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January 18, 2008



LETTER OF COMMENT NO. 43

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

File Reference Proposed FSP FIN 48-b

Dear Mr. Golden:

We are pleased to comment on the proposed FASB Staff Position (FSP) on Interpretation 48, Effective Date of FASB Interpretation No. 48 for Nonpublic Enterprises, (FIN 48-b) which provides an amendment of FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes (FIN 48). We are commenting on two issues in our response, first, the timing of the proposed FSP and, second, on certain provisions of the proposed FSP. When referring to financial information issued to third parties, it is assumed throughout this letter that the information was required to be prepared in accordance with generally accepted accounting principles (GAAP).

Timing of the FSP and Effective Date

We believe the Board should revise the proposed FSP to provide a broad deferral of FIN 48 for nonpublic companies for years beginning after December 15, 2007. We believe the deferral should apply to all nonpublic companies, however, also allow nonpublic companies the ability to adopt early, and maintain the requirement that a company cannot unadopt if they previously adopted the specific provisions of FIN 48. Our reasons for these views are described in the following paragraphs.

As a frame of reference and from a practical perspective, it is quite common for nonpublic companies to adopt new accounting standards as part of their year-end reporting, rather than in interim financial reporting in the year of adoption. We understand nonpublic third-party users routinely accept this approach for interim financial information. As such, many nonpublic companies did not adopt the provisions of FIN 48 when they issued interim financial information to third parties. When many of these companies learned of the deferral, they believed it applied to them, based on the wording and statements in the public domain. We

believe, based on the public information available to preparers, that it was reasonable for those companies to conclude that the deferral would be applicable to those entities, even though they had issued financial information that did not include the adoption of FIN 48 to third parties.

The following approximate dates are useful in this understanding.

- November 7, 2007 FASB Board meeting discussing deferral of FIN 48
- November 29, 2007 FASB Board minutes published discussing deferral of FIN 48
- December 18, 2007 FSP FIN 48-b issued
- January 8, 2008 FASB news release announcing the deferral of FIN 48
- January 18, 2008 Comment deadline

November 7, 2007

The FASB Board discussed the deferral of FIN 48 at its November 7, 2007 meeting debating several issues; however, the Board ultimately concluded to defer the effective date for nonpublic entities. Many of the news services issued alerts of the Board's decision, and the primary message delivered was that FASB deferred the effective date for nonpublic companies. In some cases, the news sources indicated the deferral would not be applicable to entities that already adopted the provisions of FIN 48. While constituents should obtain information directly from FASB and that this proposal should not have been construed as final until FASB completes its deliberative process, many in fact do rely on news services to monitor FASB developments. At this point, there was not much other public information to conclude the proposed FSP would not be a broad deferral.

November 29, 2007

The Board minutes were included on the FASB website. The minutes are consistent with the previous language referred to above, which stated that the deferral was not applicable to nonpublic entities that have already adopted the provisions of FIN 48. See excerpt of paragraph 20. from the minutes below.

20. The Board agreed with the staff's recommendation to defer the effective date of Interpretation 48 for all nonpublic entities, including not-for-profit entities, to fiscal years beginning after December 15, 2007. Nonpublic entities that have already adopted the provisions of Interpretation 48 would not be eligible for the deferral. (Five agreed [RHH, LWS, GJB, LFS, GMC by proxy]; two did not [TJL, DMY].)

As noted above, we have observed that preparers of many private companies are dependent on the news services as well as information on FASB's website. The information in the news services and the specific wording above use the phrase "already adopted the provisions of Interpretation 48"; however, neither the news services nor the FASB minutes provide any further clarification that the phrase could mean it includes entities that should have adopted FIN 48. Many entities, therefore, concluded that since they literally had not adopted the

provisions of Interpretation 48 in financial information issued to third parties, they would be allowed to defer under the proposed FSP.

