

February 14, 2011

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

Via email: tfarber@fasb.org

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

Dear Mr. Farber:

On behalf of SIFMA's Asset Management Group ("AMG") Accounting Committee¹, we would like to thank you for allowing us to participate in the FASB Public Roundtable Meetings on the IASB Staff Draft, *Consolidated Financial Statements* ("Staff Draft") on November 22, 2010.

We appreciate the FASB's efforts to solicit input as a part of the standard setting process, and support the FASB's proposed changes to the guidance for evaluating whether a decision maker is an agent or principal to a variable interest entity ("VIE") during a VIE consolidation assessment, which was discussed recently during the FASB's Board meeting on January 12, 2011. It is our understanding, based on discussions during the January 12, 2011 meeting, that the proposed changes to the consolidation guidance on principal and agent relationships are consistent with current industry practice when determining whether an asset manager is an agent or a principal. Nevertheless, during the November 2010 roundtable meetings we agreed to provide you with additional comments regarding investment funds and the role of an asset manager and a table of examples using the criteria in the Staff Draft.

Generally, an "investment fund" is defined as a fund (corporation, business trust, partnership, bank collective investment funds, or limited liability company) that issues shares and is primarily engaged in the business of investing in securities. An investment fund invests the money it receives from investors on a collective basis, and each investor shares in the profits and losses in proportion to the investor's interest in the investment fund. The performance of the investment fund will be based on (but it won't be identical to) the performance of the securities and other assets that the investment fund owns. In essence, an investment fund pools investors' assets to provide the investors with professional investment management, and therefore the entity's source of power is derived from the accumulation of investors' assets.

¹ The AMG's members represent U.S. asset management firms whose combined assets under management exceed \$20 trillion. The clients of AMG member firms include, among others, registered investment companies, state and local government pension funds, universities, 401(k) or similar types of retirement funds, and private funds such as hedge funds and private equity funds. The AMG Accounting Committee includes firms that utilize US GAAP as

well as International Financial Reporting Standards.

Asset managers provide advisory, consultation, investment and asset management services to investment funds with respect to the acquisition, development, ownership, management, leasing, marketing, financing and refinancing, and disposition of investments, in a manner which maximizes the net present value of the proceeds derived from the investments while minimizing the associated risks.

In virtually all situations, the business model for an asset manager is that of an agent acting on behalf of the investors in the fund being managed. However, the involvements an asset manager has with a fund may have attributes of both agent and principal; accordingly, for the asset management industry, the determination of the agent relationship is critical for accounting purposes. The final determination of whether the asset manager of a particular fund is acting either 1) as an agent or 2) as a principal requires a significant amount of judgment and should be determined after considering all the relevant facts and circumstances.

Certain fiduciary obligations in many asset management arrangements

In many asset management arrangements, an asset manager's obligation to act in the "best interests" of investors arises in the context of its fiduciary obligation, which is generally defined as "a duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law (e.g., trustee, guardian)"². Under FINRA³ rules, fiduciary relationships, in turn, do not arise from the mere provision of education, suggestions, recommendations or general or incidental advice of the kind that is customarily provided by a broker to a client in a retail relationship. Instead, fiduciary obligations arise in the context of advisory relationships in which the advisor is granted discretionary authority or in which the advisor is retained in order to provide personalized or tailored advice on which the advisee is expected to rely in making or authorizing an investment decision.

We believe that when an asset manager has a fiduciary duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person, this factor should be heavily weighted in deciding that an asset manager is an agent. However, the absence of this fiduciary duty does not necessary result in a conclusion an asset manager is a principal; other factors would have to be evaluated.

Application of criteria to all funds, regardless of legal form of the entity

We note that the Board decided at its meeting on January 12, 2010 that it will not apply the new model for principal-agent to limited partnerships (entities governed by Subtopic 810-20, originally issued as EITF Issue 04-5). However, the Board agreed to amend the guidance for limited partnerships that relate to the evaluation of whether kick-out rights and participating rights are considered substantive to be consistent with guidance in the proposed principal-agent analysis for variable interest entities. For kick-out rights to be considered substantive, this would require them to be held by a limited number of parties. We disagree with this conclusion. The analysis of whether a decision maker is a principal or an agent should be the same regardless of the legal form of the entity. As the Board's decision stands now, the economic facts for two structures can be identical, yet, the consolidation conclusion will be different. This can be simply illustrated when a manager / general partner receives a fee that is commensurate with market practice, has nominal "other interests" in the fund and has granted removal rights to a widely dispersed group of investors. If the

² Black's Law Dictionary (Sixth Edition: 1991)

³ Financial Industry Regulatory Authority

entity is a limited partnership, the general partner will consolidate while under the proposed principal-agent rules the manager is an agent and would not consolidate.

