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Entities should start considering the extent to which they may need to change processes and controls to apply the revised guidance.

VIE-ing for Consolidation

FASB Considers Final Amendments to Its Consolidation Model

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The FASB is currently finalizing amendments to its consolidation guidance. While the Board's deliberations have largely focused on the investment management industry, its decisions could have a significant impact on the consolidation conclusions of reporting entities in other industries. Specifically, the amended guidance could affect a reporting entity's evaluation of whether (1) limited partnerships and similar entities should be consolidated, (2) variable interests held by the reporting entity's related parties or de facto agents affect its consolidation conclusion, and (3) fees paid to a decision maker or service provider result in the consolidation of a variable interest entity (VIE). In addition, it is expected that under the amended guidance, many limited partnerships will be VIEs and may be subject to the VIE disclosure requirements regardless of whether they are consolidated.

Accordingly, all reporting entities will need to reevaluate their previous consolidation conclusions in light of their involvement with current VIEs, limited partnerships not previously considered VIEs, and entities previously subject to the deferral in ASU 2010-10.[1]

Editor's Note: Entities should start considering the extent to which they may need to change processes and controls to apply the revised guidance, including those related to obtaining additional information that may have to be provided under the disclosure requirements. Changing such processes and controls may be particularly challenging for entities that intend to early adopt the proposed guidance. In addition, companies should consider the effect of the revised guidance as they enter into new transactions.

Overview

The FASB's key tentative decisions to date regarding amendments to ASC 810[2] are summarized in the table below and further discussed in the sections that follow. Although the FASB has completed its redeliberations, the guidance in the final ASU may differ significantly from those tentative decisions on the basis of decisions made during the finalization process.

[1] FASB Accounting Standards Update No. 2010-10, *Amendments for Certain Investment Funds*.

[2] For titles of *FASB Accounting Standards Codification* (ASC) references, see Deloitte's "Titles of Topics and Subtopics in the *FASB Accounting Standards Codification*."

Under the proposed changes, a limited partnership would be considered a VIE unless a single limited partner or a simple majority of all partners has substantive kick-out or participating rights.

Subject	Current Guidance (Primarily ASC 810-10 as Amended by ASU 2009-17[3])	Proposed Guidance	Potential Impact
Determining whether a limited partnership (or similar entity) is a VIE	A limited partnership is a VIE if it meets any of the conditions in ASC 810-10-15-14. When evaluating whether a limited partnership is a VIE, the reporting entity should consider kick-out and participating rights only if they are held by a single limited partner (including its related parties).	Unlike the current guidance, under which simple majority kick-out or participating rights in a limited partnership are generally irrelevant to a determination of whether the partnership is a VIE, the proposed guidance would treat a partnership as a VIE unless such rights exist.	Partnership arrangements that include simple majority kick-out or participating rights (rather than single partner rights) may no longer be VIEs. Conversely, partnerships that do not include such rights would need to be evaluated for consolidation under the VIE guidance.
Determining whether a general partner should consolidate a limited partnership (or similar entity) that is not a VIE	Under ASC 810-20, a general partner is presumed to control a limited partnership that is not a VIE unless a simple majority of the limited partners (**excluding** the general partner's related parties) has either of the following: • The substantive ability to dissolve the limited partnership or otherwise remove the general partner without cause. • Substantive participating rights.	A general partner is required to consolidate a limited partnership that is not a VIE if it can prevent the exercise of simple majority kick-out or participating rights (e.g., if the general partner also holds a simple majority of the limited partners' kick-out rights). As indicated above, a limited partnership arrangement that does not provide the partners with simple majority kick-out or participating rights is a VIE.	The requirement to consider rights held by the general partner may result in the deconsolidation of a partnership that includes simple majority kick-out rights.
Interests held by a reporting entity's related parties (including de facto agents)	A decision maker should consider the interests of its related parties in a VIE as its own when evaluating whether it is required to consolidate the VIE.	A decision maker should generally consider its direct interests in a VIE together with its indirect exposure through its related parties on a proportionate basis when evaluating whether it is required to consolidate a VIE.	Consideration of only a pro rata portion of the interest held by a decision maker's related party may result in a determination by the reporting entity that (1) its fee arrangement is not a variable interest or (2) it must deconsolidate a VIE.

[3] FASB Accounting Standards Update No. 2009-17, *Improvements to Financial Reporting by Enterprises Involved With Variable Interest Entities* (formerly FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)*).

