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January 5, 2010

Mr. Russell Golden  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**File Reference No. 1750-100**

**Re: Proposed Accounting Standards Update — *Amendments to Statement 167 for Certain Investment Funds***

Dear Mr. Golden:

Deloitte & Touche LLP is pleased to comment on the FASB's exposure draft of a proposed Accounting Standards Update (ASU) of Consolidations (Topic 810), *Amendments to Statement 167 for Certain Investment Funds*.

We continue to strongly support the FASB's and IASB's work to develop a common consolidation model that can be applied by all entities reporting under U.S. GAAP or IFRSs. Accordingly, we support the FASB's proposal to defer the effective date of FASB Statement No. 167, *Amendments to FASB Interpretation 46(R)*, for entities with interests in certain investment funds so that both Boards can develop consistent guidance as part of their joint consolidations project. Notwithstanding our support for the deferral, we do not believe that the proposed ASU clearly identifies the population of entities that would qualify for the deferral. In addition, we believe that unless the Board further clarifies its intent in amending paragraph B22 of Statement 167, implementation issues will result that will require the issuance of additional guidance by the FASB. 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.

If you have any questions concerning our comments, please contact Jeff Nickell at (203) 761-3779.

Sincerely,

Deloitte & Touche LLP

cc: Robert Uhl, Deloitte & Touche LLP

**Deloitte & Touche LLP**  
**Appendix A**  
**Responses to the ASU's Questions for Respondents**

*Question 1: Do you agree that the Board should defer the effective date of Statement 167 for entities that meet the requirements in the proposed Update? Please elaborate as to why you believe this deferral is appropriate or not.*

We agree with the Board's proposal to defer the effective date of Statement 167 for entities that meet the requirements in the proposed ASU. We continue to strongly support the efforts of the FASB and IASB to converge their standards and develop a single, common consolidation model that can be applied by all entities that report under either U.S. GAAP or IFRSs, including entities currently considered variable interest entities (VIEs).

*Question 2: The Board expects that the deferral would only affect a limited number of types of entities, including but not limited to mutual funds, hedge funds, mortgage real estate investment trusts, private equity funds and venture capital funds. The Board expects that this deferral would not apply to securitization entities, asset-backed financing entities, and entities formerly classified as qualifying special-purpose entities. For example, the Board does not expect this deferral to apply to (a) structured investment vehicles, (b) collateralized debt/loan obligations, (c) commercial paper conduits, (d) credit card securitization structures, (e) residential or commercial mortgage-backed entities, and (f) government-sponsored mortgage entities. This list is not meant to be all-inclusive as to the entities that the Board expects would not meet the requirements in this proposed Update for deferral. Do you believe that the amendments to paragraph 810-10-65-2 in this proposed Update clearly identify the population of entities that would qualify for deferral? If not, please provide suggested language to assist the Board in achieving this goal.*

We believe that the following implementation issues would need to be resolved for entities trying to determine whether they qualify for the deferral under the proposed amendments to ASC 810-10-65-2:

- Although the Codification does not define "asset-backed financing entities," the Board has provided examples of distinguishing characteristics of such structures in the proposed ASU's Basis for Conclusions. Unless these characteristics are made part of the final ASU, the goal of the proposed deferral is not likely to be achieved.
  - For example, if an entity applies the conditions in ASC 810-10-65-2 without taking into account the discussion in the proposed ASU's Basis for Conclusions (which will not be codified), the entity may conclude that the collateralized debt obligation structure outlined in Example 2 of Appendix C in Statement 167 **would** qualify for the deferral.
- In a limited partnership, a general partner often has unlimited liability for obligations of the partnership. Although many general partners limit their legal liability by establishing a limited liability company (LLC) to serve as the general partner, it is unclear whether the Board intends that other investment partnerships (that do not set up an LLC to serve as the general partner or otherwise limit their liability) qualify for the deferral. Paragraph BC6 of the proposed ASU seems to indicate that the Board intended that most general partners will **not** qualify for the deferral. Paragraph BC6 states that "in situations in

Page 3  
January 5, 2010  
File Reference No. 1750-100

which a reporting entity has explicitly (through contract or a legal requirement) or implicitly guaranteed the debt of an investment fund, this guarantee is considered to be a potential funding of losses of the entity and . . . would disqualify the entity from the deferral.” The Board should clarify whether (1) the obligation of the ultimate reporting entity to fund the losses is the factor that determines whether the entity qualifies for the deferral and (2) legal protection provided by an intermediary entity that limits the financial risk to the ultimate reporting entity should be considered.

- The Codification defines securitization as “the process by which financial assets are transformed into securities.” Application of this definition to mutual funds or hedge funds could indicate that these funds meet the definition of a securitization entity (and thus would not qualify for the deferral).

The ASU’s Basis for Conclusions describes how the Board expects the deferral conditions to be applied. We therefore recommend the following changes to the proposed ASU to help alleviate some of the implementation issues noted above:

- The language in paragraph BC9 of the Basis for Conclusions should be in paragraph 810-10-65-2 of the proposed ASU. Paragraph BC9 appears to provide the Board’s intended application and definition of the term “asset-backed financing entity.” The paragraph also appears to illustrate how the Board is attempting to distinguish certain collateralized debt obligation structures from mutual funds or hedge funds.
- It appears that the Board does not want any of the specific entities discussed in Appendix C of Statement 167 to receive the deferral. If our understanding is correct, the language in paragraph BC10 of the Basis for Conclusions (which states this intent) should be in paragraph 810-10-65-2 of the proposed ASU to help clarify how the deferral criteria should be applied.
- The Board should clarify its intent regarding investment funds that are structured as limited partnerships and include a specific discussion on whether the Board intends differing outcomes depending on whether the general partnership interest is held through a limited liability company or another form of ownership that limits the financial risk to the general partner.
- The Board should consider more narrowly defining “securitization entity” to appropriately reflect its intended meaning (or otherwise make it clear that the meaning of the term is not the same as the broad definition of “securitization” in the Codification).

