

February 15, 2012

Ms. Susan M. Cospers  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**File Reference No. 2011-220**

**Re: Proposed Accounting Standards Update, *Consolidations (Topic 810), Principal Versus Agent Analysis***

Dear Ms. Cospers:

Deloitte & Touche LLP is pleased to comment on the FASB's proposed Accounting Standards Update (ASU) *Consolidations (Topic 810), Principal Versus Agent Analysis*.

We support the FASB's efforts to provide guidance on assessing whether a decision maker is a principal or an agent, and we believe that such guidance should be applied consistently to all types of entities. We also believe this guidance would allow the FASB to eliminate the deferral in ASU 2010-10 for entities with interests in certain investment funds, which would further simplify the consolidation model in ASC 810.

While we understand that the proposed ASU is intended to make only limited changes to the current consolidation models, we continue to question whether retaining two separate consolidation models is necessary. Aligning the consolidation models for VIEs and other types of entities would eliminate both the inconsistencies in how related parties affect the consolidation analysis and the differences in the disclosure requirements.

Appendix A contains our detailed responses to the proposed ASU's questions for respondents. Appendix B outlines some additional items for the Board's consideration.

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We appreciate the opportunity to comment on the proposed ASU. If you have any questions concerning our comments, please contact Trevor Farber at (203) 563-2547.

Sincerely,

Deloitte & Touche LLP  
cc: Robert Uhl, Deloitte & Touche LLP

**Appendix A**  
**Deloitte & Touche LLP**  
**Responses to 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?**

We support a qualitative assessment of whether a decision maker is using its power for the benefit of other parties (an agent), as opposed to for the benefit of itself (a principal). This assessment should take into account all facts and circumstances, including the decision maker's overall relationship with the entity as well as other parties involved with the entity. Accordingly, the evaluation of whether a decision maker is a principal or an agent should focus on both the decision maker's power and its economic interests. However, instead of the proposed ASU's approach, which requires a decision maker's capacity to be determined by evaluating power and economics together, we recommend an approach that focuses first on the decision maker's power (as affected by the rights of other parties). If such analysis is not determinative that the decision maker is an agent, the evaluation should then focus on the decision maker's economic interests.

The evaluation of the decision maker's power should concentrate specifically on the decision maker's rights and any rights held by other parties involved with the entity to override the power of the decision maker. We agree that the evaluation of these rights held by other parties should include an assessment of whether there are any barriers that would prevent the holders from exercising their rights. We also agree that as the number of parties required to act together to exercise these rights increases, the dispersion of the rights would be less indicative of an agent relationship. However, we believe that if these rights held by other parties are substantive and are held by a small group, this should be conclusive that the decision maker is an agent.

We disagree that the level of a decision maker's interest in the entity's economic performance should be considered in evaluating whether the rights held by others to override the power of the decision maker are substantive. We are concerned that a consideration of economic variability could lead to inappropriate inconsistencies in determining whether the level of economic variability outweighs substantive removal rights. That is, some may believe that economic variability outweighs a substantive removal right in the analysis. For example, under Case D in the proposed ASU (ASC 810-10-55-3AD through 55-3AM as amended by the proposed ASU), the decision maker holds a 20 percent pro rata interest in the entity. However, there is a substantive board of directors that has the ability to remove the fund manager. In this example, the decision maker is an agent. If the decision maker acquired additional interests (assuming, like the example, that those interests do not include voting rights), it is unclear whether the decision maker's interests would overcome the rights of the substantive board of directors, especially since the decision maker does not have any additional rights.

If it is not determinative that the decision maker is an agent on the basis of the evaluation of the rights held by other parties to override the decision maker's power, the evaluation should then focus on the decision maker's exposure to variability of the entity through its economic interests. To be considered an agent, a decision maker must direct the activities of the entity for the benefit of the other holders rather than *for its own benefit* (since this is a fundamental component of any control principle). In other words, if the ability to make decisions about the activities of another entity do not significantly affect the magnitude of the benefits (whether positive or negative) that the decision maker obtains from those activities, then the decision maker is an agent.