Subject	Current Guidance (Primarily ASC 810-10 as Amended by ASU 2009-17)	Proposed Guidance	Potential Impact
Related-party tiebreaker test	The related-party tiebreaker test should be performed if (1) two or more **related parties** (including de facto agents) hold variable interests in the same VIE and (2) the aggregate of those interests, if held by a single party, would identify that party as the primary beneficiary.	The related-party tiebreaker test should be performed if (1) two or more entities **under common control**[4] hold variable interests in the same VIE and (2) the aggregate of those interests, if held by a single party, would identify that party as the primary beneficiary.	A decision maker is less likely to be required to consolidate a VIE solely as a result of an interest held by its related parties (e.g., equity method investee or de facto agent).
Decision-maker or service-provider fee arrangements	A fee arrangement is considered a variable interest in an entity unless various criteria are met. In addition, a decision maker or service provider is required to consider all fees when evaluating its economic exposure to a VIE.	In the evaluation of a fee arrangement, fees paid to the decision maker or service provider that are "at market" and commensurate with the services provided are generally (1) not in and of themselves considered variable interests and (2) excluded from the assessment of the decision maker's or service provider's economic exposure to a VIE.	The amendments will result in fewer fee arrangements being considered variable interests. In addition, excluding fee arrangements from the evaluation of a decision maker's economic exposure to a VIE will make it more likely that certain types of structures will be deconsolidated.
Elimination of the ASU 2010-10 deferral	When a VIE qualifies for the deferral (which applies primarily to investment companies), consolidation is required if the reporting entity will absorb a majority of the VIE's expected economic exposure.	A VIE must be consolidated if the reporting entity has both of the following: • The power to direct the activities of the VIE that most significantly affect the VIE's economic performance. • Economic exposure that could potentially be significant to the VIE.	All entities that qualified for the deferral will need to be evaluated under an approach similar to that of ASU 2009-17. The new evaluation could result in a different consolidation conclusion. For example, a decision maker's 20 percent pro rata equity investment in a VIE may now result in consolidation by the decision maker.

All entities that qualified for the deferral will need to be evaluated under an approach similar to that of ASU 2009-17.

The table in Appendix A compares the current guidance in ASC 810-10 before application of the amendments in ASU 2009-17 with the FASB's proposed guidance.

Limited Partnerships

Determining Whether a Limited Partnership Is a VIE

Under the current guidance, entities not exempt from the consolidation requirements are assessed for consolidation under either the VIE model or the voting interest entity model. To determine which model to apply, a reporting entity must evaluate whether any of the conditions in ASC 810-10-15-14 exist. Entities that meet any of those conditions are evaluated for consolidation under the VIE model.

[4] There may be situations in which a reporting entity would be required to perform the related-party tiebreaker test even though the related parties are not under common control.

The FASB tentatively decided to amend the definition of a VIE for limited partnerships and similar entities but decided not to do so for other entities. Under the proposed changes, a limited partnership would be considered a VIE regardless of whether it has sufficient equity or meets the other requirements to qualify as a voting interest entity unless a single limited partner (LP) or a simple majority of all partners with equity at risk (including interests held by the general partner (GP) and its related parties) has substantive kick-out rights (including liquidation rights) or the limited partners have participating rights. Accordingly, while simple majority kick-out or participating rights in a limited partnership are generally irrelevant to a determination of whether a partnership is a VIE under the current guidance, a partnership would be considered a VIE under the amended guidance unless such rights exist.

As a result of the proposed amendments to the definition of a VIE for limited partnerships and similar entities, partnerships that do not have kick-out or participating rights but historically were not considered VIEs will need to be evaluated under the new VIE consolidation model. Although the consolidation conclusion may not change, an updated analysis on the basis of the revised guidance would be required. In addition, even if a reporting entity determines that it does not need to consolidate a VIE, it would have to provide the extensive disclosures that are currently required for any VIEs in which it holds a variable interest. On the other hand, partnership arrangements that include simple majority kick-out or participating rights (rather than single partner rights) may no longer be VIEs. While these rights are generally ignored in the determination of whether a partnership is a VIE under the current guidance, the FASB tentatively decided that such rights could be considered in the evaluation of whether a limited partnership (or similar entity) is a VIE. Accordingly, the limited partners may now be considered to have power over the entity if these rights are present.

Partnership arrangements that include simple majority kick-out or participating rights (rather than single partner rights) may no longer be VIEs.

Example

A limited partnership is formed to acquire a real estate property. The partnership has a GP that holds a nominal interest in the partnership; five unrelated LPs hold the remaining equity interests. Profits and losses of the partnership (after payment of the GP's fees, which represent a variable interest in the entity) are distributed in accordance with the partners' ownership interests. There are no other arrangements between the partnership and the GP/LPs.

