



Michael Monahan
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February 15, 2012

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

Re: Proposed ASU, Principal versus Agent Analysis – Consolidation (Topic 810)

Dear Ms. Seidman:

Thank you for the opportunity to comment on the Proposed Accounting Standards Update (ASU) “Consolidation (Topic 810) Principal versus Agent Analysis,” (the ED) issued November 3, 2011. The American Council of Life Insurers (ACLI) represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. Our member companies represent over 90 percent of the assets and premiums of the U.S life insurance and annuity industry.

GENERAL COMMENTS

We support the concept of the principal versus agent analysis and applaud the Board for reconsidering this aspect of the consolidation guidance. We believe the ED addresses the concerns that led to the deferral of FAS 167 for certain entities.

The following are overall comments that are of general concern and are primarily intended to clarify and prevent unintended consequences of the proposals as written. We also provide detailed responses to questions posed by the Board in the next section of our letter.

Convergence: The few but significant differences between the Boards’ consolidation guidance for all entities will continue to require separate analysis and different treatment for some entities.

We recognize and appreciate the efforts of the Boards to date in working closely on convergence of the proposed consolidation guidance and anticipate resolution of the remaining differences.

Operational concerns: Whether or not there is any significant reporting impact, the effect of the three new exposure drafts relating to the Consolidations Project (Principal vs. Agent, Investment Property Entity and Investment Companies) will be that analysis (for the 3rd time) of all entities, including entities that were previously evaluated under FAS 167, those entities that were deferred and investment companies

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that previously had a scope exception, will be necessary to document conclusions under these new standards. The resource impact has been significant in the past and is expected to be significant again. As a result, we ask the Boards to consider this fact when establishing an effective date. As stated in our response to question 13 in the appendix to this letter, we estimate we would need a minimum of 18-24 months to fully address the changes.

Disclosure: We recommend removing the disclosure requirements with regard to variable interest entities (VIE) where the reporting entity is not deemed to be the primary beneficiary and, therefore, would not consolidate. When FAS 167 was issued, one of the aspects included in the disclosure requirements was to require greater transparency, through disclosures, about an entity's involvement with its VIEs. This included a focus on the risks associated with a VIE, regardless of whether that VIE was consolidated or not, through requirements 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.

Since current U.S. GAAP guidance already requires a reporting entity to provide substantial disclosures related to guarantees, commitments, contingencies and risks, we believe these disclosures are unnecessary and redundant for a non-controlling or agent entity's involvement with VIEs.

The additional information provided does not enhance a user's understanding of the risk exposure of the reporting entity, since in the vast majority of the cases, the risk of loss is limited to the remaining carrying value. The non-controlling variable interests in a VIE are similar to non-controlling equity investments in a voting interest entity (VOE) and should be treated in the same manner in both financial reporting and disclosure. To the extent that the guidance moves toward a common set of principles to be used to evaluate decision making power and, therefore, consolidation, the less relevant the status of VIE versus VOE becomes. In addition, we believe it is relevant and appropriate that there is no corresponding disclosure requirement for VOEs where consolidation is not required.

The added operational burden and risk of misstatement related to the disclosure, where the reporting entity is a passive investor or agent, far exceeds any perceived benefit.

Notwithstanding our appeal for convergence, our earlier comment letter to the IASB did not include this request for removal of extraneous disclosures. We recognize that approving this amendment to the disclosure requirements on the part of the FASB, alone, would create another difference. Consequently, we would ask the Board to work with the IASB to assure tandem disclosures that reflect the amended reporting guidance.

Impact on Limited Partnerships: We understand the ED would modify ASC 810-20 sections regarding limited partnerships (formerly EITF 04-5) subjecting the General Partner's evaluation of consolidation to the principal vs. agent guidance. We believe this would bring the analysis of limited partnerships in line with the VIE model, which will further reduce the complexity of consolidation guidance. We also believe the FASB's proposed accounting guidance on principal versus agent analysis, if adopted, would align this aspect of the consolidation analysis with that under IFRS.