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We believe this approach would eliminate diversity that the proposed ASU would potentially create in the determination of how much weight to place on each of the factors in the performance of the principal agent analysis.

**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); and (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?**

In general, we agree that the factors listed as part of the decision maker's analysis are appropriate in the determination of whether a decision maker is a principal or an agent. The principal versus agent evaluation should be guided by the typical characteristics of an agent. Such characteristics include whether the decision maker:

- Can be removed by the principals.
- Has limitations on its decision-making authority.
- Has equity at risk.
- Provides financial support.
- Receives a market-based fee for services (the fee may be fixed, based on performance, or both).

Accordingly, this analysis should take into account both the rights held by the decision maker and other parties as well as the decision maker's exposure to economic variability. However, as noted in our response to Question 1, we believe that the rights held by the decision maker and other parties, and the decision maker's exposure to economic variability, should be evaluated separately in the determination of the decision maker's capacity.

While we agree with the Board that redemption rights should generally not be considered equivalent to liquidation rights, the Board should consider including guidance on situations in which the redemption by an investor would result in the liquidation of the entity. For example, a fund established for a single investor may be liquidated if the investor were to redeem its interest. Situations in which a single investor can redeem its interest at any time are similar to managed account arrangements in which a decision maker is managing the investor's money as an agent only as long as the investor desires. We believe that the substance of the redemption right should be considered and, if it is essentially identical to a liquidation right, it should be treated as such.

Further, the Board should clarify whether certain options to acquire a majority vote or the power over the most significant decisions are equivalent to kickout rights (e.g., options with no or a de minimis strike price).

**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?**

As noted in our response to Question 1, we are concerned that the factors in the analysis will be weighed inconsistently. This will ultimately result in different consolidation conclusions for similar structures. Although the proposed amendments, including the related implementation guidance and

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examples, provide guidance on how to perform this analysis, we are concerned with an approach that does not focus on power before economics are considered.

In addition, it would be helpful if the Board expanded upon the examples in ASC 810-10-55-182 through 55-205 (Case H1–H4 and Case J), which address joint venture arrangements and a furniture manufacturing entity, respectively. While each of the cases has been updated to acknowledge the principal versus agent analysis, it is unclear how this analysis would actually be performed. For instance, in Case H, it is unclear whether both Reporting Entity A and Reporting Entity B could conclude they are both agents. Presumably, if neither reporting entity is determined to be an agent, then both would be considered principals, and the primary beneficiary would be determined in accordance with the guidance in ASC 810-10-25-38A.

**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?**

Kickout and participating rights held by multiple unrelated parties may be substantive; therefore, entities should consider them when evaluating whether to consolidate another entity. The consideration of whether the rights are substantive should be based on all relevant facts and circumstances. In addition to the factors in the proposed ASU, the percentage of votes that are needed to exercise the rights may be a relevant factor for entities to consider when evaluating kickout and participating rights. For example, a kickout right whose exercise requires unanimous agreement among unrelated parties may be less indicative of an agency relationship than a kickout right that is exercisable by a simple majority. We encourage the Board to consider including in the final standard a principle such as the following:

The evaluation of kickout and participating rights should include consideration of the percentage of the vote necessary, any limitations or conditions on when the vote can occur, and whether all investors or only investors unrelated to the decision maker can vote to effectuate a removal of the decision maker or participating rights in the activities that most significantly affect the entity.

As described in our response to Question 1, although we believe that the principal versus agent evaluation should take into account the decision maker's other interests, we do not believe that a decision maker's economic interest should be determinative that the rights (even when held by more than one party) are not substantive.

We also believe that the Board should provide additional guidance on determining whether a board of directors with rights affecting the power of a decision maker is substantive. Because the consolidation analysis in the proposed ASU requires the consideration of rights held by a substantive board of directors, we are concerned that the substance of a board of directors may not be evaluated consistently. For example, we are aware of differing views on how to evaluate whether a board of directors is substantive when it was established by an asset manager or the seed capital investors at formation. Further, some have questioned the substance of a board of directors when there is no requirement for specified periods for election of the board members.

