he amendments are expected to most significantly affect reporting entities in the investment management industry", including hedge funds and private equity funds. We are concerned that the second condition in paragraph 4.aa.1.ii. will prevent investment funds structured as limited partnerships to qualify for the deferral of Statement 167.

Paragraph 4.aa.1.ii. states that: "[t]he reporting entity does not have an obligation to fund losses of the entity that could potentially be significant to the entity. This condition should be evaluated considering any implicit or explicit guarantees provided by the reporting entity and its related parties, if any."

Paragraph BC6. of the Background Information and Basis for Conclusions continues to state that "[h]owever, the Board believes that in situations in which a reporting entity has explicitly (through a contract or a legal requirement) or implicitly guaranteed the debt of an investment fund, this guarantee is considered to be a potential funding of losses of the entity and, accordingly, would disqualify the entity from the deferral provided by this proposed Update."

The general partner in a limited partnership has unlimited personal liability from a legal perspective. Most hedge funds and private equity funds domiciled in the United States are structured as limited partnerships. Therefore, those funds structured as limited partnerships will not meet the second condition for deferral. However, a managing member of a limited liability company does not have unlimited liability. The members have limited personal liability for the entity's debts even if they participate in management. This would result in two funds structured differently in form (one as a limited liability company and the other as a limited partnership), but in substance they are similar, obtaining significantly different accounting results.

When an entity is organized to achieve limited partnership status, the general partner remains personally liable for the debts and obligations of the partnership. On the other hand, a limited liability company provides insulation from liabilities to the same extent as a corporation where all owners are protected from personal liability for the obligations of the entity. This is the primary advantage of a limited liability company over a partnership. Since the general partner is exposed to unlimited personal liability, limited partnerships are sometimes structured where the general partner is a corporation or a limited liability company.

In most instances, the general partner in a hedge fund or private equity fund is a related party to the investment manager of the fund. Therefore, based on the above discussion most hedge funds and private equity funds will not qualify for the deferral and neither the general partner nor the investment manager as reporting entities with a variable interest in the fund will be eligible to apply the deferral. The Board's stated intent of the Proposed ASU will not be met since hedge funds and private equity funds are commonly structured as limited partnerships. To avoid such an outcome, we recommend the Proposed ASU explicitly address this underlying legal matter within the second condition so that it does not impact the ability to qualify for the deferral.

We strongly encourage the Board to address this issue prior to finalizing the Proposed ASU.

To Fund Losses – Ownership Interest

The condition in paragraph 4.aa.1.ii. requires that the reporting entity not have an obligation "to fund" losses of the entity. It is unclear to us whether "to fund losses" includes those instances where the general partner has an ownership interest, which is deemed to be a variable interest, in a fund and therefore shares in losses and gains similar to other investors in such fund. We suggest that the Board clarify the meaning of "to fund losses" and provide some examples to avoid unintended interpretations of such guidance.

Clarification of the Reporting Entity

The Accounting Guidance section of the Summary and Questions for Respondents on page two of the Proposed ASU indicates that the only reporting entity eligible for the deferral under paragraph 4.aa.1. is the "investment manager". The remainder of the Proposed ASU does not define which party (or parties) may be a reporting entity. We suggest that the Board clarify whether reporting entities other than the investment manager with a variable interest in an entity that meets the conditions of paragraph 4.aa.1. may qualify for the deferral of Statement 167. For example, can a reporting entity that is a general partner, whether or not a related party to the investment manager, in such entity qualify for the deferral.

Application of the Deferral

We believe it is unclear whether the Proposed ASU defers Statement 167 for "an entity" (e.g., a hedge fund) and therefore all parties involved with and having a variable interest in the entity; or, the deferral applies on a "reporting entity" by "reporting entity" basis where some parties with a variable interest in an entity apply Statement 167 while other parties may defer Statement 167. The lack of clarity results from two issues. Firstly, paragraph 4.aa. uses "a reporting entity's interest" in certain instances and also refers to "an entity" in other instances to describe which party may qualify for the deferral. For example, the lead-in to paragraph 4.aa.1. states that "[Statement 167] shall not be applied to...[a] reporting entity's interest in an entity if all of the following conditions are met", which can be interpreted that the deferral applies on a reporting entity by reporting entity basis. On the other hand, (a) the last paragraph of section 4.aa.1. states that "[e]xamples of entities that may meet the preceding conditions include...a hedge fund...a private equity fund...", and (b) the last paragraph of section 4.aa. states that (i) "[a]n entity that initially meets the deferral requirements and (ii) ...because the entity no longer qualifies for the deferral...", which many are interpreting to mean that the deferral may apply to an entity (i.e., the hedge fund or private equity fund) and therefore every reporting entity with a variable interest in such entity (that meets all three conditions of section 4.aa.1.) qualifies for the deferral. Secondly, two of the three conditions in paragraph 4.aa.1. address "the entity" while one of the conditions pertains to "the reporting entity". Therefore, given condition 4.aa.1.ii., if one reporting entity has an obligation to fund such losses it is unclear whether "an entity" would not qualify for the deferral, or alternatively, some reporting entities with a variable interest in the entity can qualify while any reporting entities with such obligation cannot qualify.

The Accounting Guidance section of the Summary and Questions for Respondents on page two of the Proposed ASU states that "[t]he proposed deferral would not apply in situations in which a reporting entity has the explicit or implicit obligation to fund actual losses of an entity..." Assume a hedge fund where the general partner and investment manager are each reporting entities that are not related parties where the general partner is obligated to fund such losses. It is unclear whether the Proposed ASU results in the obligated party (i.e., the general partner) not being eligible for the deferral while the other party (i.e., the investment manager) may qualify for the deferral, or alternatively, would the hedge fund as a whole not qualify for the deferral since the second condition is not met due to its general partner's obligation.

We suggest that the Board clarify this guidance to avoid any misinterpretation in applying the deferral provisions. We are concerned that application of the guidance in paragraph 4.aa., as currently drafted, may have the unintended consequence of being interpreted inconsistently in practice.

A Reporting Entity's "Interest"

We recommend that the Board clarify that "a reporting entity's interest" (in paragraph 4.aa.) is not limited to being entitled to a fixed fee, but rather, includes any variable interest and provide examples such as an incentive or performance fee, carry, and an equity interest. This appears to be consistent with paragraph BC7. of the Background Information and Basis for Conclusions, which states that "[t]he Board decided that an investment in an entity, regardless of its magnitude, that does not require the reporting entity to fund losses that could potentially be significant to the entity would not preclude that entity from qualifying for the deferral in this proposed Update as long as the entity meets the other requirements for the deferral." With regard to this matter, constituents are not interpreting the Proposed ASU consistently. Some believe "interest" refers to only a fixed fee while others interpret it to mean any variable interest.

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Thank you again for the opportunity to provide our comments on this important project. If you have any questions or comments regarding our letter, please do not hesitate to contact Staci (Lublin) Reyes (Senior Manager in Quality Control) at 973-577-2250 or Tim Jinks (Principal and Head of Quality Control) at 973-577-2312.

Sincerely,

Rothstein, Kass & Company, P.C.

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