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Financial Accounting Standards Board  
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**Re: International Accounting Standards Board Staff Draft, *Consolidated Financial Statements***

Credit Suisse Group ("CSG") is pleased to provide the Financial Accounting Standards Board ("FASB") with our response to the questions relating to the Roundtable Agenda for discussion on the International Accounting Standards Board ("IASB") Staff Draft, *Consolidated Financial Statements* (the "Staff Draft"). CSG's 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.

Our responses below should only be taken in the limited context of providing feedback to the FASB in determining next steps for its technical plan, and should not be taken as support for issuance of the IASB Staff Draft or as support for any similar guidance to be issued by the FASB.

Following are our responses to the specific questions raised in the Roundtable Agenda.

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 1968, or Julie Roth at (212) 538-4847 or Todd Runyan in Zurich at +41 44 334 8063.

Sincerely,

Rudolf Bless  
Managing Director  
Deputy Chief Financial Officer

Julie Roth  
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### **Question 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?*

In concept, we support one principle as a standard for determining whether consolidation of an investee is appropriate. Slight differences in the characteristics of an entity being evaluated should not direct preparers to different consolidation models that could yield fundamentally different answers. Overall, we agree with the principle that control is the more appropriate way to determine if an entity should consolidate another entity. Consolidation is appropriate when the parent can utilize the assets of the investee as if they were its own assets – freely and without limitations. Any limitations that relate to the purpose and use of those assets can be an indication that the entity does not control the investee.

We note that one of the key principles introduced in this Staff Draft is the concept of whether an entity is acting as principal versus agent. This concept is not currently used in the consolidation guidance under U.S. GAAP and we note that it is unclear how this guidance will be applied or what conclusions will be reached on various common market structures, such as private equity funds, hedge funds and mutual funds. We would need to understand how such guidance would be applied to these and other structures before we could conclude whether such guidance was an improvement from current accounting.

### **Question 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<sup>1</sup>)? 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?*

The Staff Draft does not have a significant amount of guidance as it relates to what are referred to as variable interest entities under U.S. GAAP. Therefore, the real question being asked is whether the definition of control is sufficient for determining whether or not an entity should consolidate a variable interest entity, or an entity where key decisions are not made through voting rights. When we considered how to apply the guidance in the Staff Draft to common variable interest entity structures, we were often guided by the experiences we have recently had in the implementation of ASC Topic 810 in the absence of guidance in the Staff Draft. It is

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<sup>1</sup> Originally issued as FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)*.



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not clear whether a preparer who has not applied ASC Topic 810 would reach the same conclusions.

One difference noted was that the Staff Draft does not include guidance as in ASC 810-10-25-38D relating to multiple parties directing the same activities. In those cases, ASC 810 indicates that the party, if any, with the power over the majority of those activities shall be considered to have power. The Staff Draft should clarify what guidance should apply in those situations. We support the notion of ASC 810-10-25-38D.

We also believe that the Staff Draft might require some more background on what returns in a variable interest entity should cause the party with power to consolidate. The guidance in paragraph B51 clarifies that a fixed bond and a fixed performance fee could result in the investor having variability, but there is no further guidance that shows how those concepts would be applied. Further, there are common relationships with variable interest entities that are not currently considered in analysis under ASC 810 because they do not absorb variability. While we do not think the same detailed guidance is required, there should be some more background that supports conclusions that, for example, plain vanilla interest rate swaps, would not be a return that, when combined with power, would require an entity to consolidate an investee.

The Staff Draft does not provide guidance on what level of returns, combined with control, means the party in control has power. We think that only significant returns should be considered. Further, we believe that the Staff Draft should clarify the concept that expected or anticipated returns should be considered to make it clear that not all possible outcomes should be considered in the analysis.

### **Question 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<sup>2</sup>. 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?*

We agree that a reporting entity can have control with less than a majority of rights when that control is evidenced by other contracts or legal arrangements that give the reporting entity control. We would view this as the current ability. However, the Staff Draft includes the concept of potential power which we think is different than, and not a subset of, current power. We think you have current power based on your current rights, even if your current rights include taking an action that may or may not occur. We believe that this is different from a scenario where you could have power, but you still need to do something to obtain that power. We view the latter is potential power and we think that should play less importance in the consolidation analysis than current power.

We also don't think the Staff Draft is clear on when the assessment of power should rely on the rights under paragraph B11 and related guidance or when there is further analysis required, for

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<sup>2</sup> A reporting entity controls another entity when the reporting entity has (1) power over the other entity, (2) exposure, or rights to variable returns from their involvement with the other entity, and (3) the ability to use its power over the other entity to affect the amount of the reporting entity's returns.



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example, whether the reporting entity has delegated power in paragraphs B53-B68. For example, paragraph B11, which sets forth how power arises from rights, states that examples of rights that, either individually or in combination, can give an investor power include in paragraph B11(c) rights to appoint or remove another entity that participates in decisions about the relevant activities. Investors that have substantive rights to remove the general partner of a fund have power pursuant to this guidance. However, if the guidance on delegated power is applied, a different conclusion may be reached because the delegated power guidance includes, in addition to kick-out rights, consideration of the risks and rewards held by the decision-maker. As discussed below, we would view the existence of substantive kick-out rights as determinative, and, therefore, would not consider the other factors relating to whether the reporting entity is a principal or agent. We believe the Staff Draft should clarify whether delegated power needs to be considered in the analysis when there is already a conclusion the investors have substantive rights to remove the decision-maker.

