Norman R. Nelson General Counsel



450 West 33rd Street New York, NY 10001 tele 212.612.9205

norm.nelson@theclearinghouse.org



November 13, 2008

Mr. Russell G. Golden Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: Exposure Draft, Amendments to FASB Interpretation No. 46(R) -

File Reference No. 1620-100

Dear Mr. Golden:

The Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks, appreciates the opportunity to comment on the Exposure Draft on Amendments to FASB Interpretation No. 46(R) (the "Exposure Draft").

The Clearing House shares and supports the FASB's objective "to improve financial reporting by enterprises involved with variable interest entities." However, we do not believe that this objective is accomplished. We believe that in many cases, both assets and liabilities will be overstated. The proposed amendments would lead to entities recording assets on their financial statements over which they do not have real control and liabilities for which they have no real economic risk or obligation. We believe that it would be in the interest of financial statement users to reconsider the use of the paradigm suggested in the Exposure Draft.

The members of The Clearing House are: ABN AMRO Bank N.V.; Bank of America, National Association; The Bank of New York Mellon; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; UBS AG; U.S. Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association.

Timing and Convergence

The International Accounting Standards Board ("IASB") is working on a project on consolidation that is on a "fast track," and plans to publish an Exposure Draft in the fourth quarter of 2008. The goals of the IASB project are very similar to the FASB's goals – to revise the definition of control when it is not evidenced by a majority ownership of voting common stock; to allow the same control criteria to be applied to all entities; and to require enhanced disclosures about consolidated and nonconsolidated entities. Since the SEC recently published a "road map" to move from U.S. to international accounting standards that would require all U.S. public companies to switch to IFRS starting in 2014, we believe it would be too burdensome to ask companies to implement two sets of accounting changes dealing with the same topic within a very short time frame. We would ask FASB to focus on a joint FASB/IASB project on consolidation rather than proceed with this proposed standard to enable companies to implement only one set of changes instead of two. Therefore, we do not support the proposed implementation date of fiscal years beginning after November 15, 2009. However, we have listed below our recommendations if FASB continues to proceed with the proposed amendment to FIN 46(R) as outlined in the Exposure Draft.

Examples

The examples are necessary to describe how to apply the new concepts in the Exposure Draft in practice. However, we are concerned that the fact patterns in the examples are too simplistic and do not substantially enhance readers' understanding of how FASB intends the guidance to be applied. For example, we believe that FASB should include examples of more complex situations where the qualitative analysis fails to determine who the primary beneficiary is and entities would have to resort to the quantitative analysis. In addition, we believe that FASB should also include examples of how to determine whether an entity is a variable interest entity (VIE) or not, and if an entity's status as a VIE changes.

Continuous Reassessment

We disagree with the Board's comment in the Basis for Conclusions that the proposed Statement has the same scope as Interpretation 46(R). We feel that this statement is disingenuous, because the requirement to continuously reassess whether an entity is a VIE (and not only whether an enterprise is the primary beneficiary of a VIE) potentially sweeps many more entities into the scope of FIN 46(R). For example, many investors in variable interest entities that previously did not have to reassess whether they were the primary beneficiary because of an absence of the reconsideration events specified in the current FIN 46(R) will now have to reassess their conclusions continuously whenever circumstances change.

Furthermore, we believe that the requirement for ongoing assessment to determine whether an entity is a VIE and whether an enterprise is the primary beneficiary of a VIE is impractical from an operational standpoint. Many companies in the financial sector have involvements with hundreds or thousands of VIEs and continuously reassessing each of these VIEs for consolidation, alongside a reevaluation of whether any other entities have become

VIEs, would be very burdensome. We feel the assessment to determine whether an entity is a VIE should only be performed at inception and then the evaluation should only be reconsidered quarterly based on certain triggers. If an enterprise determines that there has been a change in control, it should then ascertain when the change occurred. If the enterprise cannot determine when the change occurred, it should then assume that the change in control occurred at the beginning of the period. This model would be similar to that used for FAS 133 hedge effectiveness testing and would promote consistency between accounting standards.

Qualitative Assessment

The Clearing House strongly supports the Board's proposed move to a more qualitative model for determining which entity is the primary beneficiary of a variable interest entity, because it alleviates one of the most difficult aspects of applying FIN 46(R). We believe this objective should be even further extended to the determination of whether an entity is a VIE. Paragraph 5(b) of the Exposure Draft still requires companies to do a quantitative analysis of expected losses and expected residual returns to determine whether an entity is a VIE. The Clearing House recommends that this quantitative analysis be replaced with a qualitative analysis to be consistent with the proposed method used to determine the primary beneficiary. The expected losses and residual returns concept should be eliminated from paragraph 5(b).

Definition of Significance

Paragraph 14A.b. of the Proposed Statement sets forth an inappropriately low threshold of "potential to be significant" in analyzing whether involvement with a VIE is significant enough to meet the second characteristic for consolidation. The Clearing House believes that consolidation of a VIE should not be required unless the enterprise with power has a significant variable interest today. It appears that the FASB believes consolidation is an appropriate result when a potentially significant event (that has not occurred and has a remote possibility of occurring) could happen in the future. The Clearing House believes the only reasonable way to measure whether an interest is significant should be based on the relationship of the variable risks and rewards of the enterprise relative to the variable risks and rewards of all variable interest (VI) holders of the VIE. If the FASB does not change the provision to be consistent with the above, The Clearing House recommends a higher threshold than "potential" such as "reasonably possible" or "more likely than not" to avoid consolidation by an entity with an insignificant VI.

