

Letter of Comment No: 7
File Reference: 1082-200
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July 30, 2002

MP&T Director – File Reference 1082-200
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, Connecticut 06856-5116

Sent via E-mail only to director@fasb.org

Re: File Reference 1082-200, Exposure draft of Proposed interpretation regarding Consolidation of Certain Special-Purpose Entities

Based on my review of the proposed interpretation, the following issues require further consideration or clarification by the Board. If applicable, I have provided information to assist in clarifying the issue. In other instances, the issues identified are intended to allow the Board to further clarify the item to make sure its intent is clear to users of this proposed interpretation.

1. Paragraph 7 – definitions – The term ‘nominal owner’ is used in various places within the document, but it is not defined. Does the definition encompass owners other than the primary beneficiary, or is the definition more limited?
2. Paragraph 9 – the opening section discusses ‘one or more parties’. Is this intended to mean that any equity ownership (regardless of size) would need to meet the provisions outlined? For example, there may be a combination of common and preferred interests where preferred stock owners have a set (but not guaranteed) return during the term of the SPE, liquidation preference (but not guaranteed) and no voting interests. Is the criteria to be applied only to the voting interests, as it relates to 9.c.? Would a preferred interest be includable in the equity investment criteria to meet the sufficiency tests outlined in paragraphs 11 and 12? If there were one preferred stock investment which had guarantee provisions, and the investment and guarantee were insignificant, could that small investment cause the entity to fail the test of paragraph 9.c. and thereby require further consideration regarding variable interests?
3. Paragraph 9 and 10 – Does the criteria in Paragraph 9. regarding ‘one or more... meet’ conflict with the provision of Paragraph 10 regarding ‘A party...fails to meet’? Paragraph 9. indicates that if one party *meets* criteria a. through e., consolidation doesn’t apply. However, paragraph 10 states that if ‘A party...*fails to meet*...the conditions of paragraph 9.’, review of information related to the variable interest continues.

4. Paragraph 13 and following regarding variable interests – if the SPE and surrounding agreements have provisions that provide the primary beneficiary with an escape clause, does this mitigate the criteria in paragraph 13? For example, if the asset held is a productive asset and either no longer meets specifications or becomes obsolete such that it no longer provides the primary beneficiary value, and the primary beneficiary would lose only their equity investment by abandoning the SPE, should the entity consolidate the SPE?
5. Paragraph 26 – the first application of the standard is the ‘first fiscal period beginning after March 15, 2003.’ In the summary, page iii, the standard is applied as of the beginning of the first fiscal year or interim period beginning after March 15, 2003. These two provisions are not consistent. Implementation at the beginning of a fiscal year is more practical and provides users with more consistent financial information.
6. Paragraph 26 – applying the provisions based on fair values of the assets – is the fair value approach appropriate in all instances? Where the SPE has productive assets subject to depreciation (versus financial assets subject to fair value accounting), consolidation based on cost basis has more validity and provides for less cumbersome and costly accounting over time. In addition, cost basis for these types of assets held by an SPE would prevent the ability to manipulate the fair values that may fluctuate over time and prevent inflating the value of the SPE through a fair value determination on a date that is advantageous to the consolidating entity.
7. Paragraph 27 – pro forma disclosure – if fair value is used in all instances, how do you apply the provisions to previous periods? Is a fair value determination required for each reporting period, or is there some other measure? If there is appreciation or depreciation in value of a productive asset, when is the gain or loss recognized within the pro forma presentation? For non-financial assets, this may result in significant costs in order to implement the provisions of this interpretation.

Thank you for your consideration of the above items. You may contact me at 952-918-3599 with any questions.

Sincerely,
EIDE BAILLY LLP

James Schmidt

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Partner