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Mr. Trevor Farber
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: FASB Roundtable Meeting Agenda, Consolidations, International Accounting Standards Board Staff Draft, Consolidated Financial Statements

We applaud the joint efforts of the FASB and the IASB as they progress toward developing a converged, principles based standard for consolidations that will be applicable to all entities. We believe that the control principle outlined in the International Accounting Standards Board Staff Draft, *Consolidated Financial Statements* (the Staff Draft) is a positive step forward. However, we disagree with certain of the details of the Application Guidance in Appendix B of the Staff Draft.

We support the “*contractual rights*” model for establishing consolidation principles. That model is based on the reporting entity’s legal and contractual rights as of the reporting date. It produces a result that is identical across reporting entities and therefore provides comparability of financial reporting across entities. Furthermore, the conclusion is persistent and perpetual; once an enterprise determines whether it does or does not consolidate an investee, that consolidation analysis will remain in place until the contractual rights are changed. Additionally, with the adoption of SFAS 167, the model now has a consistent focus on control and power which aligns the model for all entities. We do not support an “*ability to*” model (sometimes referred to as the “*dominant shareholder*” model) primarily because, as has been noted by many others, the underlying basis of this model is the inaction of others.

The following summarizes, in broad terms, our views on the Staff Draft:

1. We agree with the control principle outlined in paragraphs 5 – 7 of the Staff Draft; we disagree with the Application Guidance that is based on an “*ability to*” model.
2. We agree with the elimination of the definitions of voting interest entities and variable interest entities.
3. We agree with the general guidance outlining the determination of whether a manager is acting as a principal or an agent.
4. We support the Staff Draft’s basic approach to kick-out rights; namely that they may be substantive even where exercise requires more than one party to act. We believe that, at times, kick-out rights that require a number of investors to act together may indeed be substantive, when considering all facts and circumstances together.

In the Appendix, we provide answers to the questions outlined in the FASB Roundtable Meeting Agenda. We would appreciate the opportunity to participate in the roundtable and further share our detailed views. If you have any questions, please contact Israel Snow at 212-357-5730 or me.

Sincerely,

A handwritten signature in black ink that reads "Matthew L. Schroeder". The signature is written in a cursive, slightly slanted style.

Matthew L. Schroeder

Appendix: Response to Questions

1. The Staff Draft provides a single concept of control that is used to evaluate control on a consistent basis for all types of entities (both voting interest entities and variable interest entities). Do you agree that a single-model approach to assess control will provide more consistent financial reporting for all types of entities rather than providing separate models for voting interest entities and variable interest entities? If not, why not?

Response: We agree. The distinction between variable interest entities and voting interest entities is not necessary.

2. The Staff Draft does not incorporate the U.S. GAAP concept of a variable interest entity or a structured entity. Rather, the Staff Draft provides that the way in which control is assessed will vary depending on how the activities that significantly affect the entities' returns are directed. For example, how control is assessed will depend on whether the decisions that significantly affect the returns of an entity are made through voting rights. Without an explicit definition of a variable interest entity, do you believe that (ignoring the differences when analyzing decision making relationships and the effect related party arrangements have on the analysis) the Staff Draft will produce the same consolidation conclusions as the recently issued U.S. GAAP guidance for consolidating variable interest entities (FASB Accounting Standards Codification™ Subtopic 810-10, Consolidation)? If not, what are the situations that produce a different conclusion and why? Do you think it is sufficiently clear how to assess power and control for all types of entities in the Staff Draft?

Response: The analysis of all entities is one that will take a substantial amount of time; consequently, we have not been able to perform a definitive assessment of how the Staff Draft compares with current US GAAP. Based on our preliminary analysis, we note that the recently issued FASB Accounting Standards Codifications (ASC) Subtopic 810-10 was amended to include a deferral of the application of its principles for certain investment funds. We believe that many of these funds that were within the scope of the deferral would not have been required to be consolidated even without the deferral and will not require consolidation under the Staff Draft. However, as we have previously commented, we have always been troubled by the “bright line” positions some constituents were taking in interpreting what is “significant” in the context of ASC Subtopic 810-10. Therefore, we believe the omission of reference to “significance” and “insignificance” that is contained in the current VIE model is an improvement.