Additionally, The Clearing House does not believe it is appropriate to hypothesize about what an enterprise may do if events occur in the future unless those events are reasonably possible of occurring. In this regard, the FASB appears to be attempting to capture structured investment vehicle (SIV) structures that were off-balance sheet prior to the sponsor's providing financial support it was not contractually obligated to provide. The Clearing House observes that it is potentially misleading to assume that this implicit relationship would exist on a wide-spread basis outside those unique situations. The Clearing House members do not know of any mortgage-backed securitization that was supported by the transferor or sponsor without a contractual requirement to do so. The Clearing House recommends that this guidance be limited

to contractual arrangements that would require the enterprise to provide financial support or those already considered an implicit VI under FSP FIN 46(R)-5.

Power

The concept of "power" is new in U.S. GAAP and we feel that this concept is not described clearly enough in the proposed statement. It is unclear whether the concept of "power" focuses on day-to-day decision making or whether "power" is held by the entity that makes long-term strategic decisions. We think that Example 8, which describes two unrelated parties owning a hotel, does not sufficiently address this question, because the example assumes that all significant decisions are jointly decided by Company A and Company B. However, consider a situation where the hotel operator (Company A) makes all the day-to-day decisions on behalf of the entity (i.e., hiring, training, reviewing and overseeing staff members; meeting with customers, contractors, and suppliers, etc.), whereas Company B makes long-term strategic decisions on behalf of the entity (i.e., building a new hotel wing). It is unclear to us in this type of scenario which Company would be considered the primary beneficiary. Therefore, we feel that the Board needs to better develop the concept of joint power.

The IASB exposure draft on consolidation deliberately moves away from the notion that control is only achieved through the power to govern the operating and financial policies of an entity. For example, entities with very detailed and defined founding and governing documents or operating within a strict legal framework might only be able to perform a limited range of activities and might have significantly limited decision making authority; therefore, ascribing control to any party would be meaningless. We would suggest that FASB also move in this direction to clarify that the entity that controls long-term strategic decisions has the "power" and, if a decision is made according to the governing documents, it would not be considered to be evidence of "power." Such a clarification would promote the convergence efforts by FASB and IASB.

Enhanced Disclosures

We believe that the elements of certain consolidated variable interest entities should be required or permitted to be classified separately from other elements in an enterprise's financial statements. Because the assets of certain variable interest entities can only be drawn upon to settle the claims of the VIE's liability holders, we believe that it is important to separate these assets from unrestricted assets of the primary beneficiary. Furthermore, we think that such a classification would be helpful to financial statement users, the company's investors and creditors, to see those assets that are restricted and not available to cover the company's liabilities. We would also urge the Board to reconsider adoption of the "linked presentation" accounting model. At a minimum, the linked presentation would be appropriate when the assets of a consolidated VIE are restricted to repaying the liabilities of the VIE, and the primary beneficiary is not obligated to repay the liabilities of the VIE.

Transition Provisions

The transition provisions in the proposed amendment generally require an enterprise to record the assets and liabilities of newly consolidated VIEs, including former qualified special purpose entities (QSPEs), at fair value. While this approach may simplify implementation, it may also lead to financial results that are not comparable in future periods and are potentially confusing if the enterprise does not elect to carry the assets and liabilities of the VIE at fair value on an ongoing basis. Consider, for example, a credit card master trust that is newly consolidated and will be accounted for at historical cost after consolidation. The assets and liabilities of the trust at the transition date would be recorded at fair value, with the difference between fair value and par value accreted into earnings over the life of the assets and liabilities. After the transition date, newly generated receivables sold into the trust and newly issued liabilities would be recorded at historical cost. As a result, the receivables under a single credit card account would be bifurcated into a portion carried at fair value and a portion carried at historical cost.

We believe that the transition provisions as currently written in paragraph 37 of FIN 46(R) should be incorporated into the proposed amendments. Specifically, "the consolidating enterprise shall initially measure the assets, liabilities, and noncontrolling interests of the variable interest entity at their carrying amounts at the date the requirements of this Interpretation first apply. In this context, *carrying amounts* refers to the amounts at which the assets, liabilities, and noncontrolling interests would have been carried in the consolidated financial statements if this Interpretation had been effective when the enterprise first met the conditions to be the primary beneficiary."

We also believe that the primary beneficiary should be allowed to elect the fair value option for the assets and liabilities of newly consolidated VIEs. Thus, VIEs that will be carried at fair value on an ongoing basis would initially be recorded at fair value, and VIEs that will be carried at historical cost on an ongoing basis would initially be recorded at their carrying amounts. In either case, the impact upon adoption would be the same as if the change in accounting had been applied retrospectively and any gain or loss would be recognized as a cumulative effect adjustment to retained earnings.

Thank you for considering the comments provided in this letter. If you have any questions or are in need of any further information, please contact me at (212) 612-9205.

Sincerely yours,

Korman R. Moon