

October 18, 2010

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

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

Dear Mr. Farber,

On behalf of SIFMA's Asset Management Group ("AMG") Accounting Committee, we would like to express our interest in participating in either of the FASB Public Roundtable Meetings on the IASB Staff Draft, *Consolidated Financial Statements* ("Staff Draft"). The AMG's members represent U.S. asset management firms whose combined assets under management exceeds \$20 trillion. The clients of AMG member firms include, among others, registered investment companies, state and local government pension funds, universities, 401(k) or similar types of retirement funds, and private funds such as hedge funds and private equity funds. The AMG Accounting Committee includes firms that utilize Generally Accepted Accounting Principles in the United States as promulgated in the FASB Accounting Standards Codification ("US GAAP") as well as International Financial Reporting Standards ("IFRS").

We fully support efforts to improve financial reporting and to provide more relevant and reliable information to users of financial statements. Soon after the issuance of US GAAP guidance for consolidating variable interest entities (FASB Accounting Standards Codification Subtopic 810-10, Consolidation<sup>1</sup>), the AMG formed the Accounting Committee to address various implementation issues. The Accounting Committee includes many of the industry's major independent asset management firms along with banks and insurance companies with significant asset management businesses. The individuals who serve on the Accounting Committee are senior accounting policy professionals at their respective firms.

Asset managers provide advisory, consultation, investment and asset management services to various entities (funds) with respect to the acquisition, development, ownership, management, leasing, marketing, financing and refinancing, and disposition of investments, in a manner which maximizes the net present value of the proceeds derived from the investments while minimizing the associated risks. In virtually all cases, the business model for an asset manager is that of an agent. Under common and statutory law, the obligation to act in the "best interests" of a third party arises in the context of a fiduciary relationship. Under FINRA, fiduciary relationships, in turn, do not arise from the mere provision of education, suggestions, recommendations or general or incidental advice of the kind that is customarily provided by a broker to a client in a retail relationship. Instead, fiduciary obligations arise in the context of advisory relationships in which the advisor is granted discretionary authority or in which the advisor is retained in order to provide personalized or tailored advice on which the advisee is expected to rely in making or authorizing an investment decision.

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

While an asset manager may hold an economic interest in a managed fund, the asset manager holds such interests so as to be aligned with the interests of the other investors and is generally not required to fund losses of the managed fund. These economic interests are generally expected or required by third-party investors. In addition, the asset manager's related parties (e.g., employees, officers, and employee saving plans) may also hold an economic interest in a managed fund sponsored by the asset manager. In such circumstance, the related parties' investment decisions are made independent of "corporate purposes" and are made on a voluntary basis.

It is important to note that without the deferral to the variable interest model in ASC Topic 810, certain constituents' interpretation of the amendments to that model may have required significantly more managed funds to be consolidated by asset managers. However, such views were not consistent with the AMG Accounting Committee's initial interpretation of the amended guidance under the variable interest model (FAS 167) prior to the issuance of the deferral. This is a result of the application of certain provisions in ASC Topic 810 in practice that was unanticipated by the Accounting Committee; for example, ASC 810-10-55-37 in determining whether an asset manager is acting as a fiduciary (particularly with some constituents establishing bright line guidelines for significance), ASC 810-10-25-38A(b) in determining whether the assets manager's interests are potentially significant, in even the most remote possible scenarios, and ASC 810-10-25-38C in determining whether a Board of Director's vote constitutes a unilateral kick-out right. As discussed below, we believe that the non-consolidation of managed funds is appropriate in situations where the asset manager is acting as an agent and it has no obligation to fund losses of the entity. If accounting guidance resulted in the asset manager consolidating the managed funds, the financial statements would not reflect the asset manager's business model, which is to conduct asset management services in exchange for fees.

Although not a FASB matter, we are concerned that the IASB did not re-expose the Consolidation Staff Draft for comment. It is our view that the Staff Draft is significantly different from ED 10, *Consolidated Financial Statements*, published in December 2008, specifically as it relates to the determination of principal versus agent. We believe that it would have been beneficial for the IASB to have re-exposed the Staff Draft to understand whether the guidance is operational for asset managers. Additionally, it is important to understand how the guidance provided in the Staff Draft will be applied in practice.

