

Corporate Sponsors: Consolidation Under FIN 46(R) and FASB No. 167

Corporate sponsors of venture capital and private equity investment programs managed as separate investment vehicles controlled, directly or indirectly, by such corporate sponsor need to consider the impact of Financial Accounting Standards Board Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities—an Interpretation of Accounting Research Bulletin No. 51 (Issued 12/03) (FIN 46) when structuring and negotiating the terms of such vehicles. FIN 46 requires the consolidation of variable interest entities (as defined therein) unless the entity meets certain criteria. Generally, most venture capital and private equity funds would be considered variable interest entities and therefore be consolidated with the financial results of the parent corporate sponsor.

Prior to 2009 designation as a variable interest entity could be avoided in some circumstances by providing limited partners with “substantive kick-out rights,” generally the equivalent of reducing the typical 80% threshold required for a no-fault removal of the general partner to a simple majority in interest. However, in June 2009 FASB issued additional guidance regarding substantive kick-out rights making it more difficult to avoid consolidation in the future. The additional guidance, [FASB Statement No. 167](#), amends FIN 46 and eliminates substantive kick-out rights as a criteria for exempting a general partner from consolidating a fund and as a criteria for determining a “controlling financial interest” in a variable interest entity unless such kick-out rights are held and exercisable by one limited partner (and its related parties).

Corporate sponsors should be aware of the implications of FIN 46, as amended by FASB 167, on their financial statements and should consult with their accountants when structuring sponsored funds to determine the impact of consolidation of the entity with the results of the corporate sponsor.

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For more information on the issues discussed here, please contact your Morgan Lewis [Private Investment Funds Practice](#) attorney.

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Morgan Lewis has one of the nation’s largest private investment fund practices and is ranked the Second Most Active Law Firm in the U.S. based on the number of funds worked on for general and limited partners by *Dow Jones Private Equity Analyst* (2009).

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