

February 10, 2012

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

By e-mail: director@fasb.org

**Re: Proposed Accounting Standards Update –
Consolidation (Topic 810) Principal versus Agent Analysis
(File Reference No. 2011-220)**

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned Exposure Draft.

The NYSSCPA's Financial Accounting Standards Committee deliberated the Exposure Draft and prepared the attached comments. If you would like additional discussion with us, please contact J. Roger Donohue, Chair of the Financial Accounting Standards Committee at (516) 887-7573 or Ernest J. Markezin, NYSSCPA staff at (212) 719-8303.

Sincerely,


Richard E. Piluso
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON
PROPOSED ACCOUNTING STANDARDS UPDATE –
CONSOLIDATION (TOPIC 810) PRINCIPAL VERSUS AGENT ANALYSIS
(FILE REFERENCE NO. 2011-220)**

February 10, 2012

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New York State Society of Certified Public Accountants

Comments on

Proposed Accounting Standards Update – Consolidation (Topic 810) Principal versus Agent Analysis (File Reference No. 2011-220)

We have reviewed the Financial Accounting Standards Board (“FASB”) proposed Accounting Standards Update, *Consolidation, Principal versus Agent (Topic 810)* (the “Update”), and we appreciate the opportunity to provide our responses to the questions for respondents. We agree with the focus of the FASB to provide guidance for consolidation that would reflect substance over form. With the Update, qualitative factors have been added, and they are assessed on a qualitative basis, *i.e.* what is the true effect of the various factors and that the factors should be considered in the aggregate.

Responses to Specific Questions

Principal versus Agent Analysis

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?

Response:

We agree, that all of the factors should be considered, including on a qualitative basis, to determine if the decision maker’s overall function is that of principal or agent.

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?

Response:

The factors set forth above provide a comprehensive framework in assessing whether the decision maker is a principal or agent. We do not think that any other factors would be needed.

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?

Response:

Given the same facts, we believe that the same decision would be reached in the majority of cases. There is always a certain amount of subjective assessment, but following the guidance in the Update, we do not feel it would significantly affect the final assessment.

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?

Response:

The basic concept in the Update is to look at all the facts and consider them in the aggregate. This would include all rights of other parties such as participating and kick-out- rights. With multiple unrelated parties, assessment would necessarily include looking at all the possibilities, and weighing these with the other factors. At the core of making assessments is to assess all the factors, consequently, we do not believe that kick-out rights held by multiple unrelated parties necessarily should be a determinative factor to conclude if the decision maker is functioning as a principal or 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?

Response:

As we have stipulated before, all the factors have to be evaluated on an overall basis. Based thereon, we determine if the decision maker's function is that of agent or principal. One way of making this assessment is to put oneself in the shoes of the decision maker to see what steps, agreements *etc.* one would want if one were principal. If one were the principal, these decisions would be structured to maximize income.

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?

Response:

There is no direct answer to this question. It has to be reviewed in the overall context of the interrelationship of the decision maker with the entity. For instance, what limits there are on negative results and what limits there are on positive results and whether or not those results are ameliorated because of other factors.

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.

Response:

All of the factors have to be considered in determining the capacity of a decision maker, and this would be the same. The changes could easily result in changing the capacity of the decision maker. Another very major detail is who initiated the changes, and why. One aspect of making this assessment is that if the changes were initiated by a decision maker, it would tend to indicate the capacity of the decision maker is that of a principal. Conversely, if the changes were initiated by others, the tendency is that the decision maker is functioning as an agent. Going one step further, in any case, the changes would have to be assessed overall.

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?

Response:

If the arrangement does not meet the criteria for adequate compensation, that factor in itself would indicate the entity would not qualify as a reporting entity because the entity is not entitled to fully participate in the results of operations of the entity.

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?

Response:

This would not affect principal and agent analysis because the entities' rights will be considered in the overall assessment of the decision maker capacity.

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?

Response:

Yes, the amendments in this proposed Update would rescind the indefinite deferral in Update 2010-10, and would require all variable interest entities to be evaluated for consolidation under the revised guidance. The revised guidance would clarify whether a decision maker is using its power as a principal or an agent. This analysis affects the determination of whether the entity is a variable interest entity and, if so, whether a reporting entity should consolidate the entity being evaluated.

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?

Response:

Yes, if the interests of the related parties flow to the reporting entity, they should be considered on a proportionate basis. There is a question as to what level of related

partnership relationships are intended in this requirement. We believe this point should be clarified in more detail.

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?

Response:

Yes, this is necessary for consistency in application of the accounting principle. If the decision maker is functioning as an agent, consolidation is not applicable, and, conversely, if the decision maker is functioning as a principal, consolidation would be appropriate.

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.

Response:

We would prefer that the effective date to be the annual financial statements of fiscal years beginning after December 15 of the year in which the ASU is issued.

We are a service organization and do not have a basis of determining the timing of the implementation.

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

Response:

Normally, we would not object to an option of early adoption, however, because of the far reaching effects of the Update with respect to the entities involved, it would seem much more practical to have all the organizations adopt this at the same time.

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.

Response:

The consolidation requirements should be the same for all entities whether public or nonpublic. There is a concept that nonpublic means small, but that is incorrect.