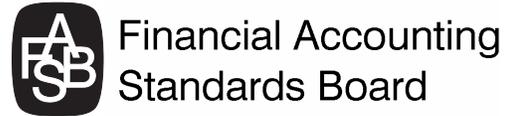


MINUTES



To: Board Members
From: Rhine (Ext. 296), Beckendorff (Ext. 229)
Subject: Minutes of the January 17, 2007 Board Meeting: Board Agenda Request – Delay the Effective Date of Interpretation 48 **Date:** January 23, 2006
cc: FASB: Bielstein, Leisenring, Smith, Golden, Paul, Beswick, Polley, Petrone, Rhine, MacDonald, Gabriele, Sutay, Carney, Allen, Attmore, Bean, 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 or Interpretation.

Topics: Board Agenda Request: Delay the Effective Date of Interpretation 48

Basis for Discussion: Board Memorandum No. 1

Length of Discussion: 9:00 a.m. to 9:35 a.m.

Attendance:

Board members present: Herz, Batavick, Crooch, Linsmeier, Seidman, Trott, Young

Staff in charge of topic: Paul, Beswick

Other staff at Board table: Smith, Golden, Rhine

Summary of Decisions Reached:

The Board added a project to its agenda to provide implementation guidance for the phrase “the tax matter is ultimately settled through negotiation or litigation” in paragraph 10(b) of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. The Board asked the staff to develop that implementation guidance for consideration at a future meeting. Also, the Board decided not to delay the effective date of Interpretation 48.

Objectives of Meeting:

The objective of the meeting was for the Board to decide if it wanted the staff to develop implementation guidance on Interpretation 48, as well decide whether to delay the effective date of Interpretation 48.

The objective was met.

Matters Discussed and Decisions Reached:

Issue 1: Implementation Guidance

1. Mr. Paul stated that the purpose of the meeting was to discuss requests for Board consideration of a delay in the effective date of Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. Interpretation 48 was issued in July 2006 to respond to investor requests for greater transparency and to address diversity in practice that had developed related to the accounting for uncertainty in income taxes recognized in accordance with FASB Statement No. 109, *Accounting for Income Taxes*. Interpretation 48 is effective for fiscal years beginning after December 15, 2006.

2. Mr. Paul noted that prior to the meeting the FASB received over 400 letters on this topic, most requesting that the Board consider a one-year delay in the effective date of Interpretation 48. Generally, the letters are from preparers of financial statements and from organizations that represent preparers of financial

statements. The letters were not concentrated to any specific industry demographic but generally were signed by the tax executives of those organizations. A significant number of the letters were identified as form letters that simply referred to issues raised in the December 12, 2006 letter from Tax Executives Institute. Mr. Paul also noted that a number of the letters were from users of financial statements that do not support a delay in the effective date of Interpretation 48.

3. Mr. Paul stated that the staff read and analyzed the letters in advance of the meeting and also made inquiries of various constituents in order to assess whether the points raised in the letters were previously considered by the Board during the development of the Interpretation. For any issue raised that was not specifically considered during the development of Interpretation 48, the staff assessed whether it was of such significance to warrant a delay in the effective date of Interpretation 48. Additionally, the staff assessed whether any of the issues raised in the letters should be addressed in formal implementation guidance to clarify the requirements of the Interpretation.

4. Mr. Paul noted that the staff summarized the issues raised in the letters into three categories for consideration by the Board: implementation issues regarding the provisions of Interpretation 48, other consequences from implementation of Interpretation 48 not directly associated with its provisions, and industry or entity specific concerns. Mr. Paul added that there were also issues raised in the comment letters that were specifically considered by the Board during development of the Interpretation such as concerns with disclosures. The staff will not reintroduce those topics since the Board has already deliberated those issues and concluded on them.

