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Director of Research and Technical Activities Financial Accounting Standards Board P.O. Box 5116 Norwalk, Connecticut 06856-5116

VIA E-MAIL (director@fasb.org)

RE: File reference No. 194-B

Proposed SFAS: Consolidated Financial Statements: Purpose and Policy

Greetings:

Capin Crouse, LLP is a full service accounting firm. Capin Crouse, LLP has offices in California, Colorado, Illinois, Indiana, and Georgia. We perform audits for a large number of medium and large sized not-for-profit organizations (NPOs). Our partners and staff focus most of their efforts on working with NPOs.

The following are our comments on the proposed statement.

We have significant reservations about the exposure draft because of its impact on the non-profit community. In terms of the impact on non-profit organizations (NPOs), we believe this document will create substantial confusion in implementation and lead to unintended consequences.

Issues 1 & 2:

In terms of the NPO environment, there is a conflict between the description of control, as specified in paragraphs 9 through 16 and the presumptions of control specified in paragraph 18. The lack of traditional ownership interests results in an odd interaction.

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The definition of control is helpful and provides a conceptual basis for determining when two entities should be consolidated. In contrast to this detailed explanation of control, there is a very specific series of tests to be applied in paragraph 18. We are concerned the presence of presumptions of control in paragraphs 18 and 21 will overshadow the explanation of control spelled out in paragraphs 9 through 16 for nonprofit organizations. We are concerned the presumptions will become the criteria used in practice, with the actual definition laid aside.

We frequently encounter situations in which the text of paragraphs 9 through 16 would suggest two NPOs should be consolidated. There are many ways that an NPO may have this type of influence over another NPO. Here are a few of the ways an NPO can have the type of control indicated in paragraphs 9 through 16, without having a majority voting interest in the board.

- NPO A (which is a tax exempt organization under section 501(c)3, as are all of the following organizations) forms organization B and in the process, defines the goals and purposes of B. Organization A would likely provide initial funding along with the initial fund raising strategy, which would typically focus on the constituency of organization A. The goals of B could either be to meet a new need, or could be directly in furtherance of the founding organization's goals. Occasionally, B might exist to raise funds for A. If the goals are to further the goals and purposes of A, there are many different ways, formally and informally, to make sure that B continues to meet A's goals.
- The level of discretionary financial support from organization C to organization D is such a high percentage of organization D's income that the loss of that support would threaten the existence of organization D. This support could take various forms, such as loans, lending of staff, or ongoing financial contributions. This level of support is a powerful way to control another organization.
- The board of directors of Organization F consists of senior level staff of organization E. Although F has a self-perpetuating board of directors, organization E still has a very strong ability to direct the policies of organization F.
- A high-profile visionary leader is the senior executive of organizations G and H. His or her high level of charisma and influence allows the executive to have a significant impact on the boards of both organizations. If both organizations have somewhat complementary goals and purposes, it is possible to move programs and resources between the organizations.

We have observed all of these situations functioning in one or more of our clients. Sometimes we observe several of these circumstances in a specific situation.

Applying the narrative of paragraphs 9 though 16 to the situations behind the circumstances listed above would indicate the organizations should be consolidated.

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However, since none of these organizations have majority voting control, none of them would be consolidated under the presumptions of control specified in paragraph 18. Furthermore, paragraph 58, in discussing a self-perpetuating board of directors, states "...many, if not most, nonprofit corporations are governed by a self-perpetuating board. Absent special provisions in the articles of incorporation designed to limit or otherwise direct their boards, those nonprofit corporations generally are not controlled by other entities." This strengthens the argument that none of the above described situations could be consolidated.

Thus, for non-profit organizations, we believe there is conflict between: a) the description of control in paragraphs 9 through 16; and b) the presumptions of control specified in paragraph 18 and the comments on self-perpetuating boards in paragraph 58. We are concerned this conflict will create confusion, result in conflict between auditors and report preparers and lead so some diversity in application.

We foresee many situations in which two entities will not be consolidated even though the facts and circumstances, when evaluated in light of paragraphs 9 through 16, would suggest consolidation is appropriate.

Example 10

We concur with the conclusion in paragraph 160 that Charity L does not control Trust M because Charity L cannot set the policies or manage the investments within Trust M. We note in this situation that even though consolidation is not appropriate, the situation meets the criteria for recording an unconditional promise-to-give, which would bring a significant portion of the economic value of the trust onto the balance sheet of the organization.

We do not concur with the conclusion in paragraph 163 that Charity L does not control Trust M when Trust M was established as an irrevocable gift from an individual ("Individual") with Charity L as trustee. Even though Charity L is obligated as fiduciary to have as their primary concern the interests of the beneficiary's current income, the interests of Charity L and Individual are not at odds.

Both Charity L and Individual have as their long-term goal the maximization of value of the trusts. Just because Individual wishes current income to be paid to Individual's spouse, does not negate Individual's concern for long term asset protection. These situations are routinely established to provide income to the beneficiary until the beneficiary dies. In most situations, this is expected to be a number of years after Individual dies. The trustor has no interest in putting the assets at risk on a long-term basis in order to create high current payments. Thus, even though the trust is focused on current payments (which could be generated as easily by selling growth stocks as by distributing interest income), the long term interests of the individual and Charity L are not in conflict. Thus, we believe that control is exercised in this scenario and consolidation is appropriate.

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As a separate issue, we perceive the circumstances in paragraph 163 would apply only to net income trusts, which are a relatively small portion of all deferred gifts. These are the type of deferred giving instruments in which the payment to the beneficiaries are based upon what was earned in the current year. There would be no effect on charitable remainder annuity trust and gift annuities, which would still be consolidated. These deferred giving instruments have a fixed payment, regardless of the value of the assets. It is likely that charitable remainder unitrusts would also be unaffected, since typically, the payment is based on a percentage of the market value of the trust assets at the end of the year. Thus, the impact of this paragraph would be to require removing from the balance sheet a very small portion of the deferred giving portfolio of nonprofit organizations.

Conclusion

We recommend further consideration of the impact on nonprofit organizations.

Thank you for the opportunity to comment on the exposure draft.

Sincerely,

Dale A. Overholt, CPA Partner