### **Overall Comments**

We applaud the FASB for taking the initiative of reaching out to constituents before deciding whether to advance a project on consolidation. With the issuance of the Staff Draft on September 29, 2010, we have had limited time to fully consider the implications of the forthcoming IASB consolidation standard. As such, in responding to the FASB's Roundtable Agenda Request, we have focused our attention on how the Staff Draft may affect the asset management industry and the overarching theoretical principles of the document. However, we have not had sufficient time to evaluate the full effect such a standard might have on the variety of entities and relationships that exist within the asset management industry. Our comments, therefore, reflect our initial observations and perspectives and are focused on key matters which appear to impact the asset management industry. We will continue to study the Staff Draft and the implications to the asset management industry and may have additional comments or suggestions.

While we support the single control concept, with regard to the application guidance in Appendix B of the Staff Draft, there are certain provisions for which we do not agree and others for which we believe additional clarifying guidance is needed (see our response to Question 7 for more details on our concerns). We also welcome additional examples (possibly in a manner similar to Appendix D of FAS 167) to further illustrate the principles of the standard and how the various factors and indicators should

be evaluated. Additional guidance would be useful in operationalizing the standard and enhancing comparability among reporting entities and minimizing differences in interpretation among preparers,

auditors, and regulators. The Accounting Committee has extensive knowledge of the various asset management transaction structures and welcomes the opportunity to assist in the development of examples related to the asset management industry.

We recommend that an explicit statement be included in the control section of the Staff Draft to state that the determination that an investor is an agent precludes that investor from being deemed to have the power over the investee. The AMG Accounting Committee's view of the asset management industry is that asset managers typically act as agents. The financial statements of the asset managers should reflect this agency relationship; accordingly, the consolidation of managed funds by asset managers acting as agents would distort the financial statements of the industry. As such, the application of accounting guidance should typically result in an asset manager being deemed an agent.

As noted below, we believe that with further clarification to the factors provided in paragraph B55 the Staff Draft, it is likely that an asset manager would be viewed as an agent in many structures and, therefore, would produce financial statements that more faithfully represent our business. Specifically,

- the source of power and the related governance structure (e.g., the role of the boards of directors) for an investee should be included as an additional criterion,
- the decision-maker's risk of exposure to fund losses should be included as an additional criterion and be weighted heavily,
- clarification is required to acknowledge and consider the roles of parties, other than the decision-maker, in establishing the founding documents of an investee,
- the investors' ability to withdraw from the managed fund (i.e., "vote with their feet") should be included as a factor of consideration, and
- the evaluation of the decision-maker's remuneration and other interests should be amended to reflect the fact that tiered fee structures and holding a portion of subordinated interests, in many cases, aligns the decision maker's interest with those of the investors.

Providing such additional clarifications, in conjunction with guidance on how to weigh the various factors, would help to ensure that the conclusions reached in practice are consistent with the Board's intent. Of course, proper vetting through the exposure draft process will be required to uncover inconsistencies in interpretation among the FASB's and the IASB's constituents.

We recommend that the Staff Draft incorporate guidance that also excludes interests of employees and employee benefit plans of the decision maker from this analysis. We also note that ASU 2010-10 clarified that when evaluating fees paid to decision-makers, any interest in the entity held by a related party of the decision-maker should be treated as if it were the decision-maker's interest. ASC 810-10-55-37A excluded interests of employees and employee benefit plans of the decision-maker from the decision-maker's overall interests unless they were intentionally used to circumvent the provisions of the guidance. We believe that this concept is an important provision to ensure that representationally faithful financial results are presented.

We are willing to work with the FASB to assist you in gaining a further understanding of the industry, including the various structures, and the potential implications of any new guidance. We would also like to suggest that the FASB conduct field visits with asset management companies to discuss any potential amendments to the consolidation guidance before continuing deliberations.

## **Responses to Roundtable Agenda**

***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>2</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?***

In certain circumstances, considering the provisions of the Staff Draft while disregarding the guidance relating to decision-making relationships and related party arrangements, differing consolidation conclusions may be reached when considering the application guidance relating to exposure to variable returns, potential voting rights, de facto control, and removal rights. A different consolidation conclusion may result for entities in the voting interest model versus the variable interest model. Please refer to our responses below, which further articulate those situations that may produce different conclusions relative to ASC Topic 810 when evaluating which investor(s) has power.