Other criteria for evaluating whether an asset manager is an agent or a principal

We believe that the principal-agent analysis should also consider the following factors:

- the purpose and design of the entity;
- governance structure and the related source from which the power to direct the entity's activities emanates;
- substance of removal, liquidation and other similar rights;
- rights held by other parties;
- obligation to fund losses of other investors beyond its own interest in the entity;
- extent of other economic interests in the entity;
- remuneration the reporting entity is entitled to in the arrangement; and
- scope of the decision maker's decision-making authority over the entity.

Attached as an appendix to this letter is a matrix of typical fund structures and how we would apply the above criteria. We would be pleased to meet with you to discuss our interpretation of the specific criteria and the conclusions reached. Certain key points of applying the criteria are presented below.

We believe the governance structure and the related source from which the power to direct the entity's activities emanates should be a factor when determining if a reporting entity is acting as an agent or a principal.

As one example of how governance structure and power should be considered, certain asset management funds have a fund Board of Directors ("BOD") which is empowered to represent the entity's investors and is comprised of a majority of independent members with a fiduciary duty to the investees. The fund BOD generally has the power to direct the activities of the entity by establishing the operating policies, which asset managers must comply. Similar to a BOD for typical operating corporations, a fund BOD provides a centralized body with the ability to control significant decisions on behalf of fund investors. Their power emanates from their role to represent the investors and while no one board member can control the board's decisions, this centralized body performs its function as a unit and, in certain cases where the roles and functions are deemed substantive, represents a single body with the ability to direct the operations of the entity. In our opinion, an understanding of how the governance structure of an entity operates is a factor when evaluating power. In many cases an asset manager may be responsible for the day-to-day asset management activities, but the fund BOD nevertheless retains ultimate responsibility for all decisions undertaken by the asset manager. The fund BOD may also be responsible for retaining or terminating the asset manager's contract. In those cases where the asset manager is executing the investment strategies of the fund BOD, we believe that the governance structure typically provides that power to the fund BOD and by extension, the investors.

Another example of how governance structure and power should be considered, we believe that substantive simple-majority removal rights should be a determinative factor when considering whether a decision maker is an agent. At the Board's meeting on January 12, 2010, the Board voted to retain the contractual rights model for consolidation. When removal rights are analyzed in the context of the contractual rights model, a simple majority removal right provided for by the governing documents should be should considered substantive if it meets the criteria outlined Subtopic 810-20 (originally issued as EITF 04-5). Similarly, we agree with the Board's decision on

January 12, 2010 that a Board of Directors can serve as a mechanism to reflect the will of the investors and therefore a removal right held by a Board that represents the shareholders should be considered in the analysis. Therefore, in considering the governance structure as a factor when assessing whether a reporting entity acts as an agent, we believe that consideration should also be given to the investors' rights, such as removal, liquidation and other similar rights, over the governance structure. Furthermore, we do not believe it is prudent corporate governance when a single party holds substantive removal rights.

As noted above, we believe an investment fund's source of power is derived from the accumulation of investors' assets. As a result, an investor may influence the asset manager by "voting with their feet" in that the investor takes the underlying assets and appoints another party to manage its assets. In such, circumstances we believe that "voting with your feet" is akin to substantive removal rights. In addition to being viewed as a removal right, this further illustrates how asset managers are agents.

Another factor when evaluating whether an asset manager is acting as an agent or principal is if the asset manager has an explicit or implicit obligation to fund losses of the fund that could potentially be significant to the fund should be a factor. If investors in a fund are exposed to all the losses and the asset manager has no obligation to fund losses beyond its own financial interests in the fund, that fact pattern would be a strong indicator that the asset manager is an agent.

As a matter of accounting principle, we do not believe the extent of an asset manager's other economic interests in the fund should be evaluated as a factor when determining whether it is acting as an agent or a principal to the fund. Any level of economic interest would simply be an arbitrary bright line. Asset managers may hold financial interests in the fund to further align its interests with those of the other investors, but is generally not required to fund losses of the fund. These economic interests are generally expected or required by third-party investors. The asset management service provided does not change with a change in the level of financial interest held by the asset manager. As noted above, asset managers often have a fiduciary duty to make decisions in the best interest of the investors in the fund. This fiduciary duty is not affected by the existence of an investment by the asset manager, regardless of the size of the investment. While "significant" interests may be indicative of a principal relationship, such interests must be analyzed in the context of the factors outlined above.

