

Stacey Sutay

From: John.McEnerney@banking.state.ny.us
Sent: Monday, December 01, 2003 3:27 PM
To: Director - FASB
Subject: File Reference No. 1082-300

Letter of Comment No: 89 -
File Reference: 1082-300
Date Received: 12/01/03

Dear Mr. Smith:

The New York State Banking Department (the Department) appreciates the opportunity to respond to the Financial Accounting Standards Board's (the Board's) exposure draft, Consolidation of Variable Interest Entities -- a modification of FASB Interpretation No. 46. While the Department acknowledges the Board's efforts to provide prompt accounting guidance on key issues following recent significant scandals, both Interpretation 46 and this proposal highlight the need for the Board to reconsider its basic approach. The number of changes and clarifications listed in this proposal again illustrates that the Board must stop proceeding along a path of complicated and confusing accounting standards. Instead, the Board should develop a true principles-based standard with a clear focus on control. The overriding principle must be to require consolidation of all entities by the party in ultimate control, and to remove corresponding assets and liabilities from the balance sheet only when such control no longer exists. These principles should be communicated in a new comprehensive statement. The Board must also determine how its approach will compare against the current and future standards of the International Accounting Standards Board, which have been and are likely to be centered on the principle of control.

The need for numerous modifications to Interpretation 46 also reveals the dangers of creating GAAP under pressure. The "crisis mode" under which the Board may see itself operating is not conducive to the development of enduring quality accounting standards.

The Department also has significant concerns about using FASB Staff Positions to clarify or establish GAAP. However well-intentioned, Staff Positions may add rather than alleviate confusion. Staff Positions also move standard-setting further away from a principles-based approach; does the Board expect parties to make judgments without continuously checking the Board's website for the latest guidance from the Board's staff? The interconnection between this proposal and the recent proposal on qualifying special-purpose entities raises questions about whether an amended Interpretation 46 will be effectively revised again in the near future, and whether that will lead to additional Staff Positions or amendments to relevant accounting standards.

Should the Board decide to proceed with the proposal, the Department has additional concerns:

* Allowing entities who are unable to obtain sufficient information to avoid consolidation benefits companies with poor documentation or the willingness to ignore relevant information. While the proposal states that the "inability to obtain the necessary information is expected to be infrequent," it does not provide any consequences should this exception be taken more than infrequently. Perhaps the Board should consider whether to require consolidation if information is not available to disprove it.

* The very quick effective date highlights concerns as to whether the Board will seriously consider any comments. Nearly immediate effective dates increase confusion and diverse practices even when information is readily available. Further, to comply with almost instantaneous changes in accounting, financial statement preparers are forced to take significant actions on proposed guidance before it is finalized. This represents an inefficient use of preparer resources, and may harm the application of existing accounting standards by diverting resources to proposed standards. The Department suggests providing at least six months between issuance and required adoption, and up to one year for more complex matters such as those addressed in this proposal.

If you have any questions or if you would like to discuss our comments, please call me at (212) 709-1532.

Very truly yours,

John McEnerney
Chief of Regulatory Accounting