5. Mr. Paul asked Mr. Beswick to present a summary of the implementation issues that were raised.

6. Mr. Beswick asked the Board whether there were any implementation issues that the Board believed should be addressed through the standard-setting

process. The FASB staff has been answering implementation questions since Interpretation 48 and FSP FAS 13-2 were issued. To date, the overall volume of implementation issues discussed with the staff has not been significant. The staff has reviewed the inquiries submitted through the FASB's technical inquiry system and in the most recent comment letters received to identify the more significant implementation issues. The staff presented three issues to the Board for its consideration. This does, however, not represent a list of every implementation issue that has been discussed. The other less significant issues were discussed with the constituents that raised the question and have been communicated broadly by the staff in speaking engagements and in conversations with the profession. The three significant implementation issues discussed with the staff are as follows:

- a) What is the definition of ultimate settlement and does the ability of the taxing authority to reopen an audit affect an entity's ability to change the recognition or measurement of an uncertain tax position?
- b) Should amounts in the balance sheet and the rollforward of unrecognized tax benefits required under paragraph 21(a) be presented on a gross or net basis? The staff has received inquiries about the classification guidance in Interpretation 48 and whether in some circumstances it would be appropriate to the report unrecognized tax benefits net of any related benefit in the financial statements or the disclosures required in paragraph 21(a) of Interpretation 48.
- c) What does an entity have to do to comply with the disclosure requirements of paragraph 21? Specifically, those commenting noted that implementation guidance regarding paragraph 21(d) would be useful. Paragraph 21(d) requires an entity to disclose certain information for tax positions when it is reasonably possible that the unrecognized tax benefits will change within 12 months of the reporting date. There are

questions on the level of detail that is required and, if aggregation is allowed, what aggregation criteria should be used?

7. Mr. Beswick stated that the staff recommends that the Board provide implementation guidance on Issue one. Issue one was the only issue on which all parties agreed that guidance would be useful to preparers and auditors. The staff believes that the guidance could be provided in a relatively expeditious manner and would improve consistency in the application of Interpretation 48. For the remaining issues, the staff does not believe that significant diversity will result if implementation guidance is not issued or that any implementation guidance that would be issued would be too general in nature to be useful to preparers and auditors because the issues are too fact and circumstance specific. Mr. Beswick asked the Board if they agreed with the staff's recommendation.

8. The Board asked the staff to develop implementation guidance for the definition of ultimate settlement, which the Board would consider at a future meeting. (Five Board members agreed; two did not (EWT, DMY).) Mr. Herz noted that because tax rules vary, he expected that guidance provided would be principles based and would explain the thought process needed to determine if a position meets the definition of ultimate settlement, rather than providing a definitive rule. Board members asked that such guidance be prepared expeditiously to assist in implementation. Board members did not believe guidance should be provided for any other Interpretation 48 implementation issues raised in comment letters. (All agreed.)

9. Mr. Batavick noted that implementation questions frequently arise when a standard is applied for the first time but believes that the staff has been very effective in responding to Interpretation 48 implementation questions through the technical inquiry process. The only issue that he believes would warrant additional guidance is the term *ultimately settled*. Some may understand the term to be strictly interpreted to indicate that a tax position must be explicitly settled with a tax jurisdiction whereas others would make a judgment on settlement

based on facts and circumstances of how tax positions are settled with a jurisdiction.

10. Ms. Seidman stated that she believes that confusion may arise when one compares paragraphs 8 and 10 with paragraph 12 and stated that she supported a clarification of the relationship between the paragraphs as it relates to ultimate settlement. This question is important to companies not only as they manage uncertain tax positions going forward, but also as they adopt the new standard and must therefore reevaluate their existing positions.

11. Mr. Crooch noted that while he supported a project to clarify ultimate settlement, he questioned if additional guidance was possible given that the resolution of a tax position is often based on facts and circumstances. Mr. Beswick stated that with the exception of ultimate settlement, the staff has addressed implementation questions that were raised by constituents to their satisfaction. With regard to ultimate settlement, however, even after discussions with constituents the staff continues to receive questions. The staff believes that it can provide additional guidance that would clarify the meaning and intention of the Interpretation without providing a rule.

12. Mr. Trott and Mr. Young stated that they did not believe that additional implementation guidance could be provided at this time because they believe that the determination of whether a position is open or closed is based on facts and circumstances. The definition of settlement varies by jurisdiction and the unique situation of an entity. Therefore, it would be difficult to provide any further guidance than has already been provided.