In regards to the reporting entity's exposure to variable returns, we believe that the guidance provided in the Staff Draft as compared to ASC Topic 810 may result in different consolidation conclusions. The Staff Draft does not explicitly state that probability should be considered in the analysis. We recognize that paragraph BC 42 of the Staff Draft states that "using the term 'returns' ... makes it clear that it is the potential to receive returns that is important" and that some may interpret this to require all potential scenarios to be considered (without considering probability). However, we disagree and believe that the reporting entity should factor in its expectations when determining its exposure to variable returns. The evaluation of exposure to benefits and losses per ASC 810-10-25-38A(b) does not consider the probability of outcome. We believe that this would be a significant improvement over the guidance in ASC Topic 810 as it reflects the way management makes decisions over the business. Furthermore, although the Staff Draft does not address the magnitude of returns when evaluating investees for consolidation, it is our belief that the magnitude and direction of returns/losses should be considered based on their materiality to the investee. This is in contrast to ASC Topic 810 where there has been wide divergence in the interpretation of the "significance criteria".

Finally, in considering the guidance in paragraph 7(c) of the Staff Draft, we believe that when evaluating the linkage between an investor's power over the entity and its ability to use its power over the investee to affect the investor's returns, the reporting entity's obligation to fund losses should be considered. An investor who has exposure to losses will generally negotiate power in order to manage their risk of loss. As an asset manager does not have the risk of loss from the managed funds, its decision-making ability is used to manage the risk of other investors, not their own. We believe that the absence of an obligation to fund losses is a strong indicator that the asset manager is utilizing such power as an agent.

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<sup>2</sup> Originally issued as FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)*.

**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 exist) 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?*

We agree with the Staff Draft that the combination of the reporting entity's involvement may provide it with the power over the entity when such investor with less than a majority of the voting rights has other contractual arrangements that provide it with decision-making abilities and is deemed to be a principal under the guidance in paragraph B55 of the Staff Draft. However, when considering a reporting entity that holds less than a majority of the voting rights and has no other contractual arrangements with the investee whose power emanates from voting rights, we believe that the reporting entity does not have power as it cannot independently make decisions. Any outcome of an investor vote is still dependent upon the actions or inactions of other shareholders. Implying via consolidation that the significant minority investor does in fact control the entity would be misleading to investors.

In assessing whether an investor's voting rights are sufficient to give it power, the Staff Draft provides four criteria in paragraph B38 to assist with the evaluation. When considering the four criteria, an assessment of power may result in diversity in practice as the criteria are subjective and may require access to information about other investors. As the action or inactions of the other parties involved with the investee must be considered, a reporting entity would need to assess the intent and ability of another party without the necessary information to make such a determination. For example, a reporting entity may need to assess whether another party's call option over a majority of the voting rights is substantive without having all of the necessary facts. Additionally, in some situations it would be difficult for the reporting entity to determine whether there were significant blocks of voting rights held by a single entity or groups of related entities, which could impact the analysis.

As another example, there are many entities with widely disbursed equity ownership interests. If based on historical trends, it is likely that the outcome of an investor vote will be within a very small margin (say 48 – 52%) and one investor acquires a 10% ownership interest, that investor could be determined to have the power over the entity. While this is an unlikely conclusion, it should be noted that such a view could be supported by the application guidance in the Staff Draft illustrating a potential for diversity in practice.

**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 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 controlled through voting rights (absent other contractual arrangements), we disagree with the concept that a reporting entity holding less than a majority of the voting rights can be determined to have power. In considering the additional indicators noted in paragraph B41 of the Staff Draft, which references paragraphs B14 and B15, we continue to believe that such determination cannot be made without creating diversity in practice. It is our view that power based on voting rights should be determined by identifying the holder of the majority of the voting rights.

However, if such guidance were to be retained we believe that the list of indicators should be further expanded to include consideration of the entity's governance structure and examples that illustrate application of the principles proposed in the Staff Draft. In evaluating the governance structure, various components should be considered such as the composition of the board of directors, other governing bodies, independence considerations, how the role and power of the governing board was established, power granted through contractual arrangements, and the provisions of the entity's governance documents.

