

Morgan Lewis

VENTURE CAPITAL & PRIVATE EQUITY FUNDS DESKBOOK SERIES

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.

* * *

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

About Morgan Lewis’s Private Investment Funds Practice

Morgan Lewis has one of the nation’s largest private investment fund practices and is consistently ranked as the “#1 Most Active Law Firm” globally based on the number of funds worked on for limited partners by *Dow Jones Private Equity Analyst*.

About Morgan, Lewis & Bockius LLP

Morgan Lewis provides comprehensive transactional, litigation, labor and employment, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our regulatory and industry-focused practices help clients craft and execute strategies to successfully address legal, government, and policy challenges in today’s rapidly changing economic and regulatory environment.

Founded in 1873, Morgan Lewis comprises some 4,000 professionals—attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—in offices across the United States, Europe, Asia, and the Middle East. The firm is unified in its long-held service philosophy that every action of our attorneys, in every representation, is driven first and foremost by the immediate and long-term concerns of each client. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This memorandum is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2015 Morgan, Lewis & Bockius LLP. All Rights Reserved.