Issue 2: Deferral of Effective Date

13. Mr. Paul stated that he would summarize the other implementation issues raised, discuss the results of the staff's inquiries, and then present the staff's recommendation on whether a delay in the effective date is necessary. Examples of issues that are categorized as other consequences from implementation of

Interpretation 48 that are not directly associated with its provisions include; concerns with documentation, consistency of application of Interpretation 48, internal control requirements, challenges with timing of implementation in consideration of other requirements (such as filing income tax returns and financial reporting), and availability of tools to implement and comply with the requirements of Interpretation 48. The staff held discussions with different constituents in order to assess the significance and magnitude of the concerns identified.

14. Mr. Paul noted that a consistent issue raised in the letters was concerns regarding documentation of tax positions; specifically, highly certain tax positions. Recently, two members of the Securities and Exchange Commission staff discussed Interpretation 48 at the AICPA National Conference on SEC and PCAOB Developments. Those staff members expressed the view that the SEC staff would not expect a significant amount of documentation and analysis to support obvious tax positions. The FASB staff discussed the issue of documentation with representatives of the auditing profession in light of the SEC's commentary. The staff was told that the Interpretation 48 documentation requirements are consistent with the SEC staff's views.

15. Mr. Paul stated that a second issue in this category that many letters raised is consistency in the application of Interpretation 48. As the Board focuses on issuing guidance that is principles-based and that requires judgment, there will be more opportunity for inconsistency in the application of that guidance. The staff specifically asked constituents about diversity in application of Interpretation 48, and those constituents stated that having a consistent model to address uncertainty in income taxes is a significant improvement over the different models used prior to Interpretation 48. As it relates to the other concerns, the staff is sympathetic to the challenges of implementing a new accounting model, but, based on the input received from constituents, none of the other issues identified in this category convinced the staff that the effective date of Interpretation 48 should be delayed.

16. Mr. Paul noted that issues identified in the third category were entity or industry specific considerations. After assessing the issues, the staff considered that the requirements of the Interpretation are generally applicable to all industries in all jurisdictions and the staff could not possibly consider all situations regardless of whether the Board decided to delay or not. The interpretation requires judgment be applied to relevant facts and circumstances in assessing the recognition and measurement criteria of uncertain tax positions. As such, the staff would expect reasonable judgment be applied to the specific industry or entity circumstances that arise in implementing Interpretation 48. Accordingly, the staff does not view any of the issues raised in this category to be of such significance as to warrant a delay in the effective date of Interpretation 48.

17. Mr. Paul stated that the staff is not aware of any issue raised that was individually or collectively of such significance to warrant a delay in the effective date of Interpretation 48. As a result, the staff recommends that the Board keep the current effective date of Interpretation 48. Mr. Paul asked the Board if it would like to delay the effective date of Interpretation 48.

18. The Board decided not to delay of the effective date of Interpretation 48. (All agreed.) Board members noted that the evaluation of uncertain tax positions was required prior to the issuance of Interpretation 48 and that entities should have some experience in this area.

19. Ms. Seidman stated that with regard to the level of documentation required for highly certain positions, the FASB staff, the SEC Staff, and the audit profession agree that Interpretation 48 does not require extensive documentation. She asked that the staff work with the PCAOB staff to make certain that this is clear to all relevant parties.

20. Mr. Linsmeier stated that the Interpretation does not require the examination of all tax positions, but only those that are uncertain and at or near the more likely than not threshold. Additionally, with exception to the one issue for which the Board has agreed to provide additional guidance, the staff has

adequately addressed the implementation questions that have been raised. He noted that the adoption of Interpretation 48 will provide investors with valuable information and questioned if the requests for a delay have been prompted by companies that do not want to reveal the uncertainty of their tax positions. Mr. Batavick added that reasons currently presented to delay of the effective date are the same arguments that were raised during the initial deliberations and that he believed they were surmountable.

21. Mr. Herz stated that new standards often require additional effort as well as judgment. The Board undertook this project at the request of the SEC staff because there was diversity in practice. The adoption of the Interpretation will ultimately benefit investors, which was the objective of the project. He added that he had spoken with large multi-national companies that file under many tax jurisdictions and that they were able to implement the Interpretation.

Follow-Up Items:

The Board asked the staff to develop implementation guidance for the phrase “the tax matter is ultimately settled through negotiation or litigation” in paragraph 10(b) of Interpretation 48 for the Board to consider at a future meeting.

General Announcements:

None.