McGladrey & Pullen

Certified Public Accountants

McGladrey & Pullen LLP Third Floor 3600 American Blvd West Bloomington, MN 55431

November 17, 2008

Mr. Russell G. Golden FASB Technical Director Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116

1620-100

LETTER OF COMMENT NO. 64

File Reference No. 1620-100 Amendments to FIN 46(R)

Dear Mr. Golden:

McGladrey & Pullen, LLP is pleased to comment on the Exposure Draft of the proposed FASB Statement, Amendments to FASB Interpretation No. 46(R) (the proposed Standard or the Exposure Draft).

We believe the proposed Standard makes improvements to a complicated standard that has posed numerous implementation issues since its inception. We appreciate that the Board is under pressure to change some aspects of FASB Statement No. 140, Transfers of Financial Assets and Extinguishment of Liabilities (FAS 140) as soon as possible, and the amendments to FASB Interpretation No. 46(R), Consolidation of Variable Interest Entities (FIN 46(R)) compliment the FAS 140 amendments. We also understand that the International Accounting Standards Boards (IASB) is currently working on a consolidation project that is on a "fast track" and plans to publish an Exposure Draft in the fourth quarter of 2008. The goals of the IASB project are very similar to the FASB's ultimate goals – to revise the definition of control when it is not evidenced by a majority ownership of voting common stock; to allow the same control criteria to be applied to all entities; and to require enhanced disclosures about consolidated and nonconsolidated entities.

If the FASB plans to issue a joint Standard with the IASB in the future, we believe it would be too burdensome to ask companies to implement two sets of accounting changes dealing with the same topic within a very short time frame. We believe it would be better to require companies to make a single change to a converged accounting standard, rather than implementing this proposal and then undertaking a second implementation effort when a converged consolidation standard is issued later. Substantial costs will be incurred to implement these standards. Preparers will incur costs to learn the new standard, train employees, collect significant amounts of data not collected today, change reporting and consolidation systems, and make changes to systems and control structures to reflect the new requirements. Auditors will need to update practice aids, policies and tools and train employees on the new standard. Users will experience a similar learning curve. Therefore, we think it is unreasonable to ask entities to apply two sets of accounting changes within what we expect to be a short time frame.

We also recommend that the FASB issue the standard on amendments to FIN 46(R) concurrently with the standard on amendments to FAS 140. We believe the two standards complement each other since they both address what should be recognized on the balance sheet. Therefore, we don't think the FASB should delay one of the proposed standards and issue the other.

Although we encourage the FASB to delay the issuance of this proposed Standard until a joint solution with the IASB can be achieved, we continue to support the issuance of FSP FAS 140-e and FIN 46(R)-e, Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities.

If the Board issues a final standard, we recommend the revisions discussed in the balance of this letter to improve the standard.

Continuous Reassessment

We do not support the change to require continuous reassessment of the status of an entity as a variable interest entity (VIE). The requirement to continuously reassess whether an entity is a VIE would potentially sweep many more entities into the scope of FIN 46(R) than would otherwise be required under the "by design" provisions of paragraph 5. For example, many investors in separate entities that previously did not have to reassess whether they were the primary beneficiary because the entities were not VIEs, in the absence of the reconsideration events specified in the current FIN 46(R), will now have to reassess their conclusions continuously even when the design of the entity has not changed. We believe that this is inconsistent with the "by design" concept in FIN 46(R). Furthermore, we believe that the requirement for ongoing assessment to determine whether an entity is a VIE will require significant effort from an operational standpoint. We feel the assessment to determine whether an entity is a VIE should only be performed at inception by evaluating the design of the entity, and then the evaluation should only be reconsidered periodically based on certain reconsideration events or triggers as currently outlined in paragraph 7 of FIN 46(R).

We do support the change to eliminate the concept of reconsideration events for consideration of whether an enterprise is a primary beneficiary of a VIE. However, we believe that assessment should be performed at each interim and annual reporting period rather than continuously. If an enterprise determines that there has been a change in whether it is the primary beneficiary, it should then consider when the change occurred and reflect the consolidation or deconsolidation at that date. If the enterprise cannot determine when the change occurred, it should then assume the change occurred at the beginning of the period.

Troubled Debt Restructurings

We agree with rescinding the exception from reconsideration for troubled debt restructurings. However, we believe lenders that are not the primary beneficiary should be exempt from the proposed disclosure requirements. A lender that becomes a variable interest holder in a VIE as a result of a loan modification that is accounted for as a troubled debt restructuring will need to assess if it is the primary beneficiary. It may be qualitatively clear that the lender does not have any power to direct the activities of the borrower and therefore is not the primary beneficiary. Thus consolidation of the borrower would not be required. However, the determination of whether the borrower is a VIE is important because the proposed Standard contains significant required disclosures for VIEs in which the reporting enterprise holds a variable interest, but does not consolidate. As a passive "investor", the lender may not have access to the data needed to make these increased disclosures. For this reason, we believe they should be exempt from the proposed disclosure requirements.

