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To: Director - FASB
Subject: Proposed FSP FIN 48-b - comment letter



LETTER OF COMMENT NO. 37

File reference: Proposed FSP FIN 48-b

We appreciate this opportunity to provide comments regarding the proposed FASB Staff Position FSP FIN 48-b (the FSP) to defer the effective date of FASB Interpretation No. 48 (FIN 48) for nonpublic companies to fiscal years beginning after December 15, 2007. As stated in the FSP, to avoid complexity the Board decided to apply the deferral of FIN 48 to all nonpublic enterprises, as that term is already defined in FAS 109, which includes all private companies, pass-through entities, and not-for-profit organizations. Based upon the discussion during the November 7 Board meeting, the intent and purpose for the deferral was to provide more time for nonpublic enterprises to better understand and implement FIN 48. As a private company we wholeheartedly agree with the intent behind the deferral, and we do need additional time to better understand and implement FIN 48.

Unfortunately, the FASB press release on January 8 has seemingly created a trap for the unwary and significant controversy between the accounting firms and their clients by generally stating that "the provisions of Interpretation 48 have been adopted if the nonpublic entity has issued financial information in accordance with U.S. GAAP to third parties." Although the press release states that the amendments contained in the FSP clarify this point, we do not agree if application of the statement in the press release means that a nonpublic company is deemed to have effectively adopted FIN 48 if it issued any 2007 interim GAAP financial information. The Board must take immediate action to end this controversy by clarifying its intent with respect to the definition of "adoption" as it relates to FIN 48.

Paragraph 6 in the "Scope" section of the FSP specifically states, "A nonpublic enterprise that adopted the provisions of Interpretation 48 before the issuance of this FSP must continue to apply the provisions of Interpretation 48." Based on this statement, it would seem that the definition of "adoption" encompasses an affirmative act on the part of the enterprise, through the use of the appropriate two-step recognition and measurement process specified in FIN 48 to properly account for income taxes in both the income statement and the balance sheet, as well as by making the required accounting policy and other necessary disclosures. We believe there is a significant difference between the wording used in the press release and Paragraph 6, particularly as it potentially relates to the "implied" adoption of a significant accounting standard. It is difficult to believe that "adopted" as used in Paragraph 6 would also include the mere issuance of any 2007 interim GAAP financial information to third parties that has not been prepared in accordance with the specific processes required under FIN 48 and that makes no mention of FIN 48.

We believe that the statement contained in Paragraph 7 of the FSP, which effectively amends paragraph 22 of FIN 48, is more consistent with the statement in the press release and that it provides further clarification to the intent of the FASB. By stating that "Earlier adoption is permitted as of the beginning of an enterprise's fiscal year provided the enterprise has not yet issued financial statements or information to third parties, including financial statements or information for any interim period, for that fiscal year," the FASB has established a more restrictive approach with respect to early adoption. It would be more appropriate to restrict the ability of a nonpublic enterprise, or any enterprise, from making an "after-the-fact adoption" (or alternatively the "un-adoption") of an accounting standard when the financial information that the enterprise has already issued to third parties did not effectively and affirmatively adopt the new method of accounting.

If the FASB truly believes that the mere issuance of 2007 interim GAAP partial financial statements or any other financial information without a specific reference to FIN 48 should be considered to be the "adoption" of a FASB interpretation, the implied adoption of FIN

48 would clearly be inappropriate and it would put the users of such GAAP financial information at a significant disadvantage since they would not be properly informed about a significant accounting policy used to prepare the financial information. There should never be an "implied adoption" of a significant accounting standard, particularly when the adoption relates to a high profile interpretation such as FIN 48 which requires specific recognition and measurement processes, provides for a cumulative effect adjustment, and specifies significant related disclosures.

The decision by the Board on November 7 to defer the effective date of FIN 48 for nonpublic enterprises was based on a number of good reasons to do so, and those same reasons continue to apply. At that time, there was a broadly held view that virtually all nonpublic enterprises would likely be eligible for the deferral. If the Board believed that nonpublic enterprises did not have sufficient time to understand and implement FIN 48 in November there is significantly less time now. A last-minute change in the eligibility rules, or at least the interpretation and application of those rules on a more restrictive basis, makes no sense and it clearly puts the nonpublic enterprises, as well as the users of their financial information, at an unfair disadvantage. There is simply no good reason to further restrict the deferral of FIN 48 for nonpublic enterprises at this time, and the Board needs to end this controversy as soon as possible.

Regards,

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