

## MINUTES



Financial Accounting  
Standards Board

**To:** FASB Board Members

**From:** Scope of Statement 160  
(Van Eperen x 229)

**Subject:** Minutes of the April 29, 2009, Board Meeting: *Scope of Statement 160*      **Date:** May 11, 2009

**cc:** Leisenring, Bielstein, Stoklosa, Golden, Bossio, Lott, Klimek, McGarity, Chookaszian, Posta, Glotzer, C. Smith, Proestakes, Sutay, Mechanick, Gabriele, Bonn, Maple, Nickel, Van Eperen, FASB Intranet

*The Board meeting minutes are provided for the information and convenience of constituents who want to follow the Board's deliberations. All of the conclusions reported are tentative and may be changed at future Board meetings. Decisions become final only after a formal written ballot to issue a final Statement, Interpretation, or FASB Staff Position.*

Topic: Analysis of the scope of Statement 160

Basis for Discussion: Board Memorandum dated April 14, 2009

Length of Discussion: 9:00–10:30 a.m.

Attendance:

Board members present:	FASB: Herz, Linsmeier, Siegel, Seidman, and L. Smith
Board members participating by phone:	None
Board members absent:	IASB: Leisenring
Staff in charge of topic:	Bonn
Other staff at Board table:	FASB: Golden, Stoklosa, Nickell, and Van Eperen

### Summary of Decisions Reached:

The Board decided to clarify the scope of the partial sale and deconsolidation provisions of FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements*, which amends ARB No. 51, *Consolidated Financial Statements*.

The Board decided to modify the scope of Statement 160 such that the partial sale and deconsolidation provisions apply only to subsidiaries that are businesses or nonprofit activities. The Board also decided to address the matters raised in EITF Issue No. 08-10, "Selected Statement 160 Implementation Questions," for which the EITF had not yet reached a final consensus. The Board decided that:

- a. EITF Issue No. 01-2, "Interpretations of APB Opinion No. 29," should be modified to clarify that the exchange of a group of assets that constitute a business in return for an equity interest should be accounted for in accordance with the deconsolidation provisions of Statement 160
- b. The partial sale and deconsolidation provisions of Statement 160 should not apply to in-substance real estate transactions
- c. Statement 160 should apply when a subsidiary is transferred to an equity method investee or joint venture.

Before exposing the scope modifications to the public, the Board asked the staff to obtain additional feedback from financial statement users on these issues.

### Objective of Meeting:

The objective of the meeting was for the staff to discuss with the Board the reconsideration of the scope of Statement 160. The staff plans to discuss with the Board whether any necessary adjustments need to be made to Statement 160 as a result of the comments received from constituents and the EITF's discussions. The objective was met.

## Matters Discussed and Decisions Reached:

1. The following four issues were discussed by the Board: (a) how the scope of Statement 160 should be clarified, (b) whether to amend Issue 01-2 when a group of assets that constitute a business is exchanged for an equity interest, (c) whether to decide on the matters raised in Issue 08-10, including matters related to in-substance real estate, equity method investees and joint ventures, and (d) what should be the transition and effective date of a proposed FASB Staff Position.

### **Issue 1: How the Scope of Statement 160 Should Be Clarified**

2. Mr. Bonn explained that the EITF added Issue 08-10 to address specific implementation issues that occurred after the issuance of Statement 160. The EITF discussed this issue at its January and February meetings, but was unable to reach a consensus because it was unsure of the Board's initial intention.

3. Mr. Bonn explained that Statement 160 addresses the accounting for subsidiary transactions. Provisions of Statement 160 appear to be in direct conflict with other deconsolidation and recognition guidance, including FASB Statements No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, and No. 66, *Accounting for Sales of Real Estate*, and constituents are unsure which guidance to apply in certain circumstances.

4. **Staff Recommendation:** The staff recommended that the Board reconsider the scope of Statement 160. The staff provided four alternatives for the Board's consideration:

**Alternative A**—Modify the scope of Statement 160 such that the partial sale and deconsolidation provisions only apply to subsidiaries that are businesses or nonprofit activities.