The GP is the property manager and has full discretion to buy and sell properties, manage the properties, and obtain financing. In addition, the GP can be removed without cause by a simple majority of all of the LPs.

Under Current Guidance (ASU 2009-17)

Since the GP interest absorbs and receives only a nominal portion of the profits and losses of the limited partnership as a whole, the GP's equity interest is not considered substantive and is not part of the equity at risk. In addition, since the GP can be removed only by a simple majority of all of the LPs (rather than a single LP), these rights would be ignored in the evaluation of whether the equity investors control the entity. Accordingly, the LPs (equity group) would not have the power to direct the activities that most significantly affect the partnership's economic performance. Since the limited partnership meets one of the criteria for determining whether an entity is a VIE, it would be considered a VIE.

Under the Revised Guidance

Although the GP has power over the activities that most significantly affect the limited partnership, a simple majority of all LPs can remove the GP. Accordingly, the equity holders as a group do not lack the criteria in ASC 810-10-15-14(b), and therefore, the partnership would not be considered a VIE provided that the conditions in ASC 810-10-15-14(a) and 15-14(c) are not met.

The FASB decided not to amend the current requirements in ASU 2009-17 (codified in ASC 810-10) related to how kick-out and participating rights affect the determination of whether entities other than partnerships (and similar entities) are VIEs. Accordingly, kick-out and participating rights held by the equity investors of entities that are not partnerships would not affect the evaluation unless a single equity holder, including its related parties and de facto agents, has the unilateral ability to exercise the rights. As a result, the effect of kick-out and participating rights on the designation of an entity as a VIE for entities other than partnerships would be significantly different from that under the proposed model for limited partnerships.

Consolidation of a Limited Partnership

Under current U.S. GAAP, a GP is required to perform an evaluation under ASC 810-20 to determine whether it controls a limited partnership that is not considered a VIE. This evaluation focuses on whether certain rights held by the unrelated LPs are substantive and overcome the presumption that the GP controls (and therefore is required to consolidate) the partnership. That is, to overcome the presumption that the GP controls the partnership, the LPs (excluding interests held by the GP, by entities under common control of the GP, and by other entities acting on behalf of the GP) must have either (1) the substantive ability to dissolve (liquidate) the limited partnership or otherwise remove the GP without cause (as distinguished from with cause) or (2) substantive participating rights.

Under the FASB's tentative decisions, unless a single limited partner or a simple majority of all partners has a substantive kick-out right or the LPs have participating rights, the entity would be a VIE.

Under the FASB's tentative decisions, unless a single limited partner or a simple majority (or a lower threshold) of all partners (including interests held by the GP and its related parties) has a substantive kick-out right (including liquidation rights) or the LPs have participating rights, the entity would be a VIE. In a manner similar to that prescribed by the existing guidance in ASC 810-20, the analysis for determining whether the GP should consolidate a partnership that is not considered a VIE would focus on an evaluation of whether the kick-out, liquidation, or participating rights held by the other partners are considered substantive. Unlike the current guidance, however, the FASB's tentative approach would require such an evaluation to include an assessment of interests held by the GP, by entities under common control of the GP, and by other entities acting on behalf of the GP. That is, the rights would be considered substantive if they can be exercised by a simple majority of all of the partners, including the LP interests held by the GP.

Example

A reporting entity forms a limited partnership in which it owns the nominal GP interest and all of the Class A limited partnership interests (20 percent economic interest); third parties hold all of the Class B limited partnership interests (80 percent economic interest). Profits and losses of the partnership are distributed in accordance with the ownership interests. In addition, the reporting entity would be required to relinquish the GP rights if it disposed of its Class A interest (and vice versa).

The GP can be removed without cause by a simple majority of all of the LPs. The Class A partners hold 45 percent of the kick-out rights, and the Class B partners hold 55 percent of those rights. There are no other arrangements between the reporting entity and the GP/LPs.

Under Current Guidance

The reporting entity's interests collectively receive and absorb 20 percent of the profits and losses of the limited partnership as a whole. In addition, the GP's decision-making rights are considered attached to its equity interest. Accordingly, the equity interest is considered substantive and part of the equity at risk. Unless the limited partnership meets one of the other criteria for determining whether an entity is a VIE, it would not be considered a VIE and would be evaluated by the reporting entity for potential consolidation under ASC 810-20. Since a simple majority of the unrelated LPs cannot remove the GP, the reporting entity would be required to consolidate the partnership in accordance with ASC 810-20. (In this example, the Class B LPs are unable to remove the GP unless approximately 93 percent of them vote to do so.)