While an asset manager may be viewed as having decision making ability over a fund, as an agent of the investors, the asset manager typically has the exposure, or rights, to only a relatively small portion of the variable returns of the investee through its remuneration. When acting as agent, and receiving remuneration for its services, the asset manager's ability to make decisions does not provide it with the ability to use its power over the investee to significantly affect the amount of the asset manager's returns versus the returns of the investors. The decisions that are made by the asset manager are for the benefit of the investors as their returns are the ones that are most significantly impacted by the asset manager's decisions. Investors absorb significantly more of the entity's variability driven by the asset manager's decisions, which not only indicates that the asset manager is the agent of the investors, but also that it does not have control over the entity.

See also our letter (attached herein) to you dated October 18, 2010 RE: International Accounting Standards Board Staff Draft, *Consolidated Financial Statements*.

We appreciate your consideration of these comments and welcome the opportunity to discuss them with you.

Sincerely,

J. Robert Hitchings

Chairman

SIFMA Asset Management Group, Accounting Committee

Cc: Leslie F. Seidman, FASB Chairman

Susan M. Cosper, FASB Technical Director

Sir David Tweedie, IASB Chairman

Alan Teixeira, IASB Director of Technical Activities

Jana Streckenbach, IASB Technical Manager

Patrina Buchanan, IASB Senior Technical Manager

		Structure					
Entity	Investors/ Governance	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/ Agent	Consolidation
GP ¹	100 LPs - none dominant	SRKO ²	1% base	1% equity	Relationship imposes fiduciary requirements on asset manager?	A	No
		no GP investment restrictions	10% performance fee	No guarantees or significant loss exposure	Source of decision-making power and governance?	A	
		no LP redemption			Role of decision maker & others in design?	P	
		limitations no participating			Decision maker's involvement with assets prior acquisition by fund?	A	
	rights				Does fund qualify as an investment company?	A	
					B55 (a) Scope of decision makers authority and restrictions on manager activity?'	Р	
					B55 (b) investor rights, including kick out rights and withdraw/redemption?	A	
					B55 (c) Fees commensurate with effort, market based?	A	
					Fees structured to align decision-maker with investors?	A	
					B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
					Decision maker's exposure to fund losses beyond its investment?	A	

¹ Governing law imposes fiduciary responsibility on GP and investment advisor, if any, to act in the best of interests of investors while subordinating its personal interests to that of the investors.

² SRKO – substantive removal rights; no significant barriers to exercise rights.

		Structure					
Entity	Investors/ Governance	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/ Agent	Consolidation
GP ³	Same as above	Same as above	Same as above	Minority equity investment	Relationship imposes fiduciary requirements on asset manager?	A	No
				No guarantees	Source of decision-making power and governance?	A	
					Role of decision maker & others in design?	P	
					Decision maker's involvement with assets prior acquisition by fund?	A	
					Does fund qualify as an investment company?	A	
					B55 (a) Scope of decision makers authority and restrictions on manager activity?'	P	
					B55 (b) investor rights, including kick out rights and withdraw/redemption?	A	
					B55 (c) Fees commensurate with effort, market based?	A	
					Fees structured to align decision-maker with investors?	A	
					B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
					Decision maker's exposure to fund losses beyond its investment?	A	

³ Governing law imposes fiduciary responsibility on GP and investment advisor, if any, to act in the best of interests of investors while subordinating its personal interests to that of the investors.

		Structure					
Entity	Investors/ Governance	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/ Agent	Consolidation
LLC ⁴	Same as above	Same as above except board has approval rights	Same as above	Same as above	Relationship imposes fiduciary requirements on asset manager?	A	No
		over significant decisions			Source of decision-making power and governance?	A	
					Role of decision maker & others in design?	P	
					Decision maker's involvement with assets prior acquisition by fund?	A	
					Does fund qualify as an investment company?	A	
					B55 (a) Scope of decision makers authority and restrictions on manager activity?'	A	
					B55 (b) investor rights, including kick out rights and withdraw/redemption?	A	
					B55 (c) Fees commensurate with effort, market based?	A	
					Fees structured to align decision-maker with investors?	A	
					B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
					Decision maker's exposure to fund losses beyond its investment?	A	

⁴ Facts and circumstances should be assessed to determine the extent of fiduciary duty required by an investment manager to an LLC.

