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Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
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director@fasb.org

Re: Proposed Accounting Standards Update; Consolidation (Topic 810)

Credit Suisse Group (CSG) welcomes the opportunity to comment on the proposed Accounting Standards Update, Consolidation (Topic 810). CSG is registered as a foreign private issuer with the Securities and Exchange Commission and its consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States (US GAAP). We also have a number of subsidiaries that are required to apply International Financial Reporting Standards ("IFRS") to their stand-alone financial statements.

Overall, CSG supports the objective of publishing a consolidation model that is qualitative in nature. CSG agrees with the overall principle set out in the ED that consolidation is required when an entity has power to direct the activities that impact the economic performance of the entity and uses that power in a principal capacity. CSG agrees broadly with the principal agent concept to conclude whether a decision maker is acting in a capacity that is more akin to an agent versus an entity that controls decisions for its own benefit. We however believe that the existence of substantive removal rights is a strong indicator that the manager is acting as an agent on behalf of third parties irrespective of whether those rights are held by one investor or multiple investors.

If the Board proceeds to issue the proposed accounting standards update as a final standard, the following are our concerns, which are explained in more detail in the Appendix:

1. Consideration of kick out rights in the principal versus agent analysis
2. Retention of two consolidation models
3. Participating rights
4. Related Parties

We have also addressed the Board's specific questions in the Appendix.

We would welcome the opportunity to further discuss our comments in this letter. If you have any questions or would like any additional information on the comments we have provided herein, please do not hesitate to contact me in Zurich at +41 44 333 19 68, or Todd Runyan in Zurich at +41 44 334 8063.

Sincerely,

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1. Consideration of kick out rights in the principal versus agent analysis

The Board has concluded that substantive kick out rights held by more than one party are not a determinative factor to conclude the decision maker is acting as an agent. We believe that multiple party kick out rights are a determinative factor to conclude the decision maker is acting as an agent. Kick out rights indicate the decision maker is acting under the implied direction of third parties, rather than having true power. Kick out rights held by multiple parties mitigate the decision makers control and we believe this right needs to be determinative in the principal versus agent analysis to apply the literature and overriding principle of control appropriately. Regardless of the decision maker's level of ownership in the entity, we believe it is conclusive a decision maker does not have control when multiple unaffiliated investors hold substantive kick out rights.

The more parties that need to act together to remove the decision maker does not impact the substantive nature of this participating right given that in order for the rights to be substantive one of the requirements includes a clear mechanism for exercise. Substantive kick out rights, as a rule included within the proposed accounting standards update, do not contain any barriers for multiple parties to act together to exercise the right, this further supports that the substantive nature of kick out rights already considers the ability for the parties to successfully act together to execute a removal. Dispersed kick out rights are not indicative that they will be less likely to be exercised. Investors interests are aligned and will likely act together to remove a decision maker.

2. Retention of two consolidation models

The Board has retained two consolidation models in the Exposure Draft. We do not support retaining two models and suggest the FASB consider converging with the IASB as IFRS 10 "Consolidated Financial Statements" includes one model for consolidation to be applied to all entities. We support one principle as a standard for determining whether consolidation of an entity is appropriate. Slight differences in the characteristics of an entity being evaluated should not direct preparers to different consolidation models that could yield different conclusions. The characteristics that result in an assessment that an entity is a variable interest entity or a voting interest entity does not suggest that different consolidation guidance would be relevant to determine which entity is the primary beneficiary. Retaining two models could create arbitrary distinctions between entities with similar economic circumstances that could lead to variations in consolidation conclusions. As an example, the legal form of an entity (i.e. partnerships) may result in applying different consolidation rules.

We believe applying one consistent control based consolidation model to all entities provides users of financial statements with useful and understandable consolidated financial statements. Overall, we agree with the principle that control is the appropriate way to determine if an entity should consolidate another entity and one control model should be consistently applied to all entities without variation which would also reduce complexity in applying the standard.

3. Participating rights

We observe that reference to and guidance for participating rights are explained in a number of sections within the literature depending on the type of entity. We propose the Board



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clearly define participating rights within one section of the literature applicable to entities under both the variable interest entity model and voting interest model.

The current language in Topic 810-10-15, 810-10-25 and 810-10-55 focusing on whether the rights to participate in day-to-day activities (i.e. setting compensation, approving budgets) was removed in the exposure draft, we believe these are important participating rights and propose the Board retain these indicators within Topic 810.

4. Related Parties

We have concerns on the proposed related party guidance. We do not agree that indirect interests of related parties should be considered in the principal versus agent analysis. An entity should only consider interests held by subsidiaries for which they have a controlling financial interest. Indirect interests of unconsolidated entities and equity method investments, where significant influence may be held, are not relevant as the decision maker does not have sole control nor can the decision maker vote independently.

