

**Stacey Sutay**

**From:** Tina Longenecker [TLongenecker@berwind.com] on behalf of Van Billet [VBillet@berwind.com]  
**Sent:** Friday, January 18, 2008 8:23 AM  
**To:** Director - FASB  
**Subject:** File Reference: Proposed FSP FIN 48-b

While we applaud the Private Company Financial Reporting Committee ("PCFRC") and the FASB in their efforts to defer the effective date of FIN 48 for nonpublic companies, we feel obligated to bring to your attention an area of significant confusion that we believe will cause tremendous problems for most nonpublic companies. The confusion emanates from the language "... prepared in accordance with U.S. GAAP to third parties." used in the second paragraph of the January 8, 2008 FASB press release and how this language is being interpreted by the FASB staff as communicated informally to some large firm practitioners.

As a nonpublic company with numerous pass-through entities and Sub-S corporations we have been monitoring the publicly available information regarding the effective date of FIN 48 for nonpublic companies. The public information available to us and most nonpublic companies can be broken down into two categories. The first category is information released by the PCFRC and the FASB. The second category is comprised of professional publications such as the AICPA Alerts and the Journal of Accountancy. The information published by the PCFRC and the FASB up through the issuance of the proposed FSP No. FIN 48-b would lead one to reasonably conclude that if a nonpublic company had not adopted FIN 48 prior to the issuance of the final FSP then the effective date for the adoption of FIN 48 would be for fiscal years beginning after December 15, 2007. In addition, numerous published articles/communications from various professional organizations (see electronic AICPA Tax Alert, dated 11/29/07 and the Journal of Accountancy, December 2007) and practitioners announced the deferral of the effective date for nonpublic companies. Therefore, based upon publicly available information to nonpublic companies it would be reasonable to conclude that most nonpublic companies put down their pencils in the Fall of 2007 with regard to the implementation work on FIN 48 and as they approached the 2007 year end believed that FIN 48 would be deferred.

It is our understanding, based on informal communications between large firm practitioners and the FASB staff (post the publication of the proposed FSP FIN 48-b) concerning the interpretation of certain language in the proposed FSP, that the FASB issued a news release on January 8, 2008. The news release attempted to clarify the meaning of certain language in the proposed FSP by stating, "The amendments contained in the proposed FSP clarify that the provisions of Interpretation 48 have been adopted if the nonpublic entity has issued financial information prepared in accordance with U.S. GAAP to third parties." Once again, based upon available public information at the time of the news release, one could reasonably conclude that if they never started or completed the implementation work for the adoption of FIN 48 (a significant undertaking for any nonpublic company) for 2007 then how could any financial information they provided to third parties during 2007 be in accordance with U.S. GAAP. As a result of this conclusion, most nonpublic companies would still believe that they would qualify for the deferred effective date. However, it is our understanding that based on informal communications between the large firm practitioners and the FASB staff after the issuance of the press release, that the FASB staff came to a different conclusion. The informal FASB staff's conclusion would in substance hold that if a nonpublic company provided any financial information to a third party during 2007 then they would not qualify for the deferred effective date because providing such financial information would be deemed to be in accordance with U.S. GAAP regardless of whether or not FIN 48 was incorporated into the financial information. It is important to note that most nonpublic companies do not have access to the informal communications between the FASB staff and the large firm practitioners and thus are unaware of the FASB staff's interpretation of the language in the news release. Furthermore, such an interpretation as proposed by the FASB staff would preclude most nonpublic companies from qualifying for the deferred effective date at a time when they believe they do qualify and are in the midst of their 2007 year end closings and audits.

In summary, we believe that most nonpublic companies only have access to publicly available information and have no way to connect into the informal communications between the FASB staff and the large firm practitioners and as such reasonably believe that they will qualify for the deferred effective date. Furthermore, if the current position of the FASB staff (deemed adoption of FIN 48) becomes part of the final FSP then most nonpublic companies will be caught by surprise and thrown into a state of confusion and frustration regarding how they will comply with the adoption of FIN 48 for 2007 at a time when they are in the year end closing and audit processes

for 2007. We believe that based on principles of fairness and timing that the FASB should not adopt the FASB staff's position (deemed adoption of FIN 48) and allow nonpublic companies to qualify for the deferred effective date unless they adopted early by affirmative action (e.g., completed the internal implementation work and recorded the results into the company's financial information) the provisions of FIN 48.

Your consideration of this matter is greatly appreciated.

Sincerely,

*Van Billet*

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