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**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 seniority of a decision maker's 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 as a principal or an agent.

**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?**

We agree that when performing the principal versus agent analysis, entities should generally place more emphasis on exposure to negative returns (particularly when exposure is not shared equally among all interest holders) than on interests that only expose the decision maker to share in positive returns. However, we believe that a decision maker should also consider the reason (i.e., the purpose and design) it holds an economic interest in an entity. We generally agree that holding interests that expose the decision maker to non-pro-rata negative returns, such as a subordinated equity interest or a guarantee, would suggest the decision maker may have rights that would be indicative of a principal because of the potential exposure to economic losses (i.e., its decisions may be more affected by desire to limit its losses than to provide returns to other holders). Paragraph BC30 of the proposed ASU states, in part:

Accordingly, the determination of how a decision maker's other interests affect the analysis should consider the purpose and design of the entity and the reason for the decision maker holding such interests. That is, the decision maker should consider the reasons for holding an economic interest, including its maximum potential exposure to losses of the entity.

Including this guidance in ASC 810-10-25-39L would help to further clarify the analysis.

We do, however, continue to have concerns about how implicit variable interests should be considered under the consolidation analysis. Specifically, during the credit crisis many financial institutions decided they would provide financial support to a VIE because they sponsored the entity even though they did not communicate their intention to the entity's investors or have an explicit obligation to the investors. On the basis of these decisions, and in accordance with the example in ASC 810 of a structured investment vehicle (Case C in ASC 810-10-55-122 through 55-133), the sponsors (financial institutions) determined they had an implicit financial interest and that such obligation could potentially be significant. This resulted in the consolidation of such entities.

With the stabilization of the credit markets, sponsors that have been consolidating VIEs as a result of their implicit obligations are questioning whether they can deconsolidate these entities if their intention to provide financial support has changed. The Board should clarify whether sponsors should continue to consolidate these entities on the basis of a decision that the sponsor may need to make if there is another credit crisis.

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**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.**

We believe that a reporting entity should continually reconsider whether there has been a change in a decision maker's capacity as a principal or an agent. This is consistent with the Board's decision in Statement 167 that a reporting entity should continually reassess whether it controls another entity, which may include whether there has been a change in a decision maker's capacity. This reassessment, which generally would be triggered by specific transactions or events that affect one of the elements of control, should take into account whether there has been a change in the purpose and design of the relationship (rather than the design of the entity as described in ASC 810-10-35-6). The reassessment should not be limited to an entity's issuance of additional equity investment that is at risk to the decision maker but should take into account the acquisition of additional interests that already exist.

The final ASU should also note that the evaluation of whether rights are participating or protective should be continuous. For example, the right to block approval of a budget that if blocked would default to a reversion of the prior year's budget plus an inflation increase may be considered a substantive participating right for a new company but deemed a protective right when the company becomes mature.

**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?**

We agree that the guidance in ASC 810-10-55-37 on assessing whether a fee paid to a decision maker or a service provider is a variable interest should be retained. Under the VIE model in ASC 810-10, a decision maker would need to determine whether it has a variable interest in an entity regardless of whether it is a principal or an agent. A decision maker that is an agent and holds a variable interest in a VIE would still be subject to the disclosure requirements for interests in VIEs. Therefore, the guidance on assessing whether a fee is a variable interest should be retained. Further, we agree that if a fee is not a variable interest, a decision maker without a variable interest should not be subject to the consolidation guidance in ASC 810 but should rather apply other GAAP.

However, we note that ASC 810-10-55-37A currently clarifies the following:

For purposes of evaluating the conditions in [ASC 810-10-55-37], the quantitative approach described in the definitions of the terms *expected losses*, *expected residual returns*, and *expected variability* is not required and should not be the sole determinant as to whether a reporting entity meets such conditions.