3. The Staff Draft proposes that in order to control an entity, the reporting entity must have the power to direct the activities of that entity. Power is defined as having existing rights that give the reporting entity the current ability to direct the activities that significantly affect the entity's returns. Do you agree with the control principle as articulated in the Staff Draft? Do you agree that there are situations when a reporting entity can have control of an entity controlled through voting rights with less than a majority of voting rights? Why or why not?

Response: We agree with the overall control principle outlined in paragraphs 5-7 of the Staff Draft. We also agree with the general principle that both positive and negative returns should be considered. This consideration should be qualitative in nature and consider the surrounding facts and circumstances. Often, the qualitative nature of positive and negative returns is very different. For example, one asset manager may receive fees based on assets under management and have no other interest or downside risk in an entity. Another manager may guarantee an entity's returns. In these examples, the negative return is a more substantive indicator of power than the positive returns even at lower quantitative return amounts. While we believe that this principle is implicit in the Staff Draft, we recommend that it be more clearly articulated to avoid confusion. Additionally, paragraph B42 indicates that "... it is the potential to receive returns that is important." Some may conclude from this that probability considerations should be excluded from the analysis. Again, we believe that individual case facts and circumstances should be considered and, consequently, the reference to potential returns should be removed.

We believe that it is a longstanding principle within US GAAP that there are situations when a reporting entity can have control of an entity with less than a majority of voting rights. This is articulated in ASC 810-10-15-8, "The usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one reporting entity, directly or indirectly, of more than 50 percent of the outstanding voting shares of another entity is a condition pointing toward consolidation. The power to control may also exist with a lesser percentage of ownership, for example, by contract, lease, agreement with other stockholders, or by court decree." We disagree, however, with the extension of this concept to the application of an "ability to" or "dominant shareholder" model for the reasons described in the body of this letter.

4. The Staff Draft states that if the activities that significantly affect an entity's returns are directed through voting rights, a reporting entity holding less than a majority of the voting rights (assuming no potential voting rights or other contractual rights exists) has power when it can unilaterally direct the activities of the entity that significantly affect the entity's returns. This assessment requires judgment. The Staff Draft provides application guidance to determine when a reporting entity holding less than a majority of the voting rights in an entity controlled through voting rights has power. Specifically, the Staff Draft provides that, in some cases, a determination can be made about whether a reporting entity has power by just considering the absolute size of the reporting entity's holding of voting rights, the size of its voting rights relative to the size and dispersion of holdings of the other vote holders, the voting patterns at previous shareholders' meetings, and other arrangements. Do you believe that there are circumstances when, considering only these factors, an assessment could be made about whether a reporting entity has power? Why or why not?

Response: We believe that the determination of the "absolute size of the reporting entity's voting rights", "the size of its voting rights relative to the size and dispersion of holdings of the other vote holders" and "the voting patterns at previous shareholders' meetings" is not conclusive since there can be many reasons that they have not exercised the legal rights they had in the past; nevertheless, they still have these rights.

5. In other circumstances the Staff Draft provides that additional evidence may be needed in order to conclude that a reporting entity holding less than a majority of the voting rights in an entity controlled through voting rights has power. The Staff Draft includes indicators that may provide additional evidence in these circumstances to assist in determining whether the reporting entity has power. Do you believe that these indicators provide sufficient guidance to conclude that a reporting entity has power in situations where it is unclear as to whether a reporting entity has power solely based on the absolute size of the reporting entity's holding of voting rights, the size of its voting rights relative to the size and dispersion of holdings of the other vote holders, the voting patterns at previous shareholders' meetings, and other arrangements? If not, what additional indicators should be included or which of these indicators should be removed?