Furthermore, we do not believe that the prior employment of a key management personnel should be an indicator that the minority investor has power (i.e., paragraph B15(a) of the Staff Draft). Once the employment relationship has expired, the employee is no longer bound to act in the interests of its prior employer. Unless there are continuing contractual relationships or other factors that might suggest that the reporting entity has the ability to control those former employees, there is no reason to presume that a special relationship exists between an individual and its previous employer for the purposes of determining power. This is consistent with the view that power is currently exercisable and prior employment is a historical event that should not necessarily be considered.

***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*
- 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?*

For the asset management industry which operates under a principal-agent relationship, the determination of the agent relationship is critical for accounting purposes. Due to its importance, we believe that an explicit statement be included in the "Control" section of the Staff Draft to state that the determination that an investor is an agent precludes that investor from being deemed to have the power over the investee.

We believe that the consideration of many of the factors related to assessing decision-making arrangements in the Staff Draft is an appropriate methodology. The determination of whether a reporting entity is acting as an agent versus a principal requires a significant amount of judgment and should be determined after considering all of the specific facts and circumstances of the transaction. While we

agree with the conceptual framework of the Staff Draft, we recommend the following modifications or enhancements to the Staff Draft to ensure that the guidance is clear and operational.

- When assessing whether a reporting entity has power over the investee, paragraph B45 of the Staff Draft states that in certain situations, the purpose and design of an investee should be considered. We believe the governance structure of the investee should be a more prominent consideration when evaluating power.

For example, certain asset management funds have a Fund Board of Directors (“BOD”) which is empowered to represent the entity’s investors and is comprised of majority independent members with a fiduciary duty to the investees. The Fund BOD generally has the power to direct the activities of the entity by establishing the operating policies, which must be complied with by asset managers. Similar to a BOD for typical operating corporations, a Fund BOD provides a centralized body with the ability to control significant decisions on behalf of fund investors. Their power emanates from their role to represent the fund holders and while no one board member can control the board’s decisions, this centralized body performs its function as a unit and, in certain cases where the roles and functions are deemed substantive, represents a single body with the ability to direct the operations of the entity. In our opinion, an understanding of how the governance structure of an entity operates is an indicator when evaluating power. For example, in many cases an asset manager may be responsible for the day-to-day asset management activities, but the Fund BOD nevertheless retains responsibility for all decisions undertaken by the asset manager. In those cases where the asset manager is executing the investment strategies of the Fund BOD, we believe that the governance structure typically provides that power to the Fund BOD and by extension the investors. Therefore, we believe that the Staff Draft should include consideration of the entity’s governance structure as an indicator when assessing whether a reporting entity acts as an agent.

Furthermore, as stated below, we believe that substantive majority removal rights should be a determinative factor when considering whether a decision-maker is an agent. Similarly, we believe that if the investors of a managed fund have substantive removal rights over the BOD, and the BOD has removal rights over the decision-maker and the ability to direct the operations of the fund, then the investors ultimately have removal rights and decision making power over the asset manager and the managed fund. Therefore, in considering the governance structure as an indicator when assessing whether a reporting entity acts as an agent, we believe that consideration should also be given to the investors’ rights over the governance structure.

- The example in paragraph B59 of the Staff Draft states that “if a decision-maker determined the founding documents of the investee or other documents that determine decision-making rights, the activities that are embedded in those documents that the decision-maker may perform shall be considered part of the decision-maker’s authority.” We believe that this example oversimplifies the processes that are typically undertaken, and the parties involved, when an entity’s founding documents are established. For certain funds, the investment guidelines with which an asset manager must comply and the triggering criteria that require or constrain action by the asset manager are established through active negotiation between third parties (e.g., sponsors, investment banks, and/or investors) and the asset manager. In instances where the fund has rated securities, a rating agency is also involved in the establishment of the governing documents. The goal of this process is to establish a commercially feasible investment to meet external investor needs and to ensure their interests are properly looked after. The decision making power emanates from the representatives of the investors, not solely the asset manager.

In circumstances where the asset manager sponsors the fund and is more involved in the design of the entity, the design decisions made are based upon the perceived or actual demands of investors. The asset manager is simply acting as an agent to facilitate the investors' investment strategy.

