



STATE OF NEW YORK  
BANKING DEPARTMENT  
ONE STATE STREET PLAZA  
NEW YORK, NY 10004

November 13, 2008



Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

LETTER OF COMMENT NO. 32

Attention: Technical Director; File Reference No. 1620-100

*By email*

Dear Mr. Golden:

The New York State Banking Department (the "Department") has reviewed the proposal to amend FASB Interpretation 46(R) and appreciates the opportunity to present the following comments and responses to selected questions.

**The Department continues to believe that consolidation of entities should be required by the party in ultimate control, and that corresponding assets and liabilities should be removed from the balance sheet only when such control no longer exists. We applaud the Board's proposal and believe it will improve accounting. While the determination of control may be addressed in various ways, we believe the proposed language should be given an opportunity to work. Field-testing would be beneficial to ascertain whether any refinements are needed before the effective date. Prior to finalizing this interpretation, the Board should coordinate with the International Accounting Standards Board and if possible issue a joint statement or interpretation to further convergence.**

*1. Will the proposed Statement meet the project's objectives to improve financial reporting by enterprises involved with variable interest entities and to provide more relevant and reliable information to users of financial statements?*

**Yes. The Board should disregard arguments about the expected impact the proposal will have on regulatory capital since regulators have the ability to revise their capital requirements.**

*2. What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further*

*reduce the costs of applying these requirements without significantly reducing the benefits to users of financial statements?*

**The costs to preparers are outweighed by the benefits of more accurate accounting. See also response to # 7.**

*3. The Board decided to adopt a more principles-based approach to determine the primary beneficiary of a variable interest entity. Do you believe the principles in paragraphs 14-14B of Interpretation 46(R), as amended by this proposed Statement, are sufficiently clear and operational?*

**Yes.**

*5. This proposed Statement retains the quantitative analysis for situations in which an enterprise cannot determine whether it is the primary beneficiary through the qualitative analysis in paragraph 14A of Interpretation 46(R), as amended by this proposed Statement. In Appendix A, each example either identifies a primary beneficiary or concludes that no primary beneficiary exists through a qualitative analysis. The Board may consider removing the quantitative analysis for determining whether an enterprise is the primary beneficiary of a variable interest entity. Do you believe that the quantitative analysis is necessary based on the proposed amended guidance for determining the primary beneficiary? Do you believe that the quantitative analysis would be performed in many situations? Why or why not?*

**The Department believes quantitative analysis should be retained. Field-testing should help answer how often quantitative analysis would be required.**

*6. For the reasons stated in paragraph B6-B15 of this proposed Statement, the Board decided to require ongoing assessments to determine whether an entity is a variable interest entity and whether an enterprise is the primary beneficiary of a variable interest entity. Do you agree with the Board's decision to require ongoing assessments? If not, please provide reasons (conceptual or otherwise) as to why you disagree with these requirements considering all of the proposed amendments in this proposed Statement.*

**The Department agrees with requiring ongoing assessments.**

*7. Do you believe that any exceptions to this proposed Statement should be made for private or not-for-profit entities? If so, please articulate the conceptual basis and reasons for the exceptions.*

**We believe no exceptions should be made for the accounting. If the Board determines that the cost of providing additional disclosures is excessive for private or not-for-profit entities, it should reduce or defer those disclosures for such entities.**

If you would like to discuss our letter, please call me at (212) 709-1532 or email me at [john.mcenerney@banking.state.ny.us](mailto:john.mcenerney@banking.state.ny.us).

Very truly yours,

John McEnerney  
Chief of Regulatory Accounting