Response: As noted above, we believe that the analysis of control should be facts based. Consequently, if, and only if, the indicators noted in paragraphs B14 and B15 are embedded in a contractual agreement, we would agree that these indicators are relevant.

6. The Staff Draft requires a reporting entity to consider its rights to obtain additional voting rights of another entity, as well as such potential voting rights (options or convertibles, for example) held by other parties, to determine whether the reporting entity has power. Do you believe the guidance in the Staff Draft is appropriate and operational? Specifically, do you believe that the guidance for determining when potential voting rights are considered substantive is operational? If not, what additional guidance would you suggest?

Response: We agree with the model outlined in the Staff Draft. We note that the general principles outlined in the Staff Draft already exist in US GAAP in the context of ASC 323-10-15-13 (formerly EITF 02-14 paragraph 6). Specifically, where an investor has the ability to convert an investment into common stock without any significant restrictions or conditions (i.e. exercise is within the control of the holder) and the conversion right is deep-in-the-money, such interests may be considered in-substance common stock.

7. When determining whether a reporting entity acts as an agent, the reporting entity must consider the overall relationship between it and other parties involved with the entity, considering the following factors:

- a. The scope of its decision-making authority over the entity*
- b. The rights held by other parties*
- c. The remuneration the reporting entity is entitled to in the arrangement*
- d. The reporting entity's exposure to variability in returns as a result of other interests that it holds in the entity.*

Do you believe the guidance related to assessing decision-making arrangements in the Staff Draft is appropriate and operational? Do you believe the Staff Draft would lead to appropriate consolidation conclusions?

Response: We discuss our view of substantive removal rights in our response to question 8 below. Subject to those comments, our overall view is that these four criteria, taken as

a whole, represent a reasonable, principles based set of criteria for determining whether an entity is principal or agent.

8. When evaluating a decision-maker's role, rights held by other parties are considered when determining whether a decision-maker is an agent. Specifically, situations in which a single party holds substantive removal rights and can remove the decision-maker without cause, in isolation, would be sufficient to conclude that the decision-maker is an agent. However, if numerous parties hold such rights, those rights would not, in isolation, be conclusive in determining whether a decision-maker is an agent. In such a situation, those rights would be considered together with the other factors included in question 7 above, to determine whether the decision-maker is an agent. Do you believe that removal rights held by numerous parties should be a factor when evaluating whether a decision-maker is an agent? If so, do you agree that it should be one factor but not in and of itself determinative, when evaluating whether a decision-maker is an agent?

Response: With regard to the criteria of “rights held by other parties” we understand that, under the “ability to” view outlined in the Staff Draft, if the kick-out rights are held by a widely dispersed group of investors, they are unlikely to be considered substantive. We believe that removal rights held by numerous parties should be a factor used to determine whether the decision-maker is an agent. In our opinion, the analysis of removal rights must merely establish that the decision-maker is an agent of the other investors and consequently does not control; it is not necessary to establish that the holders of such rights have power. Consequently, a simple majority right to remove a manager should be included as an indicator that the manager is merely an agent; particularly when considered along with the other three criteria. Furthermore, we believe that a right to kick out a manager that can be exercised by a simple majority of unaffiliated investors, by itself, renders the manager to be an agent, provided such rights are substantive.

9. The Staff Draft requires a reporting entity to reassess whether it controls another entity if facts and circumstances indicate that there are changes to one or more of the three elements of control. Do you believe this principle, and the related guidance in the Staff Draft, is sufficiently clear and operational?

Response: We agree in principle with the notion of continuous reassessment. However, as noted above, since many of the indicators in the Staff Draft are subjective the consolidation conclusions reached may not be persistent and perpetual and this may make such an analysis difficult to operationalize on a periodic basis.