**Alternative B**—Modify the scope of Statement 160 such that the partial sale and deconsolidation provisions only apply if other authoritative guidance does not address the substance of the transaction.

**Alternative C**—Modify Statement 160 such that the following model is applied in assessing the appropriate literature in accounting for the partial sale or deconsolidation of a subsidiary: First, apply Statement 160 if the subsidiary is a business or nonprofit activity. If the subsidiary is not a business or not-for-profit activity, apply other authoritative guidance applicable to the transaction. If no other authoritative guidance applies to the transaction, apply Statement 160.

**Alternative D**—Limit the scope of Statement 160 such that the partial sale and deconsolidation provisions would not apply to transactions involving all subsidiaries but would use a threshold that is not a business or not-for-profit activity.

5. Mr. Herz asked Mr. Leisenring to explain the effects of the proposed changes on convergence. Mr. Leisenring noted that the IFRS literature on business combinations is different from U.S. GAAP, as the initial carrying amount of the consolidated subsidiary is not the same. However, consistent with Statement 160, IFRS has an entity mark to fair value the remaining portion of a subsidiary if control is lost. Mr. Leisenring noted that IFRS guidance is not limited to a business.

6. Mr. Bonn stated that the IASB staff plans to ask its Board if it is necessary to consider the issue. Mr. Linsmeier noted that the Board is struggling with the concept of accounting for the noncontrolling interest as an interest or as a group of individual assets. He observed that all of the staff's recommendations appear to pierce the accounting for an interest and force an entity to value the noncontrolling interest as a group of individual assets. He noted that in the consolidation guidance, the Board voted to account for an interest. However, the staff is muddling the accounting to represent a group of individual assets in the deconsolidation guidance. He said that with respect to valuing an interest, the Boards are trying to keep the consolidation and deconsolidation guidance consistent and noted that the guidance issued by the FASB and IASB is not consistent.

7. Ms. Seidman noted that FASB Statement No. 141 (revised 2007), *Business Combinations*, distinguishes between asset purchases and business purchases. She explained that if the Board wants symmetry on the acquisition and disposal of an asset, the Board could vote to scope Statement 160 the same as Statement 141(R). A point of concern is that the proposed amendments to FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities*, do not limit its provisions to a business. Ms. Seidman noted that the general

conflict appears to be when individual assets are in the form of an entity and subsequently disposed of as a business.

8. Mr. Smith requested clarification on whether a business must be a legal entity. Mr. Golden explained that he can not think of a situation in which an entity would dispose of 60 percent of a consolidated group of assets and in return not receive an interest in something that is a legal entity. Mr. Smith noted that he believes an entity would be able to receive a 40 percent interest in the operations of a group of assets without the assets being in a legal entity.

9. Mr. Smith noted that the accounting for acquiring and disposing of a subsidiary should be consistent. Mr. Leisenring mentioned that Statement 141(R) distinguishes between assets and business purchases because of the goodwill implications.

10. Ms. Seidman noted that Statement 160 applies to equity transactions, and for this reason, it appears that entities that are using the provisions of Statement 160 must be legal entities.

11. Mr. Golden said that constituents agree that a gain should be recognized when a portion of a subsidiary is sold. However, constituents are not clear if the remaining noncontrolling interest in the subsidiary should be marked to fair value. Messrs. Leisenring and Stoklosa noted that the primary issue is if the minority interest in a previously consolidated entity should be valued at carryover or fair value. Mr. Linsmeier noted that if an entity looks to other literature in valuing the remaining noncontrolling interest, the other literature typically focuses on an asset and not a business.

12. Mr. Golden explained that one debate in practice is the example of Parent Co. owning an office building. Parent Co. then sells the office building but retains a 40 percent interest in the building, a legal entity. Constituents were unsure if the 40 percent retained interest should receive no gain recognition under Statement 66 or if it should receive gain recognition under Statement 160.

13. Ms. Seidman questioned whether a qualitative assessment of the continuing control would be necessary if an entity went from owning 51 percent to 49 percent of a subsidiary. Mr. Leisenring explained that the Board has always had problems with evaluating this type of transaction.