This guidance was deleted in the proposed ASU. If the Board retains the guidance in ASC 810-10-55-37 on assessing whether a decision maker's fee is a variable interest, a quantitative analysis should not

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be required under this assessment, and the guidance noted above should be retained or included in ASC 810-10-25-29.

**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?**

The proposed ASU includes guidance on the level of economics that would change the relationship between a decision maker and the entity being evaluated. In addition, the proposed ASU would modify how subordinated fees are considered in the consolidation analysis. Accordingly, for those reporting entities in which the subordinated fees were the reason a decision maker was determined to have a variable interest in the VIE, there will be situations in which the consolidation conclusion changes as a result of the proposed principal versus agent guidance.

**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 are concerned that the proposed guidance may require certain money market funds to be consolidated. The structured investment vehicle example in ASC 810-10-55-122 through 55-133 (Case C) concludes that the decision maker is the primary beneficiary primarily because of its implicit variable interest to ensure that the entity operates as designed. Money market funds are designed to maintain a stable net asset value (NAV), which is typically a one dollar unit value. However, as a result of the credit crisis, some money market funds experienced significant declines in the fair value of their investments as a result of deterioration in the credit worthiness of their assets and general illiquidity conditions of the investments held by the fund. In response to these conditions, some money market fund managers chose to provide financial support to their funds. Such support included, but was not necessarily limited to, capital contributions, standby letters of credit, guarantees of principal and interest, and agreements to purchase troubled securities at amortized cost or par. This financial support may represent an implicit (or explicit) variable interest.

It is unclear whether the Board's conclusion that money market funds would not be consolidated is based on the fact that more weight was placed on the fund's board of directors' having the ability to remove the manager in the principal versus agent analysis than on the manager's implicit obligation to provide financial support. If so, this would appear to contradict the requirement in ASC 810-10-25-39E that kickout rights become presumptively less relevant as the disparity between the manager's economic interests and the economic interests of those holding the rights increases. Specifically, if the manager has a subordinate implicit interest, we would have expected this to receive more weight in the analysis.

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If the Board decides not to consider the approach we suggest in our response to Question 1, we believe that the Board should consider retaining the scope exception for money market funds currently in the consolidation guidance in ASC 810. We recommend that the following language (which is consistent with that in ASU 2010-10) be included in ASC 810-10-15-12 of the scope subsection of ASC 810:

f. An entity that is 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 for registered money market funds.

**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 generally agree with the proposed amendments. However, there may be situations in which this analysis may not be clear. Specifically, in the proposed ASU, the effect of related parties is illustrated by an example in which a decision maker owns 40 percent of the equity of a related party and the related party in turn owns a 60 percent interest in the VIE. The example states that one should conclude that an equivalent 24 percent interest is held by the decision maker. However, it is unclear how this analysis would be performed if in addition to the equity interest, the decision maker has a loan receivable from the related party that has general recourse to the assets of the related party.

In addition, the Board should clarify whether economic interests held indirectly through de facto agents (as defined in ASC 810-10-25-43) should be included in the principal versus agent analysis in the evaluation of whether to consolidate a variable interest entity. Further, although the concept of de facto agents is only included in the VIE consolidation guidance, it is unclear whether indirect economic interests held through de facto agents would also be considered in the evaluation of whether a general partner should consolidate a limited partnership.

Finally, we are concerned that in some related-party relationships there may not be a "direct chain" like that in the example in the proposed ASU (for instance, brother-sister relationships). Some may conclude that in these relationships, the decision maker's equivalent interest is 0 percent and therefore may disregard the related-party interest in performing the consolidation analysis. Consider the following example:

- Entity A and Entity B are under common control but do not have ownership interests in each other.
- Entity A is the general partner (decision maker) for Partnership C but does not own any of the limited partnership interests.
- Entity B owns 51 percent of C's limited partner interests.
- Entity B is required to prepare financial statements for regulatory purposes.

