



July 10, 2006

LETTER OF COMMENT NO. 8

Mr. Lawrence W. Smith
Director—Technical Application and Implementation Activities and EITF
Chair
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Dear Mr. Smith:

The Planning Subcommittee (PSC) of the Accounting Standards Executive Committee (AcSEC) appreciates the opportunity to comment on the proposed FASB Staff Position (FSP), *Revision to the Definition of a Public Entity to Include an Obligor for Conduit Debt Securities*.

The PSC agrees in general that an entity that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets) meets the definition of a public entity or enterprise. The PSC believes, however, that as drafted the scope of the proposed FSP is too broad. The PSC suggests that the FSP be revised to focus on whether the conduit bond obligor is required to make its financial statements and related information available to potential investors in the conduit debt securities.

The PSC considered the following two examples to illustrate the scope issue:

1. Health care organization ABC is a conduit bond obligor. As part of the initial underwriting, ABC agrees to provide annual financial statements to Nationally Recognized Municipal Securities Information Repositories (NRMSIRs) pursuant to Exchange Act Rule 15c2-12. Potential investors in the bonds can obtain financial statements through a NRMSIR. The PSC believes that ABC should be considered a public entity, because it is obligated to make its financial statements available to potential investors through the NRMSIRs.
2. Company XYZ is a conduit bond obligor of industrial revenue bonds (IRBs). XYZ agrees to provide financial statements to the local bank that buys the entire issue of IRBs. XYZ has no obligation to make annual financial statements available to other parties. A potential buyer of the IRBs who wants to see XYZ's financial statements

would need to request a copy from XYZ or from a party, like the local bank, that has a current right to obtain the financial statements. The PSC believes that XYZ should not be considered a public entity, because it has no obligation to make its financial statements available to potential investors.

Specific comments on the proposed FSP are included in Attachment A to this letter.

* * * * *

We appreciate the opportunity to comment on the proposed Staff Position. Representatives of the PSC would be pleased to discuss our comments with the Board members or staff.

Sincerely,

Benjamin S. Neuhausen
Chair
Accounting Standards Executive Committee

cc: Accounting Standards Executive Committee
Health Care Expert Panel
NPO Expert Panel/Guide TF
State and Local Government Expert Panel

ATTACHMENT A

Comments

1. The title of the proposed FSP uses the term "conduit debt securities." Several other places in the proposed FSP, such as the first sentence of paragraph 1, every sentence of paragraph 2, and other parts of the proposed FSP, use terms such as "conduit municipal bond," "municipal bonds," and "conduit bond." We suggest that the FSP be revised to use consistent terminology throughout.
2. Paragraph 1, first sentence, should clarify that the definition of a *public entity* in the context of the proposed FSP applies in circumstances in which the debt is traded in a public market (or other conditions required to meet the definition of a public entity if the Board accepts the PSC's comment in the cover letter).
3. Paragraph 3 provides that "the conduit bond obligor is required to make all interest and principal payments as they become due and any future financial reporting requirements are the responsibility of the conduit obligor." Our experience is that either (a) the conduit bond obligor or (b) a governmental entity or its trustee may make the interest and principal payments, though those payments are funded by the conduit bond obligor. These transactions are described more fully in the AICPA's Audit and Accounting Guide *State and Local Governments*, paragraphs 8.76 to 8.78, as well as paragraphs 12.28 through 12.34.

We suggest that paragraph 3 of the FSP be revised to read as follows (using as a starting point the description of *conduit debt* included in the PROPOSED AMENDMENTS TO EXISTING PRONOUNCEMENTS included in Appendix A):

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third-party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for

such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements; and the governmental entity does not include any of its own financial operating results in the initial offering or future filings.

4. Paragraph 5, second sentence, should refer more explicitly to the “following accounting literature” to which it refers (presumably the literature in Appendix A of the proposed FSP).
5. Paragraph A1 - The proposed FSP would amend APB 28, *Interim Financial Reporting*. The AICPA Audit and Accounting Guide, *Not-for-Profit Organizations*, chapter 1, Appendix A, provides that APB 28 specifically exempts NPOs. Chapter 1, Appendix A of the AICPA Audit and Accounting Guide, *Health Care Organizations*, contains the same comment. The final FSP should amend both Guides to state that APB 28 applies to NPOs that are public entities.
6. Paragraph A4 - FASB Statement No. 126, *Exemption from Certain Required Disclosures about Financial Instruments for Certain Nonpublic Entities*, revised paragraph 3 (d) provides that entities *controlled* by other entities meeting certain characteristics are public entities. AICPA SOP 94-3, *Reporting of Related Entities by Not-for-Profit Organizations*, provides that in some circumstances a not-for-profit organization may control another not-for-profit organization without consolidating that controlled organization. Accordingly, for not-for-profit organizations, we believe the threshold in FASB Statement No. 126 revised paragraph 3(d) should be entities *consolidated* by a public entity obligor rather than *controlled* by a public entity obligor. The Board should make a similar change in the definition of public entity in the final Statement, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans: an amendment of FASB Statements No. 87, 88, 106, and 132(R)*.