Mr. Leisenring provided another example in which Parent. Co. owns 60 percent of a subsidiary, marked to fair value, and sells 11 percent of the interest in the subsidiary. Mr. Leisenring asked why the Board is comfortable with a gain on the 11 percent, but not on the remaining 49 percent. Ms. Seidman noted that the 11 percent was sold to a third party, presumably for cash. Mr. Smith noted that the nature of each ownership interests above is different. Mr. Smith noted that the Board is having difficulties discussing this issue because the Board does not feel comfortable with some of its previous decisions.

14. Mr. Herz noted that he does not favor alternative A because it would provide the opportunity for structuring and arbitrage, and he does not appreciate the concept of a one-time revaluation of the remaining interest. Mr. Linsmeier noted that he is not concerned with arbitrage opportunities as businesses are using the assets together jointly to create a return. Mr. Herz noted that he is more concerned with the income statements effects than with the revaluation on the balance sheet.

15. Mr. Smith expressed that he is unsure why the FASB has specific real estate guidance prohibiting the gain on the sale of real estate because an individual could sell something that is much more difficult to value than real estate and report a gain. Messrs. Smith and Herz noted that guidance should be consistent between the sale of a real estate business and another form of business.

16. Mr. Linsmeier said that he appreciates that businesses are being dealt with the same way in almost all of the staff's recommendations. However, he is not satisfied that businesses will be able to analogize to individual asset accounting rules of Statement 66 when they are dealing with minority interests of businesses, as proposed in alternative A.

17. Mr. Leisenring noted that this question is much broader than real estate; it is a foregone conclusion that the FASB and IASB Boards will not converge on this topic if the FASB Board ties a rule to Statement 66.

18. Mr. Linsmeier noted that he is worried that entities will wrap financial instruments into a business, which will override the provisions of Statement 140. Mr. Golden stated that the concern is that entities will not apply the provisions of Statement 140 and mark a noncontrolling interest in a group of financial instruments to fair value.

19. Mr. Herz asked the staff to explain the key difference between alternatives A and C. Mr. Linsmeier explained that alternative A allows an entity to analogize to other authoritative literature, while alternative C does not. Mr. Siegel asked for clarification on how FASB Statement No. 162, *The Hierarchy of Generally Accepted Accounting Principles*, provides a framework for evaluating alternative A. Mr. Bonn explained that a similar answer should be obtained in alternative A or C; however, alternative C is more explicit in determining which guidance to apply.

20. Ms. Seidman noted that she plans to choose alternative A because, in her previous experience as a preparer, there are very few pieces of guidance that provide explicit guidance on sale accounting, and sale accounting is typically done by analogy. Ms. Seidman also noted that alternative A is narrower because it does not allow entities to use Statement 160 if other guidance to analogize to can not be found.

21. Mr. Linsmeier noted that alternative C will provide more uniform transactions because entities will not be able to analogize. Mr. Smith questioned whether alternative C has a greater chance for structuring opportunities. Mr. Herz noted that he prefers alternative A because it limits the scope of what qualifies under Statement 160.

22. In addition to Statement 66 and Statement 140, Mr. Bonn noted that revenue recognition guidance will help entities account for their transaction when Statement 160 does not apply.

23. Mr. Linsmeier noted that under alternative A, entities would be able to analogize to Statement 160. Mr. Golden explained that only businesses would be able to analogize to Statement 160.

24. **Board Vote:** Messrs. Herz, Siegel, and Smith and Ms. Seidman voted for alternative A. Mr. Linsmeier voted for alternative C.

## **Issue 2: Amendments to Issue 01-2**

25. **Staff Recommendation:** The staff recommended that the Board amend Issue 01-2 to clarify that the exchange of a group of assets that constitute a business for an equity interest should follow the partial sale or deconsolidation provisions of Statement 160.

26. **Board Vote:** All Board members agreed with the staff's recommendation.

## **Issue 3(a): In-Substance Real Estate**

27. **Staff Recommendation:** The staff recommended that the Board provide a specific scope exception for subsidiaries that are in-substance real estate, which would be consistent with the EITF's consensus on Issue 08-10.