Example (continued)

Under the Revised Guidance

The limited partnership would similarly not be considered a VIE (a simple majority of the partners can remove the decision maker). However, the evaluation of whether the removal rights are considered substantive would take into account the rights held by the reporting entity. Because the GP cannot prevent the exercise of simple majority kick-out or participating rights, it is not required to consolidate the limited partnership.

When evaluating removal rights, a reporting entity should exercise judgment and consider only terms, transactions, or arrangements that truly affect its power.

The evaluation of whether a GP should consolidate a limited partnership (or similar entity) that is considered a VIE is consistent with how all other VIEs would be analyzed (i.e., consider the GP's power over the VIE and its economic exposure to the VIE). Therefore, if the entity in the example above were identified as a VIE (e.g., because of a lack of sufficient equity investment at risk), the GP would be required to consolidate the limited partnership. The GP would have the "power" to direct the activities of the VIE unless a **single unrelated** variable interest holder has the unilateral ability to remove the GP.

Editor's Note: Certain limited partnerships that historically were not considered VIEs (i.e., were evaluated for consolidation under the guidance in ASC 810-20) may have been consolidated by the GP because the LPs did not have kick-out or participating rights. Sometimes, the GP may have been required to consolidate the partnership regardless of whether it had any significant economic exposure to the partnership. If these entities are now considered VIEs (because of the lack of kick-out or participating rights), the consolidation analysis under the VIE guidance would take into account the GP's economic exposure (or lack thereof). Accordingly, the GP may be required to deconsolidate the limited partnership.

Under the proposed guidance, certain structures that were consolidated as a result of the significance of the decision maker's fee arrangement would potentially need to be deconsolidated.

Identifying the Primary Beneficiary of a VIE

The FASB tentatively decided that in a manner consistent with the requirements in ASU 2009-17, a variable interest holder would be considered the primary beneficiary of a VIE (and would therefore be required to consolidate the VIE) when it has (1) the power to direct the activities of the VIE that most significantly affect the VIE's performance and (2) the obligation to absorb losses of, or the right to receive benefits from, the VIE that could potentially be significant to the VIE.

Currently, a reporting entity is required to consider all of its variable interests, including all fees, when evaluating whether it meets the second criterion above. A fee arrangement on its own or in combination with the reporting entity's other interests (e.g., other investments in the entity) could be sufficient to satisfy this requirement.

Although the FASB decided not to amend the economic exposure threshold in ASU 2009-17, it decided that fees paid to a VIE's decision maker should not be considered in the evaluation of the decision maker's economic exposure to the VIE regardless of whether the reporting entity has other economic interests in the VIE if the fees are commensurate ("at market") with the services provided and the fee arrangement includes only customary terms and conditions. Under this proposed guidance, certain structures that were consolidated as a result of the significance of the fee arrangement would potentially need to be deconsolidated.[5]

[5] See Determining Whether Fees Paid to Decision Makers or Service Providers Are Variable Interests below for additional information about how fees would affect the consolidation analysis under the proposed amendments.

Editor's Note: The FASB's decision to exclude certain fees from the primary beneficiary analysis could significantly affect the consolidation analysis of many financial institutions. Currently, some entities are required to consolidate certain structures (e.g., collateralized debt obligation (CDO) or collateralized loan obligation (CLO)) as a result of their at-market and customary fee arrangement.

In addition, the FASB decided that when a decision maker evaluates its economic exposure to a VIE, it should consider its direct interests in the VIE together with its indirect interests held through its related parties (or de facto agents) on a proportionate basis. This approach is consistent with that of the FASB's November 2011 exposure draft[6] (ED), which includes the following two examples of this concept:

- "[I]f a decision maker owns a 40 percent interest in a related party and that related party owns a 60 percent interest in the entity being evaluated, the decision maker's interest would be considered equivalent to a 24 percent direct interest in the entity for the purposes of evaluating its decision-making capacity (assuming it has no other relationships with the entity)."
- "[I]f an employee of the decision maker is a related party and owns an interest in the entity being evaluated and that employee's interest has been financed by the decision maker, the decision maker shall include its indirect interest in the evaluation."

The FASB decided that when a decision maker evaluates its economic exposure to a VIE, it should consider its direct interests in the VIE together with its indirect interests held through its related parties (or de facto agents) on a proportionate basis.

However, the Board also decided that depending on the "nature and substance of the related party relationship," a decision maker may conclude that it should consider its related party's interests as though it holds them directly (similar to the existing guidance in ASC 810) or that it should exclude the related party's interests from the analysis. Specifically, the FASB indicated that a related party's interest should not be considered when the related party that invests in the VIE designates the investment as a trading security under ASC 320-10-25-1(a), and that the interest should be considered the related party's own interest if the reporting entity and the related party are under common control.