Therefore, while we agree that consideration should be given to the level of influence the decision-maker had in determining restrictions on its ability, all factors related to the establishment of the entity should be considered. The asset manager should not be presumed to be a principal or precluded from being deemed an agent. As such, we recommend that the example in paragraph B59 of the Staff Draft be deleted or, at a minimum, clarified.

- An additional factor that should be considered is the decision-maker's obligation to fund losses. In paragraph B55(d) of the Staff Draft, consideration is given to the decision-maker's exposure to variability of returns from other interests that it holds in the investee. We believe that consideration should also be given to the decision-maker's obligation to fund losses of the entity, which is consistent with deferral to the variable interest model in ASC Topic 810. Additionally, it is our view that greater weight should be given to an entity's obligation to fund losses versus its exposure to variability of returns. In managed funds, investors of an entity are typically exposed to all of the losses of the entity. The asset manager generally has no obligation to fund losses. We believe that this factor strongly indicates that the asset manager is acting as an agent.
- Furthermore, paragraph B68 of the Staff Draft states that consideration should be given to the maximum exposure of the decision-maker to variability of returns from the investee. Based on the above discussion, we believe that such factor should instead consider the decision-maker's maximum exposure to loss.

While we understand the view presented in paragraph B51, which states that fees absorb variability as they are exposed to the performance risk of the investee, we do not believe that they are exposed to the risk of loss as they are not required to fund losses. Asset management fees which are not earned do not represent a loss which the asset manager funds but are generally reflective of the fact they are structured to give the investors assurance the asset manager's interests are aligned with their own.

- In addition to the guidance provided in paragraph B65 of the Staff Draft, we believe that an example should also be provided to further illustrate the provisions of the standard and address situations when an investee has a tiered capital structure. That is, if an asset manager's market-based (i.e., commensurate with the level of effort) remuneration, which may be subordinated, is compared to a senior investor's interest, the decision-maker's exposure would vary from the other investors. However, if that same remuneration were compared to a subordinated investor, it would be aligned with that investor. Frequently, an asset manager's remuneration is structured in a manner to ensure that at least a portion of the fee is aligned to interests of subordinated investors. Furthermore, such remuneration is based on the demands of the market investors and not established at the asset manager's election for investment purposes.
- Paragraph B67 of the Staff Draft provides guidance on the decision-maker's exposure to variability in returns from other interests. In the asset management business, other interests held by the asset manager are designed and required by the market to align the asset manager's interests with those of the other investors. As it relates to the asset management business, we strongly disagree that the decision-maker may make decisions different from those it would make if it did not hold those other interests. To the extent that the asset manager would make decisions



different from those it would make if it did not hold the other interests, it would be for the benefit of the third party investors, which we believe is a very strong indicator that the decision-maker is an agent and not a principal.

We recognize that if the asset manager holds a sizeable amount of other interests in the investee, such factor would need to be considered in the evaluation of whether or not the investment motive was as a principal rather than on behalf of the third party investors (i.e., as an agent).

- To reiterate, we believe that it is critical to explicitly exclude the investments made by certain of the reporting entity's related parties from the assessment of whether the reporting entity is acting as agent. That is, consistent with the guidance provided in ASU 2010-10, employees, officers, and employee savings plans should be excluded as related parties of the asset manager, unless such investments were used intentionally to circumvent the accounting guidance.

Based on the guidance provided in the Staff Draft and our comments noted above, we believe that an appropriate conclusion would be reached. By providing the above noted additional clarifications and examples (e.g., an illustration of how an asset manager acting as an agent, may align its interests with other investors), we believe that there would be better consistency in application of the guidance.

While an asset manager may be viewed as having decision-making ability over a fund, as an agent the asset manager typically has the exposure, or rights, to only a small portion of the variable returns of the investee through its remuneration. When acting as agent, and receiving remuneration for its services, the asset manager's ability to make decisions does not provide it with the ability to use its power over the investee to significantly affect the amount of the asset manager's returns versus the returns of the principal investors. The decisions that are made by the asset manager are for the benefit of the principal investors as their returns are the ones that are most significantly impacted by the asset manager's decisions. The principal investors absorb significantly more of the investee's variability driven by the asset manager's decisions, which not only indicates that the asset manager is an agent, but also that it does not have control over the entity (as defined in the Staff Draft).