28. Mr. Herz explained that the question is if real estate that qualifies as a business should apply Statement 66 or 160. Mr. Bonn explained that forcing real estate businesses to apply Statement 160 would be a significant change from current practice. Mr. Bonn explained that if the Board is interested in changing the accounting for in-substance real estate, the staff believes that such a change would be more appropriate in the joint revenue recognition project currently under consideration by the Board.

29. Mr. Smith explained that he is unsure how to vote because if the Board is to remain consistent with the principles-based decision in Issue 1, it should not vote for this scope exception. Mr. Smith expressed that he is not satisfied that an entity can sell a piece of real estate, the market for which is easy to value, and not mark it to fair value, but can mark to fair value a subsidiary, the value of which is much more difficult to determine. Ms. Seidman expressed that Statement 66 is very explicit in its requirements, and she would not feel comfortable changing it as part of a scope exception. Mr. Siegel agreed and said that it would be too rapid for the Board to overturn a portion of Statement 66.

30. Mr. Golden said that the Board should explicitly ask in the notice to recipients specific questions about the conflicting nature of Statement 160 and Statement 66.

31. **Board Vote:** Messrs. Herz and Siegel and Ms. Seidman voted to provide a scope exception for Statement 66. Messrs. Smith and Linsmeier voted not to provide the scope exception.

### **Issue 3(b) and 3(c): Equity Method Investee and Joint Venture**

32. **Staff Recommendation:** The staff recommended, consistent with previous EITF consensuses for exposure, that Statement 160 should apply when a subsidiary is transferred to an equity method investee or joint venture.

33. Mr. Bonn explained that if an asset is sold into or transferred into an equity method investee, the asset is retained at historical or carryover basis in accordance with APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*. However, Opinion 18 conflicts with Statement 160 if the asset is a subsidiary because Statement 160's guidance requires the subsidiary to be valued at fair value. Ms. Seidman clarified that the subsidiary would have to qualify as a business based on the response to Issue 1.

34. Mr. Smith asked for a definition of a *joint venture*. Ms. Seidman noted that the definition of a joint venture in Opinion 18 is very subjective. Ms. Seidman noted that Statement 141(R) scopes out the formation of a joint venture. She said that Statement 160 should be consistent with Statement 141(R). Ms. Seidman and Mr. Herz noted that if an entity went from having unilateral control of a business to joint control of a business, it would receive a step-up in basis. Mr. Herz said that the Board could, as part of the entire discussion, reconsider the idea of marking the noncontrolling interest in a business to fair value. If the Board chooses not to do this, it should consider carrying through the business principle of alternative A. Ms. Seidman noted that she thinks the line between unilateral and joint control is not robust enough for Company A to have a step-up in its basis, which is something previous Boards would have considered. Mr. Golden noted that the Board should decide on Issue 3(b) and 3(c) before it discusses the merits of marking the noncontrolling interest to fair value.

35. The Board noted that it would like to better understand investors' views on these issues and the Statement 160 deconsolidation provisions before granting the staff permission to begin drafting an Exposure Draft. Ms. Seidman noted that in previous discussions with investors, they accepted accounting they disagreed with as long as proper disclosure was present. Mr. Linsmeier and Ms. Seidman noted that this should not happen again when speaking with investors because disclosures can not make up for improper accounting. Mr. Smith noted that although he may disagree with the accounting in Statement 160, the Board can not make developments if it reconsiders accounting standards before they are effective, as would be the case if the Board reconsidered Statement 160. Mr. Bonn noted that the staff would reach out to investors; however, Mr. Bonn reminded the Board that the majority of the respondents to the Exposure Draft preceding Statement 160 did not support recognizing a gain on the retained interested after control is lost.

36. **Board Vote:** Messrs. Herz, Linsmeier, Siegel, and Smith voted to clarify Opinion 18 to state that Statement 160 would apply when a subsidiary that is a business is transferred to an equity method investee or joint venture. Ms. Seidman voted against this clarification.

#### **Issue 4: Transition and Disclosures**

37. Given the decision in the preceding paragraph, the staff did not present transition and disclosures to the Board.

#### **Follow-up Items:**

The staff will explore additional opportunities to reach out to investors.

#### **General Announcements:**

None.