

FASB Consolidations Agent-Principal

Date of Entry: 2/14/2012

Respondent information

Type of entity or individual:

Industry Organization

Contact information:

Organization: Raymond James Tax Credit Funds, Inc

Name: Toni S Matthews

Email address: toni.matthews@raymondjames.com

Phone number: 727-567-4812

Questions and responses

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 agree that the determination of whether a decision maker is a principal or an agent should consider the decision maker's overall relationship with the entity and the other parties involved with the entity. A qualitative assessment provides for a more meaningful analysis suitable for the array of facts and circumstances of any given arrangement. Examination of the overall nature of the arrangement under consideration would result in a more authentic conclusion of the character of the principal/agent relationship.

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?

Yes, the proposed factors for assessing whether a decision maker is a principal or an agent are appropriate and operational. The rights held by other parties may include a variety of measures that ensure that an agent does not act against their interests. In addition, in circumstances in which the participating and kick out rights are held by multiple parties which also hold disproportionately greater economic interests, it would give measurable weight to the conclusion that the decision maker is acting in an agency capacity.

The proposed and more comprehensive evaluation of the compensation to which the decision maker is entitled in accordance with its compensation agreement addresses the crux of this issue. Consideration of the terms of the fee arrangement and whether it is customary and negotiated on an arm's-length basis coupled with the exposure or lack of exposure to losses (whereas non-receipt of a fee does not represent risk of negative returns) and the level of subordination of a fee to an entity's other obligations provide for a more precise assessment of the true nature of the relationship between the parties.

The consideration of the magnitude of a decision maker's equity interest in an entity in conjunction with exposure to true variability of returns (given that subordination of a service fee is not indicative of exposure to loss) is efficacious to an appropriate conclusion.

In addition, while we understand that the term negative returns is broadly considered to include the potential obligation to the entity (paragraph BC25 to the exposure draft), we believe that the obligation to fund the liabilities of the entity does provide evidence of a principal vs. agency relationship and should be more clearly included in the analysis. Paragraph BC13 of the background information explains that Board rejected including the right to use the underlying assets of the entity and the obligation to fund liabilities. However, it only provided the reasoning for not including the right to use the underlying assets of the entity. No explanation was given as to why the obligation to fund the entity's liabilities was omitted. If the decision maker's obligation is no more than its minimal equity interest and that non-receipt of a fee is not considered funding operations, this could indicate that it is acting in an agency capacity

-
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 agree that the proposed amendments, inclusive of the implementation guidance and illustrative examples will greatly facilitate the goal of more consistent and relevant conclusions.

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 agree that substantive kick-out and participating rights held by multiple unrelated parties should be one of the items considered when evaluating whether a reporting entity should consolidate another entity. Consideration should be given to the rights held by other parties, specifically, the number of partners or members that share such rights, through a weighting system. A group of twenty investors in an entity in which the investors hold the majority of the economic interest have a much more substantial possibility of the other interest holders exercising those rights than in entities with a very large number of investors. The guidance and examples provided are clear and operational.

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 with this provision.

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?

The risk of loss (defined as true risk of loss resulting from performance or lack of) can be an indicator of a principal relationship and should be considered in conjunction with other factors. The risk of loss should not include uncollected fees that are unrelated to an entity's performance. Dependant on other factors, a decision maker with minimal or no risk of loss is most likely operating in an agency capacity.

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 agree with this requirement when an entity has a significant change in the decision maker's capacity. This provision would address the opportunity to structure an entity for a specified outcome and subsequently alter the structure of the entity without re-consideration of the impact of a valid analysis.

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 with this approach. In instances where the decision maker is operating in an agency capacity, further consideration with respect to consolidation should not be necessary. The purpose of consolidation is to accurately reflect an organization's financial position. The consolidation of an entity in which the organization is only operating as an agent would result in misleading and confusing financial reporting rather than providing valuable information to the user.

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?

No Comment.

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?

No Comment.

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 agree with the proposed amendment. Although it should not be determinative, all interests should be considered. The more exposure there is to downside risk (e.g., equity investment and guarantees), the more potential that the decision maker will make decisions in its own interest. Asset managers and servicers would argue they have a fiduciary duty to act in the best interest of investors regardless of their level of investment. One would need to consider the total exposure regardless of probability of loss.

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 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. Conclusions under the current guidance criteria are often inconsistent and may result in consolidation of an entity when the general partner has a very nominal interest and is truly acting in an agency capacity. These are complex issues and even with disclosure can result in financial statements that are challenging for the user to interpret.

Statement of Financial Accounting Concepts No. 1, Objectives of Financial Reporting by Business Enterprises (CON 1), states that the role of financial reporting is to provide information that is useful in making business and economic decisions. The usefulness of financial reporting is impacted by its quality. CON 1 specifically addresses enterprise performance and earnings and states that the primary focus of financial reporting is to provide information about an enterprise's performance provided by measures of earnings and its components.

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.

14. Should early adoption be permitted? If not, why?

Yes.

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 this proposed update should apply similarly to public and non-public entities.

- AdditionalComments. Please provide any additional comments on the proposed Update or any comments on this electronic feedback process below.