#### **Question 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?*

When assessing consolidation based on voting rights the reporting entity either does or does not have control based its existing voting rights. In contrast to the Staff Draft, we do not think an entity can "unilaterally direct the activities of the entity that significantly affect the entity's returns" without the unilateral legal right. We do not agree that non – contractual arrangements could be used to conclude a party has power including; voting patterns (per B38(d)), and dispersion of voting rights (B38 (a)). Non contractual indicators of control are not indicative of how decisions could be currently exercised. The dispersion of shares and parties that participate in decisions made at shareholder meetings may frequently change and should not be relied upon to assess current powers. An entity with a significantly large minority interest is still just that – a minority interest holder. Unless other parties are deemed to be that investor's agent, they should not be deemed to have control merely by having a larger portion of the voting shares.

#### **Question 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*



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*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?*

As previously stated, for an entity where power is obtained through voting rights, we do not agree that an additional test is required for large minority investors. If the guidance is retained, then at a minimum we believe a pattern of voting and controlling key decisions would be required before that investor would consolidate. There should be a presumption that the minority investor does not control, unless there is evidence that indicates otherwise. We believe relying on the legal rights when legal rights govern control would produce more consistent and appropriate results than a model that requires judgment on whether a large minority investor has control.

#### **Question 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?*

Consistent with our views above in Question 3, when an entity is governed by voting rights current, legal rights held by an investor (including rights obtained by contracts) should be considered. It is our view that potential voting rights should not be included as the potential investor may not have the current ability to influence the voting process. We do not disagree with the principle that facts and circumstances should be considered to ensure that the parties are making independent decisions. However, we do not believe the economics of the arrangement alone will be the deciding factor – an option may be in the money to an investor but the investor may not have the means or interest in exercising that option. If the reporting entity is aware of its desire to control an investee, this factor would be considered in the analysis.

We also think the consideration of options in the assessment of current control is complex for the analysis of potential voting rights and whether an investor has a sufficiently large investment to have de facto control. For the latter, it would be challenging to assess which investors own the shares, but to add the layer of what option arrangements can exist between shareholders demonstrates the complexity when you move away from a contractual rights model to consolidation.

#### **Question 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*



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*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?*

We believe the underlying principle in the guidance in the Staff Draft has strong merit – if you are acting as an agent you should not consolidate. However, the factors to consider include considerations of both control and risks and rewards. It is not clear which, if any factor, is more relevant in the analysis.

We believe that the factors in (a) and (b) can be useful in determining whether a decision-maker has control. Application of the factors in (c) and (d) are more subjective and it is not clear in the Staff Draft what type of remuneration or involvement is that of an agent versus a principal. A reporting entity can have risk of a principal but still not have control over an investee and support for this concept is not clear in the Staff Draft.

It would be our expectation that the guidance was not intended to cause consolidation of “traditional” mutual funds, though global firm mutual fund structures and fees can vary significantly and further analysis is required. On the other hand, the impact to other alternative investment products, such as private equity funds or hedge funds, is unclear. The decision-maker of these funds, often as a general partner of a limited partnership, may hold an investment in the fund, either directly or via employee plan participation. The investment is typically the same investment held by the third-party investors that do not give the reporting entity any incentive to make different decisions than if they did not hold those investments.

It is our view that if there are substantive kick-out rights, as currently described in ASC 810-20-25-8 (not limited to being held by one investor), that alone can lead to a conclusion that the decision-maker does not have power. This is consistent with the guidance relating to kick-out rights in ASC 810-20-25-8, which we think should be retained. Given the other factors to consider in the principal versus agent analysis, it is unclear whether the Staff Draft will have the same results as in ASC 810-20-35-8 and we would be interested in both the FASB and IASB's views on this issue.

Paragraph B65 states that “remuneration that exposes a decision-maker to variability of returns does not, in isolation, preclude the entity from being an agent if the remuneration aligns the returns of the decision-maker with those of other interest holders.” Broadly, we agree with this concept. However, it is unclear how this guidance would be applied when an asset manager receives a market-based, arm's length fee, but some of the fee's variability may move more closely with, for example, the subordinated investors. There might be certain investors who benefit more from the management of the assets, but in our view that should not preclude a manager from being an agent.

The concept of delegated power, or principal versus agent for the consolidation analysis, is a new concept and the Staff Draft does not include any examples to assist in the application of the guidance. It is our view that the Staff Draft would benefit from some key examples that demonstrate this principle to common market transactions. This will help in the consistent application of the guidance.



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**Question 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?*

As noted above, we believe substantive removal rights held by multiple parties in and of itself should lead to a conclusion that the decision-maker does not have power. It should not only be an indicator but it should be a determinative factor in the analysis. Further, we strongly support a model that concludes substantive kick-out rights can be held by one party or multiple parties. We do not think there is conceptual support that kick-out rights can only be substantive when held by only one party. Commercially, many structures could not have one party have all the control to remove the decision-maker because there would be no economic reason the other investors would give one party this important decision. We agree we would consider the factors included in the Staff Draft in determining whether the kick-out rights were substantive and that conclusions will be based on facts and circumstances.

**Question 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?*

We support the requirements to reassess whether a reporting enterprise controls another entity. However, as noted above, we would expect operational difficulties in performing the assessment if it has to consider the ownership and actions of third-parties, as would be required if the guidance requires significant minority interest holders to assess whether they have control.