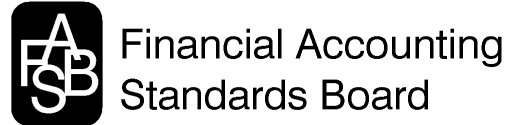


MINUTES



**To:** Board Members  
**From:** Yust (x442)  
**Subject:** Minutes of the October 15, 2008 Board Meeting: Scope of the Deferral of Interpretation 48 for Private Entities **Date:** November 3, 2008  
**cc:** Leisenring, Golden, Stoklosa, Proestakes, Malcolm, Inzano, Mechanick, C. Smith, Yust, Mussat, Gabriele, Posta, Chookaszian, Allen, Klimek, Sutay, FASB Intranet

*The Board meeting minutes are provided for the information and convenience of constituents who want to follow the Board's deliberations. All of the conclusions reported are tentative and may be changed at future Board meetings. Decisions become final only after a formal written ballot to issue a final Statement, Interpretation, or FASB Staff Position.*

Topic: Scope of the Deferral of Interpretation 48 for Private Entities

Basis for Discussion: Board Memorandum No. 3 and Appendix

Length of Discussion: 9:00 a.m. to 9:35 a.m.

Attendance:

Board members present: Batavick (by phone), Herz, Seidman, and Smith

Board members absent: Linsmeier

Staff in charge of topic: Glotzer

Other staff at Board table: FASB: Golden, Proestakes, and Yust

## Summary of Decisions Reached

At the October 15, 2008 meeting, the Board redeliberated the scope of the proposed deferral of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, for certain nonpublic entities. The Board previously had decided at the October 1, 2008 meeting that the deferral should be limited to only pass-through entities.

The Board decided to issue a proposed FASB Staff Position (FSP) to defer the Interpretation for all nonpublic entities until fiscal years beginning after December 15, 2008, rather than limiting the deferral to pass-through entities only. As decided at the October 1, 2008 meeting, this proposed FSP will have a 30-day comment period.

The Board will then subsequently issue a separate FSP that will provide guidance for pass-through entities and provide amendments to the existing disclosure requirements for nonpublic entities. The Board expects to finalize and issue this FSP in the first quarter of 2009.

## Objectives of Meeting:

The objectives of the meeting were to ask the Board to reconsider the scope of the deferral of Interpretation 48 for certain private entities and to define pass-through entity for purposes of the deferral. The objectives of the meeting were met.

## Matters Discussed and Decisions Reached:

### **Issue 1: Deferral of Interpretation 48**

1. Mr. Glotzer stated that the staff discussed the proposed deferral for pass through entities only with a number of constituents. The most common questions asked were (a) how would the deferral apply if a taxable entity has pass-through subsidiaries, (b) how would the deferral apply if a pass-through entity has taxable subsidiaries, and (c) how would a deferral affect an entity that is a pass-through for federal purposes but is a taxable entity with uncertain tax positions for state, local, or foreign jurisdictions.

2. To address these questions, the staff identified four alternatives for the Board to consider relating to the scope of the deferral of Interpretation 48: (1) grant the deferral on a jurisdiction-by-jurisdiction basis, (2) grant a deferral on an entity-by-entity basis within the consolidated financial statements, (3) grant a deferral to all entities within a chain of entities if a pass-through entity exists anywhere within the chain, or (4) grant a deferral for all private entities whether or not they are pass-through entities.
3. **Staff Recommendation:** The staff notes that each alternative has drawbacks. Some members of the staff recommends alternative 3 because those staff members do not want to provide an additional deferral for private company stand alone C-corporations. Other staff members recommend alternative 4 because of its simplicity and the fact that it would provide comparability across private companies.
4. **Board Vote:** Messrs. Batavick, Herz, Smith, and Ms. Seidman voted to defer Interpretation 48 for all private entities (alternative 4). Mr. Linsmeier (via proxy) did not vote to support alternative 4. Mr. Linsmeier's prefers alternative 1, but he would accept alternative 3. Both Messrs. Herz and Smith stated that they were reluctantly voting to support alternative 4 but they both would have preferred other alternatives. The staff was instructed to draft the proposed deferral and make sure the final guidance for pass-through entities and disclosure amendments were issued in the first quarter of 2009 so it could be included in the education cycle materials.
5. **Board Comments:** Mr. Smith stated that his preference would be alternative 1. Mr. Proestakes noted that alternative 1 had conceptual appeal, but he believed it could be difficult for users to assess the income tax uncertainties and how they relate to an entity's total operations if Interpretation 48 was applied to only some jurisdictions and not to others. Mr. Golden stated that one of the biggest reasons for the deferral is that many federal pass-through entities, because of their status as a federal pass-through entity and the low levels of detection risk, had not even determined if they had nexus with certain states in which the entities would not