Power

The concept of "power" is new in U.S. GAAP and we feel this concept is not described clearly enough in the proposed Standard. It is unclear whether the concept of "power" focuses on day-to-day decision making or whether "power" is held by the entity that makes long-term strategic decisions. We believe Example 8, which describes two

unrelated parties owning a hotel, does not sufficiently address this question because the example assumes that all significant decisions are jointly decided by Company A and Company B. However, consider a situation where the hotel operator (Company A) makes all the day-to-day decisions on behalf of the entity (i.e., hiring, training, reviewing and overseeing staff members; meeting with customers, contractors, and suppliers, etc.), whereas Company B makes long-term strategic decisions on behalf of the entity (i.e., building a new hotel wing). It is unclear to us in this type of scenario which Company would be considered the primary beneficiary. Therefore, we believe the Board needs to better develop the concept of "power." EITF Issue No. 04-5, Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights (EITF 04-5) places little emphasis on "protective rights" to determine which entity should be consolidated, but rather focuses more on "participating rights". We believe the FASB should strengthen its definition of power by incorporating a discussion of "protective" and "participating" rights to be consistent with existing GAAP. Additionally, more examples would be helpful in this regard.

The IASB exposure draft on consolidation deliberately moves away from the notion that control is only achieved through the power to govern the operating and financial policies of an entity. For example, entities with very detailed and defined founding and governing documents or operating within a strict legal framework might only be able to perform a limited range of activities and might have significantly limited decision-making authority; therefore, ascribing control to any party would be meaningless. We suggest the FASB also move in this direction to clarify the entity that controls long-term strategic decisions has the "power" and, if a decision is made according to the governing documents, it would not be considered to be evidence of "power." Such a clarification would promote the convergence efforts by the FASB and IASB. Furthermore, paragraph B23 in the Basis for Conclusions states the FASB concluded the matters most significant to a VIE are generally matters that most significantly impact the economic performance. Entities that have control over long-term strategic decisions can most significantly impact the economic performance, not those entities that make day-to-day decisions on behalf of the entity. We believe this concept should be clarified in the Exposure Draft.

Kick-Out Rights

We disagree with the proposed requirement that kick-out rights only be considered substantive when a single enterprise has the ability to exercise them unilaterally. EITF 04-5 states kick-out rights are substantive if they can be exercised by a vote of a simple majority of the limited partners. The final Standard should also consider the guidance in EITF Issue No. 96-16, Investor's Accounting for an Investee When the Investor Has a Majority of the Voting Interest but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights. The SEC Advisory Committee on Improvements to Financial Reporting (CIFR) has recommended that GAAP should be based on a presumption that similar activities should be accounted for in a similar manner. Therefore, the guidance in FIN 46(R) on kick-out rights should be consistent with that in EITF 04-5. Particularly, in the case where a small number of parties have the ability to exercise kick-out rights with a simple majority vote, we believe the kick-out rights should be considered substantive.

Examples

We believe examples are very important to illustrate how to apply the new concepts in the Exposure Draft in practice. However, we are concerned that the fact patterns in the examples are too simplistic and do not substantially enhance readers' understanding of how the FASB intends the guidance to be applied. For example, we believe that the FASB should include examples of more complex situations where the qualitative analysis fails to determine who the primary beneficiary is and entities would have to resort to the quantitative analysis. As discussed above, we believe the FASB should also provide examples of situations when a qualitative assessment could be used to assess whether an entity is a VIE.

Transition

We believe that the same transition provisions applied when FIN 46(R) was issued should apply to the proposed Standard also. Those provisions required that the consolidating enterprise initially measure the assets, liabilities, and noncontrolling interests of the variable interest entity at their carrying amounts. If determining the carrying amounts is not practicable, the assets, liabilities, and noncontrolling interests of the variable interest entity should be measured at fair value. Any difference between the net amount added to the balance sheet of the consolidating enterprise and the amount of any previously recognized interest in the newly consolidated entity shall be recognized as the cumulative effect of an accounting change.

This method is necessary to avoid being forced into a mixed attribute accounting model and more complicated disclosures of loan loss reserves among others. For example, consider the case where a company's unsecuritized credit card receivables portfolio is accounted for at historical cost, with a related allowance for loan losses. As a result of the new consolidation guidance, certain securitized credit card receivables would be recorded at fair value upon adoption of the amendments to FIN 46(R), and no allowance would be established at the effective date. Therefore, the total managed credit card receivables portfolio would now have two different bases of accounting, which would be confusing to users of financial statements trying to understand the loan loss statistics and the allowance coverage relationship to the loan portfolio. We believe requiring a different (i.e., fair value) method of accounting would not be justifiable, because effectively there has been no change in economics. In this example, the company would be required to consolidate the credit card receivables only because the consolidation rules changed, not because the economics changed resulting in the company becoming the primary beneficiary. Therefore, the basis of accounting should not change.

Enhanced Disclosures

We believe the elements of a consolidated variable interest entity should be required or permitted to be classified separately from other elements in an enterprise's financial statements. Because the assets of a variable interest entity can in certain cases only be drawn upon to settle the claims of the VIE's liability holders, we believe it is important to separate variable interest entities from voting interest entities. Furthermore, we think such a classification would help financial statement users to see those assets that are restricted and not available to cover the company's other liabilities.

We would be pleased to respond to any questions the Board or its staff may have about any of the preceding comments. Please direct any questions to Jay D. Hanson (952-921-7785.)

Sincerely,

McGladrey & Pullen, LLP

McGladrey of Pullen, LLP