Unamended FIN 46R Decision Tree

The following decision tree provides users with a step-by-step approach for evaluating whether real estate investees are variable interest entities under the provisions of FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities* (FIN 46R) (FASB Accounting Standards Codification (ASC) 810-10-15-14), before amendment by FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167) (FASB Accounting Standards Update (ASU) 2009-17). It is intended to facilitate evaluation of the applicability of the disclosure requirements of FIN 46R as amended by FAS 167 to real estate investees that meet the criteria for deferral of the consolidation requirements of FAS 167 in ASU 2010-10, *Consolidation (Topic 810): Amendments for Certain Investment Funds*. After the effective date of the FASB ASC, FIN 46R is included within ASC Topic 810 and related subtopics. This decision tree is not a substitute for, and should not be used without further reference to, those standards.

<table>
<thead>
<tr>
<th>Step</th>
<th>Criteria</th>
<th>Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Does the total equity investment at risk(^1) at least equal the down payment requirements prescribed in ASC Subtopic 360-20, <em>Property, Plant and Equipment – Real Estate Sales</em>? If Yes, move to step 5. If No, move to step 2.</td>
<td>FIN 46R Paragraph 5(a) (ASC 810-10-15-14(a))</td>
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<tr>
<td>2</td>
<td>Does the entity have traditional first mortgage financing (i) with normal loan-to-value ratios, (ii) with an interest rate that was consistent with market first mortgage lending rates at inception of the loan for that type of property, and (iii) that was obtained without providing additional subordinated financial support (e.g. guarantees)? If Yes, move to step 5. If No, move to step 3.</td>
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<tr>
<td>3</td>
<td>Does the entity have at least as much equity invested as other entities that hold similar assets (that are of similar quality and amounts) and operate with no additional subordinated financial support? If Yes, move to step 5. If No, move to step 4.</td>
<td></td>
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<tr>
<td>4</td>
<td>Does the amount of equity invested exceed the estimate of the entity's expected losses? If Yes, move to step 5. If No, entity is a variable interest entity (VIE).</td>
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FIN 46R Paragraph 5(b) (ASC 810-10-15-14(b))

5 As a group, do the equity-at-risk investors\(^3\) have the right to receive the entity's expected residual returns? Equity holders do not have this right if their return is capped\(^4\). If Yes, move to step 6. If No, entity is a VIE.

6 As a group, are the equity-at-risk investors\(^3\) not obligated to absorb the expected losses of the entity if they occur (e.g., because they are indemnified by another party through third-party guarantees, residual value guarantees, etc.)? If No, move to step 7. If Yes, entity is a VIE.

7 Are there any third parties that have decision making rights, through instruments or contracts other than equity-at-risk investments, that can significantly affect the success of the entity? For example, does an advisor, asset manager, or property manager meet all of the following characteristics: i) it is a decision maker, ii) it is not an equity investor (or a parent, subsidiary, or consolidated affiliate of an equity investor), and iii) it cannot be removed without cause? If No, move to step 8. If Yes, entity is a VIE.

8 Do the general or certain limited partners have the ability to make decisions that have a significant effect on the success of the entity but not have equity at risk\(^1\) (e.g., because fees paid by the entity at its inception to the partner exceed that partner's initial equity)? If No, move to step 9. If Yes, can such partners with the ability to make significant decisions be removed without cause by a simple majority of the third party limited partners? If No, entity is a VIE. If Yes, move to step 9.

FIN 46R Paragraph 5(c) (ASC 810-10-15-14(c))

9 Are decision making and/or voting rights of equity-at-risk investors proportionate to their respective obligations to absorb the expected losses AND rights to receive expected residual returns of the entity arising from all of their variable interests, including but not limited to their equity interests? If No, move to step 10. If Yes, entity is not a VIE.

10 Are substantially all of the entity's activities conducted on behalf of one equity-at-risk investor\(^5,6\) AND does that investor have disproportionately few decision making rights in
proportion to its variable interests? If No, entity is not a VIE, go to step 11. If Yes, entity is a VIE.

1 Apply guidance in ASC 810-10-15-14(a) to determine the amount of equity at risk.
2 Under ASC 360-20-55-2 minimum initial investments include 25% for land acquisitions and 10%-25% for commercial property and multi-family property.
3 Equity-at-risk investors as a group collectively refers to investors, including an investor's parent, subsidiary, or consolidated affiliate acting as an advisor, asset manager, or property manager, whose interests would be reported by the entity as equity in the entity’s financial statements.
4 Examples of situations that would cap returns to the equity holders include, but are not limited to, the following:
   • A fixed-price call option on the assets of the entity
   • A profit allocation provision whereby a thirdparty advisor receives ALL residual profits after the equity holders receive a specified return.
5 Related parties of the investor, as defined in ASC 810-10-25-43 except for de facto agents under ASC 810-10-25-43(d)(1), should be considered in assessing this criteria.
6 The existence of one or more of the following factors may indicate that substantially all of the activities of the entity are conducted on behalf of the investor with disproportionately few voting rights:
   • The entity's operations are substantially similar in nature to the activities of the investor with disproportionately few voting rights
   • Substantially all of the entity's assets were acquired from the investor with disproportionately few voting rights
   • Employees of the investor with disproportionately few voting rights are actively involved in managing the operations of the entity
   • The investor with disproportionately few voting rights is obligated to fund operating losses of the entity
   • A significant portion of the entity's assets have been leased to the investor with disproportionately few voting rights
   • The investor with disproportionately few voting rights has a call option to purchase the entity's assets or the interests of the other investors
   • The entity has the right to put its assets, or the other investors in the entity have an option to put their interests, to the investor with disproportionately few voting rights.