In applying the equation in the proposed ASU, A would conclude that it has a 0 percent equivalent interest in C. Accordingly, both A and B may be able to avoid consolidation in their financial statements. We recommend the Board clarify that a closer evaluation of the substance of the stated power and economic exposure is necessary when one party controls some or all parties within a related-party group since that controlling party may have the ability to assign power or exposure to economics to a particular party to achieve a preferred consolidation result. The reporting entity should

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consider the substance of the terms, transactions, and arrangements between the related parties and the parent company.

Thus, notwithstanding the stated power and economic exposure, all relevant facts and circumstances, including the guidance in ASC 810-10-25-44(a) through (d), should be considered, even if one party within the related-party group appears to exhibit the characteristics of a controlling financial interest in ASC 810-10-25-38A. If one party within the related-party group appears to be most closely associated with the VIE on the basis of the guidance in ASC 810-10-24-44(a) through (d), but the stated power arrangements indicate that another party within the related-party group meets both of the characteristics in ASC 810-10-25-38A, the stated power of the party would not be substantive.

**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 with the proposed guidance on requiring a general partner to determine whether it is a principal or an agent in determining whether the general partner should consolidate a limited partnership. An entity should evaluate who has control over the entity, and this evaluation should not differ as a result of an entity's structure. The principal versus agent analysis should be consistently applied to all types of entities.

However, some have questioned how to apply the consolidation model to a limited partnership when the general partner is deemed an agent. Generally, a limited partner would not have rights itself. If the Board's intent is that, by virtue of the general partner's being an agent, the rights held by the general partner are actually rights of the limited partners, then this should be clearly stated in the final ASU. Further, we would point to ASC 970-323-25-8, which states, in part:

If the substance of the partnership agreement is such that the general partners are not in control of the activities that most significantly impact the limited partnership's economic performance, a limited partner may be in control. An example could be a limited partner holding over 50 percent of the total partnership interest.

This guidance would seem to suggest there would be scenarios in which a limited partner may have to consolidate a limited partnership. We believe that this guidance should be moved from ASC 970 to ASC 810 because it should be applied to all industries.

**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.**

We agree with the proposed transition requirements. The Board should take into account, when selecting an effective date, the amount of time that will be required for entities to adopt the new guidance. The proposed amendments will potentially affect all entities being evaluated for consolidation, which may result in changes that are significantly broader than some may have expected. Although the proposed amendments might not change the consolidation conclusion for many entities, the adoption of the amendments will require a reporting entity to update its consolidation analysis for any entity in which it has an interest. In addition, this will be the first time

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entities that qualified for the deferral in ASU 2010-10 are evaluated under the consolidation model introduced by Statement 167. We would encourage the Board to consider these efforts when selecting an effective date.

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

Early adoption may reduce comparability between entities if some entities early adopt the proposed ASU and other entities do not. However, we are concerned that as a result of the deferral in ASU 2010-10, many reporting entities are currently evaluating their variable interests under multiple consolidation models. Accordingly, we support permitting early adoption of the proposed ASU because this would allow an entity to analyze all of its variable interests under a single revised model.

**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.**

The amendments in the proposed ASU should be the same for both public and nonpublic entities. We continue to believe that the needs of investors and other users of financial statements are best met by one set of principles-based accounting standards. However, we would not oppose a delayed effective date for nonpublic entities.

**Appendix B**  
**Deloitte & Touche LLP**  
**Additional Comments**

***Assessment of Participating Rights***

Under the proposed amendments, the assessment of whether noncontrolling shareholders' participating rights would overcome the presumption of consolidation by the investor with majority voting rights would require the investor to consider whether the noncontrolling shareholders' rights allow the noncontrolling shareholders to "participate in the activities that most significantly impact the investee's economic performance." Under current GAAP, a reporting entity would consider whether the noncontrolling shareholder can participate in "significant decisions that would be expected to be made in the ordinary course of business." While we support the consistent assessment of rights throughout the VIE and voting interest models, we are concerned that entities may not appreciate that this change may result in a different consolidation conclusion. Therefore, we suggest that the Board provide further implementation guidance or discussion in the Basis for Conclusions on how it expects this may affect current practice.