December 18, 2007

FSP FIN 48-b is issued and contains clarification on which entities could early adopt. Paragraph 7 of the proposed FSP includes the following sentence. "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 any financial statements or information for any interim period, for that fiscal year". This sentence suggests an entity is permitted to early adopt only if they have not already issued financial information to third parties, which could also be interpreted that if an entity issued interim financial information to third parties that did not include adoption of FIN 48, that they were now *prohibited* from adopting FIN 48.

The last sentence in paragraph 7 indicates, "A nonpublic enterprise that adopted the provisions of Interpretation 48 before issuance of FSP FIN 48-X, Effective Date of FASB Interpretation No. 48 for Nonpublic Enterprises, must continue to apply the provisions of that Interpretation." This sentence is consistent with the other available public information and specifically indicates the deferral is not available to an entity that adopted the provisions of FIN 48. The FSP does not indicate in the background information or in the position itself that this sentence may actually mean an entity that should have already adopted FIN 48 in financial information issued to third parties cannot now defer the adoption.

<u>January</u> 8, 2008

FASB issued a news release announcing the proposed deferral of FIN 48 for nonpublic enterprises that included different wording than the FASB minutes or the proposed FSP. The news release stated, "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." This sentence was not included in the FASB Board minutes or the proposed FSP and appears to change the definition of who could defer.

<u>January</u> 18, 2008

Comment letters are due on the proposed FSP. All of the above information referred to is non-authoritative, and until the final FSP is issued, the meaning of those provisions will continue to be uncertain.

As described in the timeline of events above, until just recently, many preparers likely concluded that the deferral would be applicable if they had not "already adopted the provisions of Interpretation 48," even though they issued financial information to third parties. Further, many companies that may have been planning for the adoption of FIN 48 in 2007, stopped their processes when the first announcement was made in early November; therefore, they are not in a position to now restart those processes in order to prepare their 2007 financial statements in a timely manner.

In conclusion, if these issues were being deliberated months ago with a final FSP to have been issued in October or November 2007, for example, we could support a conclusion that the deferral was not applicable to entities that issued financial information to third parties. Our primary concern is that the initial tentative announcements issued in late 2007 gave the perception of a broad deferral that would be applicable to most nonpublic entities. For the many nonpublic entities where the effects of adoption are only additional disclosures, adopting even at this late time might not be that significant or burdensome. However, for those entities where the potential exists for large adjustments, it presents an unfair burden to require their adoption at this late time, and the work required to compute the effect is needed even for those that will ultimately only have added disclosures.

Proposed Wording Changes

For the reasons cited above, we believe a deferral for nonpublic entities is appropriate. Therefore, we propose the following changes to the proposed FSP.

Originally Proposed

[Added text is underlined and deleted text is struck out.

For public enterprises (as defined in paragraph 289 of Statement 109) this Interpretation shall be effective for fiscal years beginning after December 15, 2006. For nonpublic enterprises (also as defined in paragraph 289) this Interpretation shall be effective for fiscal years beginning after December 15, 2007. 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. A nonpublic enterprise that adopted the provisions of Interpretation 48 before issuance of FSP FIN 48-X, Effective Date of FASB Interpretation No. 48 for Nonpublic Enterprises, must continue to apply the provisions of that Interpretation.

Suggested

Added text to the FSP is underlined and deleted text from the FSP is struck out.

For public enterprises (as defined in paragraph 289 of Statement 109) this Interpretation shall be effective for fiscal years beginning after December 15, 2006. For nonpublic enterprises (also as defined in paragraph 289) this Interpretation shall be effective for fiscal years beginning after December 15, 2007. 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. A nonpublic enterprise that issued financial statements or information to third parties that included the adoptioned of the provisions of Interpretation 48 before issuance of FSP FIN 48-X, Effective Date of FASB Interpretation No. 48 for Nonpublic Enterprises, must continue to apply the provisions of that Interpretation.

Thank you for consideration of our comments. Please contact James A. Dolinar, should you have any questions.

Very truly yours,

Crowe Chizek and Company LLC

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