



LETTER OF COMMENT NO. 47

Stacey Sutay

From: rslas@aol.com
Sent: Monday, January 21, 2008 10:02 AM
To: Director - FASB
Subject: File Reference: Proposed FSP FIN 48-b

January 21, 2008

Mr. Russell G. Golden
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

File Reference: Proposed FSP FIN 48-b

Dear Mr. Golden:

Proposed Financial Accounting Standards Board (FASB) Staff Position (FSP) FIN 48-b would amend paragraph 22 of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48), to defer the effective date of that Interpretation to fiscal years beginning after December 15, 2007, for nonpublic enterprises as defined in FASB Statement No. 109, *Accounting for Income Taxes*, unless such enterprises have already adopted FIN 48. The FSP proposes to amend paragraph 22 to read as follows: [Added text is underlined and deleted text is ~~struck out~~.]

For public enterprises (as defined in paragraph 289 of Statement 109) this Interpretation shall be effective for fiscal years beginning after December 15, 2006. For nonpublic enterprises (also as defined in paragraph 289) this Interpretation shall be effective for fiscal years beginning after December 15, 2007. Earlier adoption is permitted as of the beginning of an enterprise's fiscal year, provided the enterprise has not yet issued financial statements or information to third parties, including financial statements or information for any interim period, for that fiscal year. A nonpublic enterprise that adopted the provisions of Interpretation 48 before issuance of FSP FIN 48-X, *Effective Date of FASB Interpretation No. 48 for Nonpublic Enterprises*, must continue to apply the provisions of that Interpretation.

The instructions for the preparation of the Consolidated Reports of Condition and Income (Call Report), which are quarterly regulatory reports that are filed with the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency (the banking agencies) by banks under their supervision, state that "[f]or recognition and measurement purposes, the regulatory reporting requirements applicable to the Call Report shall conform to U.S. generally accepted accounting principles" (General Instructions, page 11). This instructional guidance is consistent with the provisions of Section 37(a)(2)(A) of the Federal Deposit Insurance Act (<http://www.fdic.gov/regulations/laws/rules/1000-150.html>), which states that "[s]ubject to the requirements of this Act and any other provision of Federal law, the accounting principles applicable to reports or statements required to be filed with Federal banking agencies by all insured depository institutions shall be uniform and consistent with generally accepted accounting principles."

Accordingly, in the Supplemental Instructions to the Call Report issued to banks each quarter from December 2006 through September 2007, the banking agencies summarized FIN 48 and advised banks about the requirement to implement this Interpretation for Call Report purposes in accordance with the effective date stated in the Interpretation as issued in July 2006. In relevant part, the December 2006 Supplemental Instructions (http://www.ffiec.gov/PDF/FFIEC_forms/FFIEC031_041_suppinst_200612.pdf) stated that:

Banks must adopt FIN 48 for Call Report purposes for fiscal years beginning after December 15, 2006. FIN 48 permits earlier adoption as of the beginning of an earlier fiscal year, provided the bank has not yet issued a financial statement or filed a Call Report for any period of that fiscal year. Because FIN 48 was

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issued in June 2006, i.e., after the filing of the March 31, 2006, Call Report, a bank with a calendar year fiscal year may not adopt FIN 48 early and must begin to apply this interpretation as of January 1, 2007.

Virtually identical language about the adoption of FIN 48 for Call Report purposes was included in the Supplemental Instructions issued to banks in each subsequent quarter through September 2007.

As a result of the FASB Board's decision at its November 7, 2007, meeting to defer the effective date of FIN 48 in the manner described in the language quoted above from the proposed FSP, the banking agencies prepared a revised discussion of FIN 48 for the Call Report Supplemental Instructions issued to banks in December 2007 to provide guidance to banks in response to questions being received about the applicability of the deferral for regulatory reporting purposes. In relevant part, the December 2007 Supplemental Instructions (http://www.ffiec.gov/PDF/FFIEC_forms/FFIEC031_041_suppinst_200712.pdf) state that:

FIN 48 is effective for fiscal years beginning after December 15, 2006. Banks must adopt FIN 48 for Call Report purposes in accordance with the interpretation's effective date. FIN 48 permitted earlier adoption as of the beginning of an earlier fiscal year, provided the bank had not yet issued a financial statement or filed a Call Report for any period of that fiscal year. Because FIN 48 was issued in June 2006, i.e., after the filing of the March 31, 2006, Call Report, a bank with a calendar year fiscal year may not adopt FIN 48 early and must begin to apply this interpretation as of January 1, 2007, for Call Report purposes. On December 19, 2007, the FASB Board requested comments on a proposed FASB Staff Position that would defer for one year the effective date of FIN 48 for nonpublic entities, except that nonpublic entities that have already applied the provisions of FIN 48 and have issued financial statements to third parties would not be eligible for the deferral. Because banks have been expected to prepare their quarterly Call Reports, which are a form of financial statements or information issued to third parties, in accordance with FIN 48 during 2007, banks are not eligible for the FASB's proposed deferral of the effective date of FIN 48.

The FASB should be aware of this regulatory reporting guidance for banks as it determines how to proceed with its proposed FSP FIN 48-b.

Sincerely,

Robert F. Storch

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