Effects of Related Parties

Under the requirements in ASU 2009-17, when a related-party relationship exists,[7] each party in the related-party group must first determine whether it has the characteristics of a controlling financial interest (ASC 810-10-25-38A) in the VIE. If none of the parties in the related-party group have the characteristics of a controlling financial interest individually but the related-party group as a whole has these characteristics, the reporting entity must consider the factors in ASC 810-10-25-44 to determine which party in the group is the primary beneficiary and, therefore, the party that must consolidate the VIE (this analysis is commonly referred to as the "related-party tiebreaker test"). In addition, parties in the related-party group (including de facto agents) cannot conclude that power is shared and instead must identify one of the parties as the primary beneficiary of the VIE.

The FASB tentatively decided that in a manner consistent with these requirements, each party in a related-party group must first determine whether it individually has the characteristics of a controlling financial interest in the VIE. The FASB also decided to retain the current guidance under which parties in a related-party group (including de facto agents) cannot conclude that they do not individually have these characteristics because they consider power to be shared among them. Accordingly, when power is considered "shared," the related parties would be required to perform the related-party tiebreaker test to identify the party in the group that is most closely associated with the VIE.

[6] FASB Proposed Accounting Standards Update, *Principal Versus Agent Analysis.*

[7] The term "related parties" includes those parties identified as related parties in ASC 850 and certain other parties described in ASC 810-10-25-43 that are considered de facto agents of the reporting entity.

Example

Two **related** parties, Enterprise A1 and Enterprise A2, form a joint venture, Entity Z, that is a VIE. All decisions that most significantly affect Z require the consent of both A1 and A2 (i.e., the two parties are not responsible for different activities and do not have unilateral discretion for a portion of the activity).

In accordance with ASC 810-10-25-38D, power can be shared only among multiple unrelated parties; two or more related parties cannot conclude that power is shared. Since the two venturers in this example are related parties, power cannot be considered shared between them even though they are required to consent to any decisions that are made. Thus, they will need to perform the analysis in ASC 810-10-25-44 (the related-party tiebreaker test) to determine which of them is the party that is most closely associated with the VIE and, therefore, the party that must consolidate the VIE.

If power is not considered shared among the related parties, the related-party tiebreaker test would be performed only by parties in the decision maker's related-party group that are under common control and that together possess the characteristics of a controlling financial interest. In this situation, the purpose of the test would be to determine whether the decision maker or a related party under common control of the decision maker is required to consolidate the VIE.

If power is not considered shared among the related parties, the related-party tiebreaker test would be performed only by parties in the decision maker's related-party group that are under common control and that together possess the characteristics of a controlling financial interest.

Example

Entity A and Entity B are under common control but do not have ownership interests in each other. Entity A is the GP (decision maker) for Partnership C but does not own any of the limited partnership interests. Entity B owns 51 percent of C's LP interests. The partnership is considered a VIE.

In applying the FASB's decisions, A would conclude that it has a nominal economic interest in C. In addition, B would conclude that it does not have the power to direct the activities that most significantly affect the partnership (power criterion). Accordingly, when A and B each consider only their own respective interests, neither party individually would have both of the characteristics of a controlling financial interest. However, since A and B are related parties under common control that together possess the characteristics of a controlling financial interest, they would be required to apply the related-party tiebreaker test. Consequently, either A or B would be required to consolidate the partnership.

Note that if A and B were not under common control (e.g., if A's parent entity accounted for its interest in B by using the equity method), A and B would not be required to apply the related-party tiebreaker test. This is a significant change from the current guidance, under which the related-party tiebreaker test must be performed when related parties (including de facto agents) together have the characteristics of a controlling financial interest. The proposed guidance could significantly affect accounting in the asset management industry. For example, a fund that is a VIE may currently be consolidated by an asset manager because of interests held by the asset manager's employees (related parties) or by other investors that are subject to transfer restrictions (de facto agents).

The FASB also tentatively decided that if neither the decision maker nor a related party under common control is required to consolidate a VIE but the related-party group (including de facto agents) possesses the characteristics of a controlling financial interest and substantially all of the VIE's activities are conducted on behalf of a single entity in the related-party group, that entity would be the primary beneficiary of the VIE.

Example

An investment manager establishes a fund on behalf of Investor B. The investment manager owns 5 percent of the equity in the fund, and B owns the remaining interests. The investment manager cannot be removed as the decision maker of the fund, and the investment manager cannot sell or liquidate its investment without the consent of B. The fund is considered a VIE. In addition, the investment manager and B are considered related parties (de facto agents).

