

# McGladrey & Pullen

Certified Public Accountants



LETTER OF COMMENT NO. 29

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**File Reference: Proposed FSP FAS 140-e and FIN 46(R)-e, *Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities***

Dear Mr. Golden:

We appreciate the opportunity to comment on the proposed FASB Staff Position (FSP) No. FAS 140-e, *Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities*. McGladrey & Pullen, LLP supports the FASB's objective of providing greater transparency to financial statement users about a transferor's continuing involvement with variable interest entities in the period before the proposed Standards on FASB Statement No. 140 and FIN 46(R) are expected to become effective.

While we support the FASB's objective of providing greater transparency, we believe that some of the disclosures are excessive and overly burdensome. We are particularly concerned about the proposed disclosures where the transferor has no continuing involvement. Additionally, the proposed disclosures of future implicit arrangements are not feasible because companies cannot always predict the circumstances that would cause them to provide non-contractual support to an SPE.

Some of the proposed disclosure requirements impose an undue burden on the preparer or require information that the reporting enterprise cannot obtain. We believe the most onerous disclosures should be reduced or eliminated from the FSP's requirements. These include disclosures pertaining to:

- Transactions where there is no continuing involvement.
- Transactions that are consolidated on an entity's balance sheet.
- Passive investors that hold a significant variable interest in a QSPE (but have no other involvements with the QSPE) in those situations where the investor does not have access to the information necessary to make the proposed disclosures.

The following are our specific comments related to certain of the proposed amendments to FASB Statement No. 140 and FIN 46(R):

#### **Scope (paragraph 4)**

We agree with the decision to include only publicly traded companies in the scope of the proposed FSP. Private companies will be required to eventually include similar disclosures to the ones proposed in this FSP (assuming the proposed changes to FASB Statement No. 140 and FIN 46(R) become final). Private companies will need the additional time to capture the data necessary for those new disclosures.

#### **Effective Date (paragraph 12)**

The effort to compile the new disclosure information will be substantial. In addition, many companies will be dealing with planning for the initial application of several new FASB Statements (FAS) including FAS 141(R), FAS 160 and FAS 161. We believe the proposed effective date of the proposed FSP would not provide sufficient time for compliance with the new requirements. Therefore, we believe the effective date of the final FSP should be no earlier than the first interim period ending after June 15, 2009.

The language in paragraph 12 does not make it clear whether the proposed disclosures apply to all interim periods or only to the first interim period after adoption of the FSP. To reduce the operational and reporting burden on reporting enterprises, we recommend that after the first interim period, the disclosures should be required on an annual basis only.

#### **Appendix B – FASB Statement No. 140 Disclosures**

##### ***Scope (paragraph 17)***

We believe a transferor with no continuing involvement should be scoped out of the disclosure requirements in paragraph 17. If it is the Board's intent to include transferors with no continuing involvement within the scope, then it should consider identifying which disclosures, if any, are required and consider providing the justification for requiring these disclosures in the FSP. This would help preparers ensure that they have included all relevant disclosures.

##### ***Paragraph 17 f. (2) and 17 g. (3)***

We believe the requirement to disclose the model validation procedures goes beyond other requirements in accounting standards that regularly use models (such as stock option valuations) and should not be required.

##### ***Paragraphs 17 i. (3) and (4)***

We suggest making it clear whether the disclosures about assets and liabilities with continuing involvement apply to those accounted for as secured borrowings. We do not believe they should be required for secured borrowings.

#### **Appendix C – FIN 46(R) Disclosures**

##### ***Expanded Disclosure Requirements for Sponsors of Variable Interest Entities (paragraphs 22A, B, C & 23)***

The proposed FSP requires certain disclosures that apply to a *sponsor* of an entity, even where the *sponsor* holds an insignificant variable interest. Surprisingly, the Board had indicated that it was not necessary to define the term *sponsor* because that term is used elsewhere in accounting literature without definition. In practice, the definition of the term "sponsor" has been the topic of debate. We believe to properly apply the FSP, the Board should communicate its definition so that companies have a common understanding of the characteristics of a "sponsor".

##### ***Implicit Arrangements (paragraph 22C)***

Proposed paragraph 22C would establish new disclosure requirements for primary beneficiaries, holders of significant variable interests, and sponsors that hold any variable interests in a variable interest entity. We have concerns about an auditor's ability to obtain a reasonable level of assurance that the disclosures related to implicit arrangements as required in paragraph 22C (d) are complete and accurate. Implicit arrangements are generally based on management's intent and relate to contingent future events (which, by definition, may or may not occur)

and are outside of the company's control. Therefore, forecasting future implicit arrangements is not always feasible nor is it appropriate in audited financial statements. We believe the Board should eliminate the disclosure requirement for implicit arrangements.

***Deletion of Exception from Required Disclosures for a Consolidated Variable Interest Entity (paragraph 23)***

In the introduction to paragraph 23 of FIN 46 (R), we note that the exception from the required disclosures for the primary beneficiary of a variable interest entity (VIE) where the primary beneficiary also holds a majority voting interest has been deleted (see Appendix G for the deleted text that is struck out). Under current practice, a VIE analysis is not always prepared for entities where the parent knows that the entity would be consolidated regardless of whether the entity is a VIE. Reporting enterprises would have to analyze many entities that are consolidated today and first determine whether the entities are VIEs and then also determine which, if any, of these entities meet the definition of a business in FAS 141(R), *Business Combinations*, in order to make the disclosures required by the proposed FSP. We fail to understand why additional disclosures are necessary for consolidated variable interest entities. If the assets and liabilities are included in the consolidated balance sheet, the reporting enterprise already has to make the disclosures required of them under existing GAAP (for example, restrictions on assets). We believe these additional disclosures are excessive.

**Appendix D - Disclosures for a Nontransferor Enterprise that Holds a Significant Variable Interest in a Qualifying SPE**

We believe passive investments should be scoped out of Appendix D. Passive investors in QSPEs may not have the ability to obtain the information required by the proposed FSP without undue cost and effort. The proposed disclosures would require an investor to determine whether its investment is in a QSPE, whether the SPE continues to qualify as a QSPE, and whether its interest is significant to the VIE as well as to the investor. Investors who were not involved with the formation of the QSPE and that do not provide servicing, liquidity, credit, or risk management facilities to the QSPE will most likely not be able to obtain the information required to make the disclosures.

**Other Items**

We noted there are no examples of the required disclosures included in the proposed FSP. We believe examples of the required disclosures will be useful to preparers and recommend that examples be developed to illustrate the new disclosure requirements.

We would be pleased to respond to any questions the Board or its staff may have about any of the foregoing comments. Please direct any questions to Jay D. Hanson (952-921-7785).

Sincerely,

*McGladrey & Pullen, LLP*

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