***Disclosure Requirements***

ASC 810-10-50-5A currently requires that a reporting entity with a variable interest in a VIE disclose its method for determining whether it is (or is not) the primary beneficiary of the entity, including, but not limited to, significant judgments and assumptions made. We recommend expanding the scope of this disclosure requirement to include situations in which significant judgments and assumptions were made in determining whether a decision maker is a principal or an agent. A conclusion that the decision maker is an agent of the entity's equity at-risk investors may result in the entity's not being considered a VIE. The reporting entity would therefore not be required to provide the disclosures that are specific to VIEs. We believe that this disclosure requirement should be consistent for both VIEs and entities that are not considered VIEs.

***Series Funds***

Because views about how to apply the proposed ASU to series funds are diverse, the Board should clarify whether such funds are considered VIEs and, if so, how to determine whether the manager of a series fund is the primary beneficiary. A series fund is a single entity that is formed with separate series or "cells" created internally within the entity. Effectively, the series fund is a single umbrella entity that has the ability to partition its assets and liabilities among various series. Although the series fund may have only one board of directors that is elected by investors of every series, each series may have different investors, investment objectives, managers, and year-ends. In addition, the profits, losses, and liabilities of each series are legally separate from the other series. This structure eliminates the administrative burden and expense of forming multiple entities.

***Liquidation Rights***

We recommend that the Board include language in the Codification that indicates that liquidation rights should be considered equivalent to kickout rights. Currently, this language is included only in the Basis for Conclusions of the proposed ASU, which will not be codified. In addition, ASC 810-10-25-10(c) (as amended by the proposed ASU) indicates that "liquidation of the investee or a decision to

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cause the investee to enter bankruptcy or other receivership” would be considered protective rights. We believe that this is inconsistent with the Board’s conclusions on liquidation rights as discussed in the proposed ASU’s Basis for Conclusions.

### ***Commercial Paper Conduit***

The commercial paper conduit paper example in ASC 810-10-55-3AY through 55-3BK illustrates the application of the principal versus agent guidance and concludes, on the basis of the level of economic variability that the sponsor is exposed to through its fee and its **implicit** variable interest, that the decision maker is a principal. The facts are the same in the example in ASC 810-10-55-134 through 55-146, which illustrates how a sponsor of a commercial paper conduit would evaluate whether it is the primary beneficiary of the entity; however, the conclusion that the sponsor is the primary beneficiary is based on its fee and its **explicit** variable interests (credit and liquidity features). Since the facts are identical in these two examples, the Board should conform the analysis.

### ***Nonsubstantive Terms***

Although the proposed ASU is intended to make only limited changes to the consolidation model for voting interest entities, we believe that the Board should clarify that the consolidation analysis for voting interest entities should only take into account substantive terms, transactions, and arrangements, whether they are contractual or noncontractual. The consolidation guidance on VIEs includes such language (ASC 810-10-15-13A), and we are concerned that the lack of a similar requirement for other types of entities could be interpreted to permit the inclusion of nonsubstantive terms, transactions, and arrangements in the consolidation analysis for such entities. For example, some could argue that rather than focusing on the substance of the arrangement, entities can ignore potential voting rights that are in substance voting rights (e.g., an option to acquire a controlling interest in an entity for a nominal amount) in the consolidation analysis under the voting interest entity model.

### ***Other Clarification***

Under ASC 810-10-25-1B(a)(1)(ii), a majority-owned subsidiary that is not within the scope of the VIE model is not consolidated if the subsidiary is in bankruptcy. However, the proposed ASU does not provide similar guidance on the VIE or partnership model. We suggest that the Board clarify how bankruptcy proceedings would affect the consolidation analysis for VIEs and partnerships.