



LETTER OF COMMENT NO. 45

One Ocean Spray Drive  
Lakeville-Middleboro, MA 02349  
508-923-3701

January 18, 2008

Mr. Russell G. Golden  
Financial Accounting Standards Board  
401 Merritt 7, PO Box 5116  
Norwalk, CT 06856-5166  
**File Reference:** Proposed FSP FIN 48-b

Dear Mr. Golden:

My name is Tim C. Chan, and I am the *Senior Vice President and Chief Financial Officer* for Ocean Spray Cranberries, Inc., a privately-owned, non-public cooperative not required to file reports with the SEC. I am writing to you to indicate my frustration over the apparent complexity of the definition of “non-public entity” in connection with the deferral of the application of FIN No.48.

Since the announcement by the FASB on November 7, 2007 that there would be a deferral for the adoption of FIN No. 48 for non-public companies, Ocean Spray, and if I may surmise, many other companies that are not subject to SEC reporting, delayed preparatory work to adopt FIN No. 48. In discussing the deferral with our auditors, PricewaterhouseCoopers, and whether Ocean Spray Cranberries qualifies as a non-public entity, it became evident that there are multiple interpretations as to what constitutes a non-public entity for purposes of applying accounting standards.

FAS No. 109, “Accounting for Income Taxes,” defines the term “non-public entity” as follows:

*An enterprise other than one (a) whose debt or equity securities are traded in a public market, including those traded on a stock exchange or in the over-the-counter market (including securities quoted only locally or regionally), (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), or (c) whose financial statements are filed with a regulatory agency in preparation for the sale of any class of securities.*

This definition differs from what one would infer is the SEC’s definition of a non-public entity based on its definitions of the terms “issuer,” “security” and “exchange” in the Securities Act of 1933 and the Securities and Exchange Act of 1934 (the “Acts”) and the references in the Acts to “exempted transactions” being those “by an issuer not involving any public offering.” It is reasonable to infer, based on the language in the Acts, as well as in the SEC’s summaries of its role in regulating the securities industry, that its definition of “public entity” would be as follows:

*A company that has issued debt or equity securities in a public offering and whose securities are traded on the open market and as a result are subject to periodic filing of financial and other information with the SEC under federal securities laws.*

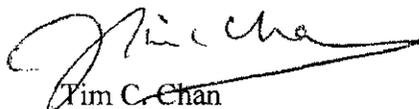
Conversely, the definition of “non-public entity” would be an entity whose shares or other securities are not offered for sale to the public or traded on the open market and therefore are not subject to the SEC’s reporting requirements.

Apparently, the FASB is struggling with the determination of a standard definition of “non-public entity.” This is evident based on a letter issued by the *Private Company Financial Reporting Committee* on October 9, 2007 to its constituent resource group members stating that the FASB is requesting input from the PCFRC in its effort to settle on a standard definition of a public entity, and hence, a private entity. The appendix to that letter provides examples of the varied definitions of “public entity” and “non-public entity” that exist within current accounting literature, and most prevalently within the FASB framework. In addition, the minutes of the December meeting of the PCFRC reflect a unanimous vote to recommend that the FASB apply the definition based on the definition of an “issuer” as presented in the Acts.

As a practical matter, a company that is not required to file financial reports with the SEC considers itself a private company. However, the FASB’s much narrower definition could result in a company being considered a private company for SEC purposes and a public company for GAAP purposes. Furthermore, the short time frame from the initial announcement of the deferral of the effective date of FIN No. 48 for non-public entities and the apparent backpedaling by the FASB indicating that the initial announcement, although not specific, did not intend for this deferral to apply to *all* non public entities, shows that the FASB is having difficulty with how to implement changes to its own standards.

It is my hope that the FASB will standardize its definition of a non-public entity to be consistent with how the SEC would view it, and apply this definition to the deferral of the effective date of FIN No. 48 so that the deferral will apply to all non-public entities. Should you wish to discuss this further, I encourage you to contact me at the number listed above.

Sincerely,



Tim C. Chan  
Sr. Vice President and  
Chief Financial Officer