*Question 3: Do you believe that the Board’s proposed change to include language to clarify that related-party arrangements should be considered for all of the conditions in paragraph B22 of Statement 167 is operational and achieves the Board’s objective?*

We agree that all of the conditions in paragraph B22 of Statement 167 should take into account related-party arrangements. However, the amendments in the proposed ASU state that related parties of the entity’s decision maker(s) or service provider(s) “should” be considered in evaluating the conditions in paragraph B22. We believe this language would indicate that related parties may not need to be considered in all scenarios or that the related-party relationship could be disregarded after an initial consideration. If this is the Board’s intent, then the Board should state that. If this is not the Board’s intent, we recommend that the introductory sentence of paragraph 810-10-55-37A state, “For purposes of evaluating the conditions in the preceding paragraph, any interest in the entity that is held by a related party of an entity’s decision maker(s) or service provider(s) shall be treated as the decision maker’s or service provider’s own interest.”

Page 4  
January 5, 2010  
File Reference No. 1750-100

Our amended wording aligns the amendment to paragraph 810-10-55-37A with paragraph 16 of Statement 167.

*Question 4: Do you believe that the Board's proposed changes to condition (c) in paragraph B22 of Statement 167 are operational and achieve the Board's original objective in Statement 167 that a quantitative test should not be the sole determinant of whether a fee arrangement is a variable interest?*

We do not believe that the Board's proposed changes to condition (c) in paragraph B22 of Statement 167 are operational because, as written, the intent of the changes is unclear. We believe the Board should either (1) not make the proposed revisions to paragraph B22(c) or (2) clarify its intent for making the changes.

If the Board is simply trying to state that an entity is not always required to perform a detailed expected-loss calculation to assess condition (c), we do not believe the proposed amendment is necessary as we believe this concept is already established in practice. For example, if a decision maker holds 100 percent of the residual interest in an entity (and the residual interest is substantive), one may conclude that it is not necessary for an entity to perform a quantitative test to assess condition (c) (i.e., one could qualitatively conclude, on the basis of specific facts and circumstances, that holding all of a substantive residual interest would represent a more than an insignificant amount of the entity's expected losses or expected residual returns).

Otherwise, the Board should state (or at least provide examples of) what qualitative conditions should be considered in addition to the quantitative conditions in paragraph B22. Statement 167 indicates that the Board believes that the paragraph B22 conditions are adequate for determining whether an enterprise is acting as a fiduciary. If the Board now believes that those conditions, in isolation, are inadequate in the determination of whether an enterprise is acting as a fiduciary, it should either address that concern as part of its joint deliberations with the IASB or clarify the qualitative conditions that should be considered as part of the paragraph B22 analysis.

If the Board does make the proposed revisions to condition (c) in paragraph B22, we believe it should make similar revisions to condition (f). We understand conditions (c) and (f) to require a consideration of the variability absorbed by a decision maker's or service provider's fee and other interests (both individually and in the aggregate). Therefore, we believe any changes to condition (c) should also be made to condition (f). If the Board believes these conditions require different analyses, it should clarify why and how the analyses differ.

**Deloitte & Touche LLP**  
**Appendix B**  
**Other Items for Consideration**

The following are our additional comments on the proposed ASU:

- The final ASU should clarify that if an entity meets the deferral requirements under ASC 810-10-65-2, the reporting entity should apply the guidance under Interpretation 46(R), before the amendments by Statement 167, to determine whether an entity is a VIE, whether the reporting entity is the primary beneficiary of the VIE, and whether the reporting enterprise holds a variable interest in the entity.
- The Board should consider whether entities created in association with the Federal Reserve's and the Treasury's joint Term Asset-Backed Securities Loan Facility (TALF) program or the Treasury's Public-Private Investment Fund (PPIF) program would qualify for the deferral. If the Board intends that the application of the deferral will result in such entities being deferred, it should explicitly state that intention.
- The proposed ASU indicates that a securitization entity would not be eligible for the deferral. It is therefore unclear why a separate condition exists stating that a former qualifying special-purpose entity (QSPE) would not be eligible for the deferral.
- Paragraph BC7 states, in part, that the "Board decided that an investment in an entity, regardless of its magnitude, *that does not require the reporting entity to fund losses* that could potentially be significant to the entity would not preclude that entity from qualifying for the deferral" (emphasis added). If the Board believes that holding an investment (either a residual or a senior holding) could, in isolation, represent an obligation to fund losses of an entity, it should clarify that in the ASU. The language in paragraph BC7 implies that something other than an obligation to reimburse the VIE or its investors for losses in the future could represent an obligation to fund losses (i.e., something other than an obligation to "write a check" in the future).
- We recommend the following revision to the sentence below in paragraph BC6 (added text is underlined):

However, the Board believes that in situations in which a reporting entity has explicitly (through contract or a legal requirement) or implicitly guaranteed the debt of an investment fund, this guarantee is considered to be a potential funding of losses of the entity and, accordingly, would disqualify the entity from the deferral provided by this proposed Update if the guarantee could potentially be significant to the investment fund.

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