These general comments are included in our responses to the ED's specific questions in the appendix, below.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Monahan". The signature is fluid and cursive, with a long horizontal stroke at the end.

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APPENDIX QUESTIONS FOR RESPONDENTS

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 this approach moves toward a more principles-based approach that considers the appropriate facts and circumstances applied equally to VIEs and non-VIEs. Although differences in total consolidation guidance remain between U.S. GAAP and IFRS, and must be addressed, we believe this approach moves in the direction of convergence.

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?

Evaluator is the Decision maker:

We believe the factors individually are appropriate and operational for the decision-maker. However we are concerned that the combination of the three factors creates an area of potential confusion. These factors seem very similar to considerations required to determine whether the entity in question is a VIE. Therefore, we recommend clarification of factor c in order to avoid reversion to a quantitative or formulaic analysis and development of bright lines that mitigate the substance of the relationship.

In addition, because the *purpose and design of the structure* dictate compensation and decision-making, we recommend that a 4th criterion (d) be added to reflect this consideration of the decision-maker's capacity.

We believe the analysis should be primarily *qualitative* with consideration of quantitative factors where appropriate, so that management's judgment in the application of principles-based guidance can prevail. Addition to the guidance of examples and/or a decision tree to clarify this point is recommended in order to assure consistent and appropriate analysis based on the facts and circumstances.

Evaluator is not the Decision maker:

If an entity is not the decision-maker, we are concerned that these requirements are not operational. For example, if an entity is a passive investor in an entity, they frequently do not have the contractual rights to access the information that would be required to properly determine if the entity is a VIE or VOE. For this reason, we have proposed that the disclosure requirements for non-primary beneficiaries be removed from the guidance. If this were to occur, a non-decision-maker would not need to consider these factors.

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?

We believe the illustrative examples are helpful, but provide the potential for bright lines to be established, and that is most likely not the FASB's intent. It would be helpful to add language that emphasizes looking at all facts and circumstances, together with the implementation guidance and illustrative examples, in order to achieve consistency in substance.

In addition, we recommend that the final ASU state explicitly what "consolidation" issue they are trying to solve, e.g., what vehicles were not being consolidated that should have been. This should aid in consistent conclusions by improving the consolidation guidance and yet clarifying the boundaries in order to avoid unintended consequences like consolidating money market funds.

We further recommend an example of assessment in a situation where an entity is a decision-maker with an interest in a VIE as a principal and the VIE produces losses that wipe out the equity. It is unclear whether, under the proposed guidance, the design has changed and whether the determination of principal vs. agent has changed. We believe this example would aid in determining the Board's intended application of assessment of the entity as a VIE, as well as assessment of the decision-maker as principal vs. agent. See also our response to question 7.

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 believe that all rights and responsibilities should be considered. However, once kick-out rights, where present, are determined to be substantive and executable, whether held by one or more parties, we believe they should be determinative, since by design these rights underscore incentive and control.

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?

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 agent. We further agree that a subordinated fee should not be automatically considered a variable interest. 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).

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 believe that negative exposure is a strong indicator of a principal interest, specifically when that negative exposure is disproportionate to ownership. Positive returns can be an indicator of a principal interest if they are above market, but negative returns further increase the true risk/exposure to the decision-maker.

We further agree that more emphasis should be placed on a decision-maker's potential for negative exposure, but that non-receipt of a subordinated fee should not be considered a negative return. As indicated in question 8, positive returns through an incentive should not be determinative that the decision-maker is acting as a principal. Positive returns from interests other than the fee arrangements may be an indicator of a principal interest. Interests that expose the decision-maker to both negative and positive returns further increase that decision maker's true risk/exposure to the entity. In most cases, the existence of negative returns would be a stronger indicator of a principal interest than positive returns. However, we do not believe that there is any benefit to reverting to a primarily quantitative analysis, weighing the positive and negative returns.