When the investment manager and B each consider only their own respective interests, neither party would be required to consolidate the fund in its stand-alone financial statements. However, under the FASB's decisions, B would be required to consolidate the fund because the related-party group possesses the characteristics of a primary beneficiary and substantially all of the VIE's activities are conducted on behalf of B. This result is generally consistent with the consolidation conclusion that would be reached under current U.S. GAAP if the related-party tiebreaker test was performed.

See Appendix B for an illustration of when and how the related-party tiebreaker test would be performed under the proposed guidance.

Determining Whether Fees Paid to Decision Makers or Service Providers Are Variable Interests

While the FASB has agreed to retain the current definition of a variable interest, it has decided to modify the criteria for determining whether a decision maker's or service provider's fee is a variable interest.

One of the first steps in assessing whether a reporting entity is required to consolidate another entity is to determine whether the reporting entity holds a variable interest in the entity being evaluated. While the FASB has agreed to retain the current definition of a variable interest, it has decided to modify the criteria for determining whether a decision maker's or service provider's fee is a variable interest.

Under current U.S. GAAP, six criteria must be met before the reporting entity can conclude that a decision maker's or service provider's fee does not represent a variable interest. The FASB has tentatively decided to eliminate the criteria related to the fees' priority level (ASC 810-10-55-37(b)) and significance (ASC 810-10-55-37(e) and 55-37(f)). Therefore, under the proposed requirements, the evaluation of whether fees paid to a decision maker or service provider are a variable interest would focus on whether (1) the fees "are commensurate with the level of effort" (ASC 810-10-55-37(a)), (2) the reporting entity has any other direct or indirect interests (including indirect interests through its related parties) that absorb more than an insignificant amount of the VIE's variability (ASC 810-10-55-37(c)), and (3) the arrangement includes only customary terms (ASC 810-10-55-37(d)).

It is expected that as a result of eliminating three of the criteria in ASC 810-10-55-37 and allowing the decision maker to consider only a proportionate amount of the interests held by its related parties in its evaluation, fewer fee arrangements would be considered variable interests. Of the three criteria the FASB plans to remove, the most significant is the requirement to evaluate whether fees are subordinated (i.e., whether their level of priority is lower than that of other operating liabilities). Under the proposed changes, a manager of a CLO or CDO entity that receives a junior or subordinated fee may no longer have a variable interest in the entity if it does not have any other interests in the entity and all of the remaining criteria in ASC 810-10-55-37 are met.

Money Market Funds

The FASB decided to eliminate the deferral in ASU 2010-10 for a reporting entity's interest in money market funds. Instead of the deferral, the FASB will include a scope exception to the consolidation requirements for a reporting entity's interest in an entity that is required to comply, or operates in accordance, with requirements similar to those in Rule 2a-7 of the Investment Company Act of 1940 for registered money market funds. The FASB decided to clarify the term "similar" and require sponsors of money market funds that qualify for the scope exception to disclose any arrangements to provide support to the fund and whether they have provided any support during the periods presented.

Convergence With IFRSs

The consolidation project began as a joint project between the FASB and IASB to develop improved, converged consolidation standards that would apply to all entities (i.e., VIEs, voting interest entities, and investment companies). However, the boards ultimately decided not to converge on this topic, mainly because of differences regarding "control with less than a majority of the voting rights" and the consideration of "potential voting rights." In May 2011, the IASB issued new and amended guidance on consolidated financial statements, which was effective for annual periods beginning on or after January 1, 2013. For more information, see Deloitte's May 27, 2011, *Heads Up*.

Transition and Effective Date

The FASB tentatively decided to require modified retrospective application (including a practicability exception) with an option for full retrospective application. For public business entities, the guidance would be effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2015. For entities other than public business entities, the guidance would be effective for annual periods beginning after December 15, 2016, and interim periods beginning after December 15, 2017. The FASB tentatively decided to allow early adoption for all entities but to require entities to apply the guidance as of the beginning of the annual period containing the adoption date.

Editor's Note: The FASB tentatively decided not to issue a revised ED. Instead, the FASB directed its staff to prepare a draft of the final ASU for distribution to select constituents (including financial statement users, preparers, and auditors) to obtain feedback on the proposed amendments. On the basis of feedback received, the FASB will determine how to proceed.

Appendix A — FIN 46(R) Model and Proposed Guidance Compared

The table below highlights differences between (1) the FASB's current consolidation guidance before application of ASU 2009-17 and (2) the FASB's proposed guidance. Note that this appendix applies only to entities that currently qualify for the investment company deferral.

