

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



LETTER OF COMMENT NO. 5

**Re: File Reference Proposed FSP SOP 94-3a and AAG HCO-a**

Dear Mr. Golden:

PricewaterhouseCoopers LLP appreciates the opportunity to respond to the guidance that the Financial Accounting Standards Board has proposed in FASB Staff Position No. SOP 94-3-a and AAG HCO-a, *Omnibus Changes to Consolidation and Equity Method Guidance for Not-for-Profit Organizations*. We support the issuance of the proposed FSP and believe it will simplify and improve the current guidance by enhancing consistency, both between the two standards and with other authoritative standards, where appropriate. Our comments on the proposed FSP are outlined below.

#### Temporary Control and Related Matters

Paragraph 9 carries forward existing guidance from the AAG HCO, which states that, generally, sole corporate membership in a not-for-profit entity is analogous to a controlling financial interest, unless the sole corporate member's economic interest "is limited by state law or contractual agreement." However, no guidance is provided to identify the nature or extent of a limitation that would overcome the presumption that a controlling financial interest exists. We recommend the Board either clarify the phrase "is limited by state law or contractual agreement" or delete it. We do not believe omission of this phrase would create significant issues in practice, as in our experience this limitation seldom, if ever, applies.

#### Special Purpose Entity (SPE) Lessors

Paragraph 13 requires not-for-profit organizations to apply the guidance in EITF Issues 90-15, 96-21, and 97-1 whenever they are lessees in transactions involving SPE lessors; however, it does not mention EITF Topic D-14, which was the precursor to EITF Issue 90-15. We are aware of diversity in practitioners' and preparers' interpretations of the applicability of EITF Topic D-14 to private companies, including not-for-profit organizations. It is therefore unclear whether the Board intends for not-for-profit organizations applying the guidance in EITF Issue 90-15 to consider the guidance in EITF Topic D-14, which is indirectly referenced in the response to Question No. 2 of EITF Issue 90-15. Absent clarification of the applicability of the incremental guidance in EITF Topic D-14, not-for-profit organizations could reach diverse conclusions. For example, the incremental requirement that the SPE's owner of record be independent appears only in EITF Topic D-14. Therefore, we recommend the board clarify the applicability of EITF Topic D-14.

The proposed FSP confines the applicability of the SPE guidance to relationships involving leasing SPEs. However, the response to Question No. 2 of EITF Issue 90-15 indicates that the guidance set forth in that issue may be useful in evaluating other transactions involving SPEs. Therefore, we



suggest that the Board similarly state that the conditions for assessing the consolidation of SPEs set forth in EITF Issue 90-15 (and potentially the views discussed in EITF Topic D-14) may be useful in evaluating relationships involving nonleasing SPEs.

#### Investments in For-Profit Partnerships, LLCs and Similar Entities

Paragraphs 15 and 16 state that the equity method of accounting should be applied to investments in for-profit partnerships, limited liability companies, or similar entities in which a not-for-profit organization holds "more than a minor" interest. In support of this conclusion, footnote 6 quotes from paragraph 7 of SOP 78-9 and refers to the guidance contained in EITF Topic D-46, which states that practice generally views 3-5% as the threshold for what would constitute "more than a minor" interest.

We are concerned that by using the phrase "more than a minor" interest in conjunction with both a partial quote from the guidance in SOP 78-9 and the reference to the threshold in EITF Topic D-46, it could be misinterpreted that the Board has established a bright line below which the application of the equity method of accounting would not be appropriate. We believe that is not the Board's intent. Furthermore, in practice, the guidance in SOP 78-9 is interpreted as allowing the application of either the equity method or the cost method to non-controlling investments in limited partnership interests at ownership levels below the threshold stated in EITF Topic D-46. We believe that is appropriate. Accordingly, we recommend that the reference to "more than a minor" interest and footnote 6 be removed and that paragraph 16 simply state that the equity method of accounting should be applied to non-controlling interests in for-profit partnerships, limited liability companies, or similar entities if required by SOP 78-9, EITF Issue 03-16, FSP SOP 78-9-1, or EITF Topic D-46.

Our responses to the specific issues on which the Board is seeking comments are provided below.

**Question 1** - *Paragraph 19 of this FSP generally requires retrospective application of its provisions, except for provisions directly related to elimination of the temporary control exception to consolidation. What impediments, if any, do you anticipate in applying those provisions retrospectively? Please be specific.*

We believe that there will not be significant impediments in applying the FSP provisions retrospectively, but recommend that the Board consider including an impracticability exception consistent with that defined in FASB Statement No. 154.

**Question 2** - *As indicated in footnote 2, this FSP would simplify the consolidation guidance in SOP 94-3 by deleting what the Board understands is a seldom, if ever, used provision in that guidance (and one that does not exist in the health care Guide)—"control through a majority ownership interest by other than ownership of a majority voting interest." If you know of any specific instances in which the relationships described in that provision exist, please describe them.*

We are unaware of any specific instances in which the relationships described in that provision exist.

If you have any questions about our comments, please contact John Althoff (973-236-7288) or Martha Garner (973-236-7294).

Sincerely,

PricewaterhouseCoopers LLP