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. A decision-maker's capacity may change or move to another party without a change in the purpose or design of the entity (e.g., a change in ownership allocation, investment manager responsibilities or changes in the decision-maker's related party ownership). Consequently, we do not believe assessment should be limited to that circumstance. We believe that the current assessment under ASC 810, a continuous assessment to determine if any event or change has taken place that would warrant reevaluation, is appropriate for all entities (potentially) subject to consolidation.

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 an entity's fee arrangement is not a variable interest in the entity, then the decision maker should not be required to continue the consolidation assessment. We further suggest revising the first sentence of paragraph 810-10-55-37 to specifically state the FASB'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 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 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 based on a subordinated fee arrangement alone. We also believe that this guidance will result in fewer VIEs being consolidated by investment managers since it would no longer be the default assumption that a subordinated fee arrangement is a variable interest in a VIE and, therefore, no further consolidation assessment would be required, (for example, collateralized debt obligations). Further, to the Board's intention and belief, we agree that the proposed amendments will not significantly affect the consolidation conclusions for securitization entities, asset-backed financing entities and entities formerly classified as qualifying special-purpose entities. Those entities for which the subordinated fee was the basis for consolidation under the previous guidance will now not be consolidated on that basis alone.

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?

We believe that, as written, the proposals could result in consolidation of money market funds. One potential cause for consolidation is raised in Case F, which requires the decision-maker to consider its implicit financial responsibilities. Many are interpreting this consideration to require the consolidation of a money market mutual fund based on the decision-maker's reputational risk if the fund breaks the buck. Perception of the necessity to make the fund whole is being interpreted to constitute an implicit responsibility. We continue to agree with the Board that money market funds should not be consolidated into another entity's statements for reasons outlined in our comment letter on the Investment Companies ED. Consequently, it is important that the intent of the Board should be made clear by a specific exclusion, together with further explanation in the Basis for Conclusions.

In addition, because of variations in interpretation, we believe the Board should make a clear stipulation that all funds registered under the Investment Company Act of 1940 are VOEs, since they have an independent board and voting shareholders similar to other non-VIEs. This recommendation is further developed in our comment letter on Investment Companies.

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?

We have no opposition to including indirect interests in the consideration, recognizing that where the indirect interests do not increase decision-making power, the conclusion regarding the decision-maker's capacity would not change. However, within the context of insurance companies, we are concerned that certain separate accounts may be construed as related parties. 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 may require the insurance company or the separate account to consolidate the mutual fund (see our comment letter on the Investment Company Entities exposure draft). Consequently, we urge the Board to make clear that ASU 2010-15 would continue to scope out separate accounts of life insurance companies.

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 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?

We agree. We believe the proposed guidance brings the evaluation of partnerships and similar entities in line with current other consolidation guidance. Adoption of this guidance would supersede previous specialized guidance requiring presumption of consolidation of limited partnerships by the general partner. We believe the same principles should be applied for all entities.

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.

The proposed amendments must be considered in conjunction with the proposed investment company guidance and proposed investment property entity guidance. We believe that significant effort will need to be applied in order to reassess and document conclusions under the proposed new standards, requiring the input and collaboration of many parties company-wide. In addition, should consolidation conclusions change as a result of the updated guidance, processes for gathering information and performing consolidations and de-consolidations will need to be adjusted. Consequently, we believe a minimum of 18-24 months be allowed for implementation. In addition, with a view to convergence with the IFRS, we believe the effective date should be coordinated with the IASB including an extension of the effective date of IFRS 10.

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

No. We do not believe early adoption would be beneficial to shareholders, due to the lack of comparability it would create.

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.

We refer the Board to our comments regarding amendment of the disclosure requirements. While we believe this recommendation to remove non-consolidated VIE disclosures is appropriate for all entities, should the Board retain these requirements, we urge exclusion of nonpublic entities from these requirements. We believe the reasons given in our General Comments are even more significant for nonpublic entities.