Subject	Current Guidance Before Application of ASU 2009-17 (Primarily FIN 46(R)[8] as Codified in ASC 810-10)	Proposed Guidance	Potential Impact
Determining whether an entity is a VIE	An entity is a VIE if it meets any of the conditions in ASC 810-10-15-14. Simple majority kick-out or participating rights may be considered in the determination of whether the equity at risk group controls the entity.	*Entities other than limited partnerships* — Kick-out and participating rights cannot be considered in the determination of whether the equity at risk group controls the entity unless they are held by a single party (including related parties and de facto agents).	Under the amendments, an entity may become a VIE if the equity holders as a group no longer are considered to have "power" over the entity through their kick-out rights. A board of directors would not be considered a single party unless a single party controls the board of directors.
		Limited partnerships — In addition to single party kick-out rights, simple majority kick-out and participating rights are considered in the evaluation of whether the partnership is a VIE. A partnership would be considered a VIE unless such rights exist.	Limited partnerships that do not provide a single limited partner, or a simple majority of all partners with equity at risk, with simple majority kick-out or participating rights would need to be evaluated for consolidation under the VIE guidance.
Determining whether a reporting entity should consolidate a VIE	A reporting entity is generally a VIE's primary beneficiary (which consolidates the VIE) if it absorbs the **majority** of the VIE's variability as determined through quantitative analysis.	In the absence of any related-party relationships, a reporting entity is required to consolidate a VIE if it has both (1) the power to direct the activities of the VIE that most significantly affect the entity's economic performance ("power") and (2) the obligation to absorb losses of, or the right to receive benefits from, the VIE that could potentially be **significant** to the VIE.	A reporting entity that has power would need to evaluate its economic exposure to the VIE by using a lower threshold. This could result in the consolidation of a previously unconsolidated VIE (e.g., if the decision maker has a 20 percent proportionate equity interest).
Determining whether a general partner should consolidate a partnership that is not a VIE	Under ASC 810-20, a general partner is presumed to control a limited partnership that is not a VIE unless a simple majority of the limited partners (excluding the general partner's related parties) has substantive liquidation, removal, or participating rights. The general partner's economic exposure is not considered in the evaluation.	A general partner is required to consolidate a limited partnership that is not a VIE if it can prevent the exercise of simple majority kick-out or participating rights (e.g., if the general partner also holds a simple majority of the limited partners' kick-out rights). If the limited partnership arrangement does not provide a single limited partner, or a simple majority of all partners with equity at risk, with kick-out or participating rights, the limited partnership is a VIE. Under the VIE analysis, the general partner would be required to consider its economic exposure to the VIE in its consolidation analysis.	The amendments may result in the deconsolidation of a limited partnership if (1) the general partner (or its related parties) hold interests that have kick-out or liquidation rights or (2) the limited partners do not have kick out rights but the general partner has an insignificant economic interest.