***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?*

We are in agreement that substantive removal rights over the decision-maker should be considered in the evaluation of whether the decision-maker is an agent. We further believe that substantive removal rights should be a determinative factor that a decision-maker is acting as an agent and that the decision-maker does not have power over the entity. That is, in addition to the consideration of unilateral substantive removal rights, we believe that a removal right which has no substantive barrier to exercise (even if held by broad group of investors) and may be exercised by a simple majority vote of investors is also a determinative factor that the decision-maker is an agent. As it relates to the asset management industry, removal rights afforded to the majority of the investors (i.e., not unilateral removal rights) are demanded by investors or required by regulations. During transaction negotiations, these rights are carefully

considered and negotiated between parties as each of the parties (i.e., investors and asset managers) consider them to be an important source of power which they would each like to maintain. This further indicates that the asset management industry considers such rights to be substantive.

It should also be noted that in practice, such substantive majority removal rights are in fact exercised. For example, the board of a Japanese Fund has removed the asset manager twice in the past eight years. With the investors' approval, the fund's advisory contract shifted to a new asset manager. The shift was not a result of default or non-performance by the asset manager, but at the discretion of the Board and approval by the investors.

Consistent with how unilateral removal rights are evaluated, we believe that removal rights held by numerous parties should also be a determinative factor, and not simply an indicator, in evaluating whether a decision-maker is an agent as they are acting at the discretion of the other investors. Furthermore, considering such removal rights on a determinative basis is consistent with the current US GAAP voting interest model. We believe that the substantive removal rights criteria, as noted in the voting interest model, is the appropriate methodology for evaluating removal rights as it provides the reporting entity the ability to evaluate the facts and circumstances of the arrangement to determine substantiveness. This would also improve consistency of financial reporting as the discrepancy between the variable interest model and the voting interest model would be removed.

A typical structure of a managed fund is a general partnership, a limited liability company, or a similar entity, depending on international jurisdiction. The managed funds typically have a general partner, or managing member, which operates the fund on a day-to-day basis for investors (i.e., the limited partners). In most fund structures, unilateral removal rights held by one of the investors is not commercially viable as it would favor one investor over all other investors in a fund. However, the investors may have substantive majority removal rights over the general partner, or managing member, which are incorporated into the fund's governing documents. Absent the general partner, or managing member, having control over the removal rights through its other investments, we believe that the power over the investee is held by the third party principal investors which emanate from the substantive removal rights.

Certain asset management funds also have an independent BOD which has the ability to removal the asset manager. The Fund BOD represents a centralized body with the ability to make decisions on behalf of the investors. While no one investor or board member can control the board's decisions, this centralized body performs its function as a unit and represents a single body with the ability to remove the decision maker. In other words, the BOD serves as a mechanism to facilitate the collective action of a widely diverse group of investors. We believe that in such circumstances, the ability of the BOD to remove the asset manager, at its sole discretion, is a substantive removal right indicating that the asset manager is an agent.

For example, for funds subject to the Investment Act of 1940, regulation requires a BOD which has decision making ability over the operations of the fund as well as removal rights over the asset manager. For funds that are not subject to the Investment Act of 1940, removal rights are afforded to investors when the marketplace demands such provisions be included in the transaction structure.

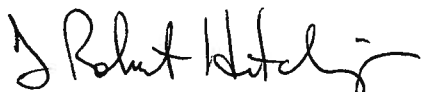
Furthermore, while not all funds provide investors with formal removal rights, in practice, investors "vote with their feet." That is, an investor may have withdrawal rights and the ability to use such rights as leverage to influence the asset manager. In certain scenarios, the result of "voting with your feet" is that the investor takes the underlying assets and appoints another party to manage the assets. In such circumstances we believe that "voting with your feet" is akin to substantive removal rights. In addition to being viewed as a removal right, this further illustrates how asset managers are agents.

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SIFMA's Asset Management Group would be pleased to participate at the public roundtable meetings to discuss the Staff Draft on the standard. We are also willing to work with the staff at FASB and the IASB on further developing these principles.

If you have any questions, please contact me at (212) 635-7083.

Sincerely,



J. Robert Hitchings  
Chair  
SIFMA Asset Management Group

cc: Leslie Seidman  
Sir David Tweedie  
Alan Teixeira  
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