		Structure					
Entity	Investors/ Governance	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/ Agent	Consolidation
Business trust or corporation	5,000-none dominant	SRKO Written	Typically fixed AUM-based fee	Minority equity interest	Relationship imposes fiduciary requirements on asset manager?	A	No
regulated by SEC (i.e.,	75% independent board with	investment restrictions	No performance fee	No guarantees or significant loss exposure	Source of decision-making power and governance?	A	
registered fund) ⁵	ability to terminate manager	No redemption limitations			Role of decision maker & others in design of entity?	P	
Investment strategy designed to	without cause	SEC restrictions on activities			Decision maker's involvement with assets prior acquisition by entity?	A	
meet needs of market-					Does entity qualify as an investment company?	A	
place					B55 (a) Scope of decision makers authority and restrictions on manager activity?'	A	
					B55 (b) investor rights, including kick out rights and withdraw/redemption?	A	
					B55 (c) Fees commensurate with effort, market based?	A	
					Fees structured to align decision-maker with investors?	A	
					B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
					Decision maker's exposure to fund losses beyond its investment?	A	

⁵ Governing law imposes fiduciary responsibility on asset manager to act in the best of interests of investors while subordinating its personal interests to that of the investors.

		Structure					
Entity	Investors/	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/	Consolidation
	Governance					Agent	
Luxembour	500-	No SRKO	1% base	0% equity	Relationship imposes fiduciary requirements on	A	No
g-based	institutional	_	_		asset manager?		
UCITS ⁶	investors -	Written	No performance	No guarantees or			
	none dominant	investment	fee	significant loss	Source of decision-making power and	A	
	No	restrictions		exposure	governance?		
	independent board	No redemption limitations			Role of decision maker & others in Design?	P	
	oodid	(however, asset manager may			Decision maker's involvement with assets prior acquisition by fund?	A	
		require investor to take pro-rata share of assets)			Does fund qualify as an investment company?	A	
		Investments are			B55 (a) Scope of decision makers authority and restrictions on manager activity?'	P	
		segregated into			restrictions on manager activity:		
		portfolios and investment class			B55 (b) investor rights, including kick out rights and withdraw/redemption?	A	
		and are joint property of all unit holders who			B55 (c) Fees commensurate with effort, market based?	A	
		have equal rights in proportion to the number of units			Fees structured to align decision-maker with investors?	A	
		they hold			B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
					Decision maker's exposure to fund losses beyond its investment?	A	

⁶ Governing law imposes fiduciary responsibility on asset manager to act in the best of interests of investors while subordinating its personal interests to that of the investors.

		Structure					
Entity	Investors/	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/	Consolidation
	Governance					Agent	
Collective	100 – none	No kick out	1% - 2 % base	0% equity	Relationship imposes fiduciary requirements on	Α	No
trust ⁷	dominant	rights	plus		asset manager?		
			0%-20%				
		Written	performance fee		Source of decision-making power and	A	
		investment	0		governance?		
		restrictions	Or		Data of takini an analon for otherwise Danie and	D	
		No voto richta	3% - 4% base		Role of decision maker & others in Design?	P	
		No veto rights	15% - 4% base fee		Decision maker's involvement with assets prior	A	
		OCC restrictions	166		acquisition by fund?	A	
		on activities	Negotiated with		acquisition by rund:		
		on activities	each institutional		Does fund qualify as an investment company?	A	
		No redemption	investor with				
		restrictions	respect to the		B55 (a) Scope of decision makers authority and	P	
	although gating	related asset		restrictions on manager activity?'			
		may be imposed	class covered by				
		to protect non-	the trust		B55 (b) investor rights, including kick out rights	Α	
		redeeming			and withdraw/redemption?		
		investors					
				B55 (c) Fees commensurate with effort, market	Α		
					based?		
					East atmentioned to align designer maker with		
					Fees structured to align decision-maker with investors?	A	
					mvestors:		
					B55 (d) Decision-makers exposure to variability of	A	
					returns from other interest holdings?	1.	
					<i>S</i>		
					Decision maker's exposure to fund losses beyond	A	
					its investment?		

⁷ Governing law imposes fiduciary responsibility on asset manager to act in the best of interests of investors while subordinating its personal interests to that of the investors.