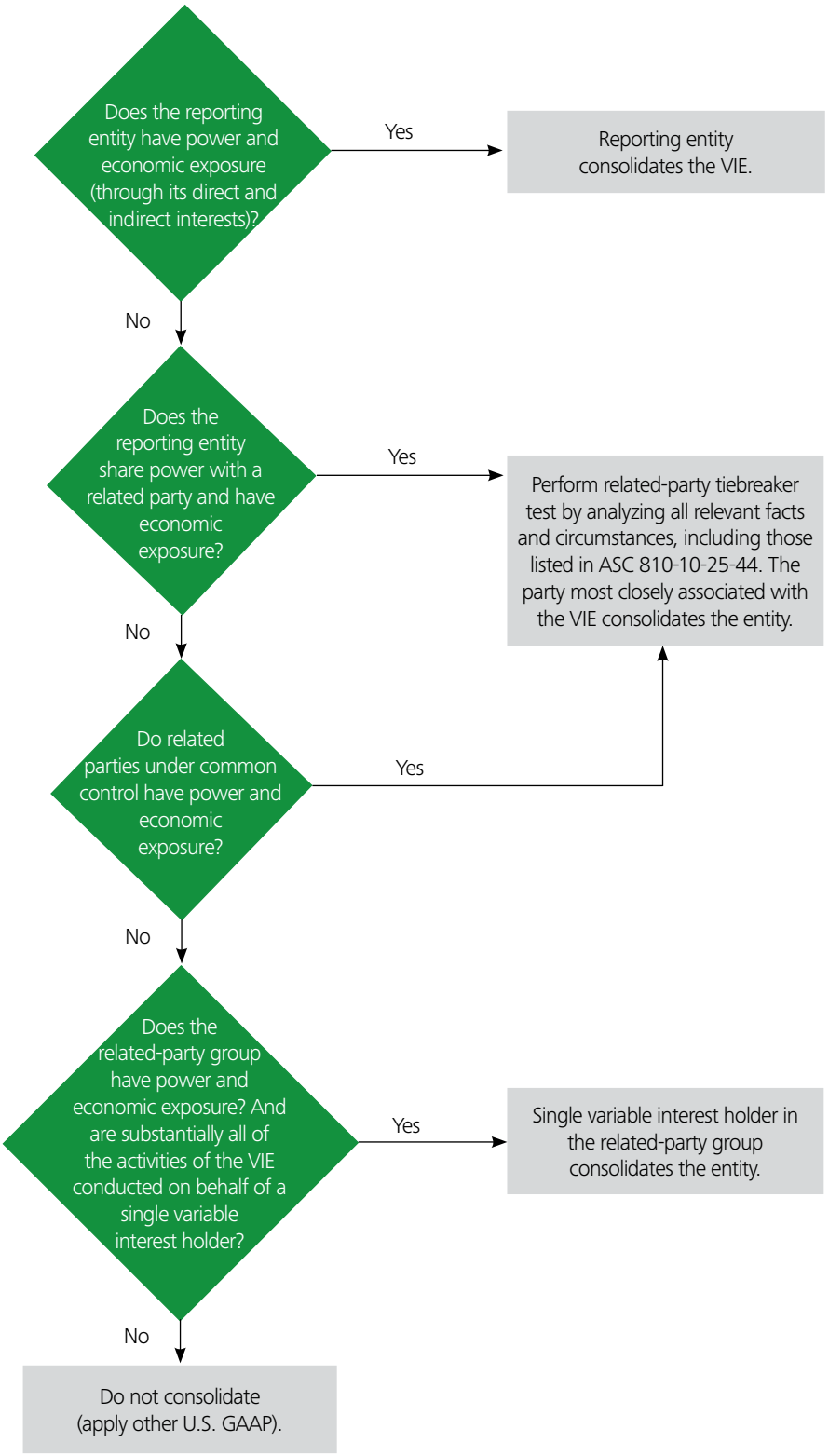
[8] FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities* — an interpretation of ARB No. 51.

Subject	Current Guidance Before Application of ASU 2009-17 (Primarily FIN 46(R) as Codified in ASC 810-10)	Proposed Guidance	Potential Impact
Reconsideration of the primary beneficiary	A reporting entity is required to reconsider the primary beneficiary determination if certain events occur. Specifically, a change in an entity's design or capital structure, or the entity's entering into transactions that affect its equity at risk, would trigger reconsideration of the primary beneficiary.	A reporting entity is required to continuously evaluate (as facts and circumstances change) whether it is the VIE's primary beneficiary.	The requirement to continuously reconsider the primary beneficiary conclusion could result in more consolidation and deconsolidation of VIEs.
Related parties (including de facto agents)	A party that has entered into an agreement that precludes it from selling, transferring, or encumbering its interests in a VIE without the prior approval of the reporting entity is a de facto agent of the reporting entity if the reporting entity's right of prior approval could constrain the other party's ability to manage the economics of its interest in a VIE.	A de facto agent relationship does not exist if both the reporting entity and the other party have the right of prior approval and the rights are based on mutually agreed terms entered into by willing, independent parties.	The reporting entity may have fewer related parties (or de facto agents) that must be considered in the consolidation analysis.
Related-party tiebreaker test	The related-party tiebreaker test should be performed if (1) two or more **related parties** (including de facto agents) hold variable interests in the same VIE and (2) the aggregate of those interests, if held by a single party, would identify that party as the primary beneficiary.	The related-party tiebreaker test should be performed if (1) two or more entities under **common control**[9] hold variable interests in the same VIE and (2) the aggregate of those interests, if held by a single party, would identify that party as the primary beneficiary.	A decision maker is less likely to be required to consolidate a VIE solely as a result of an interest held by its related parties (e.g., its employees) or by other investors that are subject to transfer restrictions (de facto agents).
Decision-maker or service-provider fee arrangements	A decision maker must be subject to kick-out rights to conclude that it does not hold a variable interest in an entity.	Fees paid to decision makers do not represent a variable interest if (1) the fees are commensurate ("at market") with the services provided, (2) the fee arrangement includes only customary terms and conditions, and (3) the decision maker does not have any other variable interests that would absorb more than an insignificant amount of expected losses or returns.	As a result of the amendments, fewer fee arrangements would be considered variable interests.

[9] There may be situations in which a reporting entity would be required to perform the related-party tiebreaker test even though the related parties are not under common control.

Appendix B — Decisions Regarding Related Parties

The flowchart below illustrates when and how the related-party tiebreaker test would be performed under the proposed guidance for entities that are considered VIEs in accordance with ASC 810-10.



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