We also believe it is unclear when related parties and de facto agent rules are considered. We understand that there may be differences in applying de facto and related party rules when assessing if an entity is: i. the primary beneficiary of a voting interest entity ii. the primary beneficiary of a variable interest entity and iii. in the principal versus agent analysis when determining if the decision maker is an agent. We propose the FASB consider aligning the related party rules within the standard to provide for consistent application in all relevant sections of an entity's consolidation analysis.



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Appendix

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?

While we support a qualitative approach for determining whether a decision maker is acting as a principal or agent we realize the quantitative indicator, other interests held by the decision maker, can become determinative in the analysis when considering the level of interests held by the decision maker. This concern is articulated in Question 3 below.

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?

Overall we believe the Boards concepts are appropriate for assessing whether a decision maker is principal or agent. The Board should include multiple party kick out rights as determinative to conclude the decision maker is acting as an agent.

We understand that the Board is working towards converging with the IASB, however, we believe that multiple party kick out rights indicate determinatively that a decision maker does not control an entity consistent with guidance that exists today under Topic 810-20-25. We believe current guidance in Topic 810-20-25 should not be amended and converged with the IASB as it relates to multiple party kick out rights. Kick out rights indicate the decision maker is acting under the implied direction of third parties, rather than having true power.

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 support the overall principle based approach to weigh each factor in determining if a decision maker is principal or agent.

However, one of the factors to consider includes considering the level of ownership interest held by the decision maker suggesting that the greater the equity interest the more weight this factor should carry.

We caution the Board that although the overall principle of principal versus agent is qualitative certain quantitative indicators can become determinative in the analysis including the level of investment the decision maker holds in the entity. Decision makers have a fiduciary duty to



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make decisions in the best interest of the investors of the fund which is not affected by the existence of an investment in the fund regardless of the size.

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?

We believe substantive kick out rights in general, and regardless of whether held by more than one party, should be determinative in concluding the decision maker is acting as an agent.

In assessing the substantive nature of kick out rights, one already considers the dispersion and mechanisms to exercise, once the rights are deemed to be substantive they should be determinative in and of themselves to conclude the decision maker is an agent.

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 the seniority of fees should not be determinative of a decision maker's capacity. It is also common that certain entities may not even have significant operating liabilities that arise in the normal course of business therefore the seniority criterion is not always relevant. We further agree with the Board that the fee should be at market which is a stronger indicator that the decision maker is acting as 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 believe judgement is required in the principal versus agent analysis which, at times may include considering both positive and negative returns exposed to the decision maker. Applying equal weighting to both negative and positive returns could be appropriate in various structures with different potential loss scenarios. Focusing on only negative returns would not always be indicative of a principal versus agent relationship.

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.



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We agree that a reporting entity should reassess the decision maker's capacity if the purpose and design of an entity changes. We believe that an entity issuing additional equity is not however a conclusive factor in determining that the purpose and design of an entity has changed. The conclusion of whether the purpose and design of an entity has changed requires judgement and requires an assessment by preparers to properly reflect relationships with entities that could change over time.

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 if an entity's fee arrangement does not meet the definition of a variable interest, and the entity has no other variable interest in the entity, the decision maker should not proceed with the principal versus agent analysis if the entity is a VIE.

We believe that if a decision maker does not have a variable interest in the entity it is sufficient to conclude the decision maker is not the primary beneficiary without further analysis.

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 would require sufficient time and further analysis to assess whether consolidation conclusions for various entities would be impacted as a result of the proposed amendments.

Proposed amendments that may have an impact on current consolidation conclusions include changes to the guidance used to determine whether an entity is a variable interest entity in section 810-10-15-14b and the removal of "potentially significant" in section 810-10-25-38A possibly impacting the threshold used to determine if an entity that has power is the primary beneficiary.

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 do not agree the indirect interests of related parties should be considered in the principal versus agent analysis. An entity should only consider interests held by subsidiaries for which they have a controlling financial interest. Indirect interests of unconsolidated entities and



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equity method investments, where significant influence may be held, are not relevant as the decision maker does not have sole control nor can the decision maker vote independently. We believe including indirect interests of unconsolidated entities is a significant change to current guidance and would introduce operational challenges in accurate and timely reporting.

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 would agree the principal versus agent analysis should be analysed to determine if a general partner of a partnership should consolidate the partnership only if multiple party kick out rights are determinative that a decision maker is an agent.

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 believe the standard should be effective at the beginning of the calendar year at least one year after the standard has been issued, with earlier application permitted to provide financial statement preparers sufficient time to analyse and operationalize the standard.

We expect the same transition guidance would apply to variable interest entities and partnerships and similar entities although section 810-10-65-4 is not clear on this point.