		Structure					
Entity	Investors	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/ Agent	Consolidation
CDO	Multiple debt holders	SRKO	Fixed-rate base fee (part senior	Investment in subordinated tranche –	Relationship imposes fiduciary requirements on asset manager?	N/A	No
Highly leveraged	Multiple subordinated	Significant written investment	fee, part subordinated fee)	minority of that tranche	Source of decision-making power and governance?	A	
Multiple debt tranches	note holders No board	restrictions Redemption	Performance fee	No guarantees or significant	Role of decision maker & others in design of entity?	P	
and equity Collabora-		restrictions		exposure to loss, explicit or implicit ⁹	Decision maker's involvement with assets prior acquisition by entity?	A	
tively designed by advisor and				Total economics less than 50%	Does entity qualify as an investment company?	A	
underwriter and rating				ioss than 3070	B55 (a) Scope of decision maker's authority and restrictions on manager activity?'	A	
agency criteria					B55 (b) investor rights, including kick out rights and withdraw/redemption?	A	
					B55 (c) Fees commensurate with effort, market based?	A	
					Fees structured to align decision-maker with investors?	A	
					B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
					Decision maker's exposure to fund losses beyond its investment?	A	

⁹ Despite the recent market turmoil, asset managers have not suffered losses in excess of their equity holdings in CDOs despite the significant losses incurred by the debt holders in the CDOs.

		Structure					
Entity	Investors	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/ Agent	Consolidation
CDO	Multiple debt holders	No kick out rights	Fixed-rate base fee (part senior	Manager transfers assets to the CDO	Relationship imposes fiduciary requirements on asset manager?	N/A	Yes ³
Highly leveraged	Several equity holders	Significant written	fee, part subordinated fee)	and retains a minority equity interest (manager	Source of decision-making power and governance?	A	
Multiple debt tranches	No board	investment restrictions	Performance fee	achieves an sale accounting for the assets)	Role of decision maker & others in design of entity?	P	
and equity Collabora-		Redemption restrictions		No guarantee	Decision maker's involvement with assets prior acquisition by entity?	P	
tively designed by advisor and					Does entity qualify as an investment company?	A	
underwriter					B55 (a) Scope of decision maker's authority and restrictions on manager activity?'	A	
					B55 (b) investor rights, including kick out rights and withdraw/redemption?	Р	
					B55 (c) Fees commensurate with effort, market based?	A	
					Fees structured to align decision-maker with investors?	A	
					B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
					Decision maker's exposure to fund losses beyond its investment?	\mathbf{P}^{10}	

¹⁰ Because the manager transferred the assets to the CDO, there may be an implicit obligation to fund losses to the extent the transferred assets suffer significant credit defaults. If such an implicit obligation exists, this fact may indicate a principal relationship.

		Structure					
Entity	Investors	Investor Rights	Fee Structure	Other Interest	Analysis	Principal/ Agent	Consolidation
Single seller asset- backed	Hundreds of debt holders	Investment restrictions (manager must	1% base Liquidity fee	Generally the conduit purchases assets directly in	Relationship imposes fiduciary requirements on asset manager?	A	Yes
commercial paper conduit ¹¹		invest in high grade collateral a specified in		the market (however, sponsor may	Source of decision-making power and governance?	P	
		the agreements)		warehouse and transfer assets to	Role of decision maker & others in Design?	P	
		Investor must hold commercial paper until		conduit) with proceeds received from issuing	Decision maker's involvement with assets prior acquisition by fund?	A or P	
		maturity, albeit a short period		commercial paper	Does fund qualify as an investment company?	P	
				Liquidity guarantee ¹²	B55 (a) Scope of decision makers authority and restrictions on manager activity?'	A	
				A portion of the spread between the rate earned on	B55 (b) investor rights, including kick out rights and withdraw/redemption?	P	
				the collateral and the commercial paper rate is	B55 (c) Fees commensurate with effort, market based?	A	
				retained by the sponsor	Fees structured to align decision-maker with investors?	A	
				Sponsor may provide backstop credit support	B55 (d) Decision-makers exposure to variability of returns from other interest holdings?	A	
				credit support	Decision maker's exposure to fund losses beyond its investment?	P	

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¹¹ Manager uses proceeds from commercial paper issuance to purchase hi-grade assets (collateral for the commercial paper liability). Assets may have a longer term than the maturity date of the commercial paper. Sponsor/manager will often provide a liquidity guarantee to the conduit that requires it to fund any shortfall should manager be unable to roll commercial paper at maturity or should proceeds from asset sales be insufficient to cover commercial paper liability. Facts and circumstances should be assessed to determine the extent of fiduciary duty required by an investment manager to a single seller asset-backed commercial paper conduit.

¹² Consolidation is appropriate as the manager provides a liquidity guarantee exposing it to potentially significant risks.