qualify as pass-through entities. Accordingly, he stated that those entities would not have time to do the correct analysis under alternative 1, so he did not believe such a deferral would benefit many pass-through entities.

6. Mr. Herz stated that his preference would be alternative 2. He stated that it would not be ideal for different entities within a consolidated group to apply different GAAP because certain entities would apply Interpretation 48 for uncertain tax positions and other entities would apply FASB Statement No. 5, *Accounting for Contingencies*. However, he believed that it was operationally possible and should not impact an entity's tax planning strategies. Additionally, he noted that similar situations already exist. For example, some entities may apply LIFO while others apply FIFO in the same consolidated group. Accordingly, Mr. Herz stated that he believed the downside of the added complexity was outweighed by the benefit of having most private entities, such as standalone private C-corporations, applying Interpretation 48. He also noted that there are public master limited partnerships that have C-corporation subsidiaries that have been applying the Interpretation.
7. Mr. Glotzer noted that alternative 3 would still result in standalone private C-corporations applying Interpretation 48. However, Mr. Golden stated that he feared certain private entities may create a pass-through entity in the consolidated group in order to become subject to the deferral.
8. Ms. Seidman stated that she still supported alternative 4. She believed the Board should expeditiously work to develop the guidance for pass-through entities and the disclosure amendments in Interpretation 48 in order to finalize those changes so that they can be effective for the following year's financial reporting cycle. However, she did not think that this project was an emergency for private company users, so she was basing her decision entirely on prioritization of FASB resources and the ability of small companies to implement the Interpretation in the fourth quarter with the current market environment. She also noted that questions about the application of Interpretation 48 to pass-through entities were not new and had been raised back in 2007.

9. Mr. Batavick similarly stated that he supported alternative 4. He noted that all other alternatives have operational issues, and he also noted that the Board still lacked a crisp definition of what constituted a pass-through entity. He stated that it was getting too late in the year to expose and redeliberate any alternatives other than alternative 4 because of issues that may arise. He also stated that the Board miscalculated when it decided to let the AICPA and third-party providers address any guidance that was necessary for pass-through entities.
10. Mr. Smith stated that he struggled with providing a blanket deferral to all private entities when a number of private entities do not have pass-through status and should have had sufficient time to learn and apply the Interpretation. However, while he would prefer alternative 1, he stated that he would support alternative 4 if the Board reached a stalemate. Similarly, Mr. Herz stated that he was deeply chagrined to have to provide an additional one-year deferral to private entities. He stated that this deferral set a bad precedent but that the Board would not be as tolerant of the private company community on other issues in the future.
11. Ms. Seidman stated that the Board may have to take a proactive role in reviewing the training materials that are being prepared for private company major conferences to make sure that it includes adequate information about what issues will be coming up in the near future for private companies. Mr. Herz stated that the Private Company Financial Reporting Committee could also review such materials in the future in addition to writing comment letters.

Follow-up Items:

None.

General Announcements:

Mr. Herz announced that this would be Mr. Batavick's final meeting at the FASB and that Mr. Siegel would be starting the following week. Mr. Herz thanked Mr. Batavick for his service in his five plus years of service at the FASB.