**MINUTES**

**To:** Board Members

**From:** Delmonico ext. 393

**Subject:** Minutes of the November 7, 2007 Board Meeting; Deferral of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, for non public entities – agenda decision **Date:** November 29, 2007

**cc:** Bolash, Chookaszian, Cosper Glotzer Golden, Bielstein, MacDonald, Leisenring, Leverenz, Lott, Malcolm, Maples, R. Paul, Tully, Posta, Gabriele, Klimek, Allen, 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.*

Topic: Deferral of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes,* for nonpublic entities

Basis for Discussion: Board Memorandum No. 1

Length of Discussion: 9:30 a.m. to 10:00 a.m.

Attendance:

Board members present: FASB: Herz, Batavick, Linsmeier Seidman, Smith, and Young
IASB: Leisenring

Board members absent: Crooch

Staff in charge of topic: Glotzer

Other staff at Board table: Golden, Paul, and Delmonico

Summary of Decisions Reached:

At the November 7, 2007 Board meeting, the Board deliberated on a deferral of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, for nonpublic entities. At that meeting, the Board decided:

1. To add a project to its agenda to defer the effective date of Interpretation 48 for all nonpublic entities, including nonpublic not-for-profit entities, to fiscal years beginning after December 15, 2007. Nonpublic entities that have already adopted the provisions of Interpretation 48 would not be eligible for the deferral.

2. To proceed to a preballot draft of the proposed FSP with a 30-day comment period.

Objectives of Meeting:

The objective of the meeting was for the Board to decide whether it wanted to add a project to its agenda to defer the effective date of Interpretation 48 for nonpublic entities.

The objective was met.

Matters Discussed and Decisions Reached:

1. Mr. Glotzer began the meeting by stating that the staff had received a letter from the Private Company Financial Reporting Committee (PCFRC) which raised concerns about the effective date of Interpretation 48 for nonpublic entities. He noted, however, that this was not the first time the Board had been asked to deliberate delaying the effective date of Interpretation 48. Staff Memorandum 1 identified the arguments raised at previous Board meetings both for and against delaying the effective date. He indicated, however, that a letter received from the PCFRC raised issues relating to nonpublic entities that had not been considered in previous deliberations. He further stated that the PCFRC in its letter indicated that it believes that many nonpublic entities and their CPA practitioners are just now becoming aware of the implications of the Interpretation. Mr. Glotzer commented that one of the primary ways in which these entities and practitioners learn about new FASB standards is from continuing professional education sessions or CPE. CPE sessions are typically held in June and cover changes to GAAP that have occurred in the preceding year that become effective in the current year. He argued that since

Interpretation 48 was issued in July of 2006, the CPE sessions held in June of 2006 did not cover Interpretation 48 at all, or only superficially. The continuing education sessions covering Interpretation 48 would not have been held until June 2007, which is after the Interpretation became effective.

2. Mr. Glotzer commented that the staff was also aware of other ways in which nonpublic entities and their CPA practitioners learn of new FASB standards. He indicated that in addition to continuing education, these entities and practitioners learn from subscriptions to GAAP guides or from third party practice aids. Mr. Glotzer commented that the staff contacted a provider of practice aids used by many CPA practitioners to see what information about Interpretation 48 was provided and when it was issued. Through its contact, the staff learned that the 2006 edition issued in September of 2006 contained four paragraphs in the practice aid materials about Interpretation 48, all of which related to disclosure requirements. He commented that the staff also obtained a GAAP guide issued about the same time and noted that it made no mention of Interpretation 48. As a result, firms that use these materials for FASB updates did not learn about Interpretation 48 until the materials were issued in September of 2007, which is after the Interpretation became effective.

3. Mr. Glotzer then stated that the PCFRC raised a second issue, Interpretation 48's applicability to pass-through entities. He commented that the PCFRC is requesting that the Board issue guidance specifically geared towards pass-through entities. Since Interpretation 48 is an interpretation of FASB Statement No. 109, *Accounting for Income Taxes,* many nonpublic entities and their CPA practitioners were not aware that it applied to pass-through entities. He stated that these CPA practitioners reasoned that as an interpretation of Statement 109, it was not applicable to their S-corporation and partnership clients.

4. Mr. Glotzer commented that the PCFRC letter recommended that the Board delay the effective date of Interpretation 48 until guidance could be issued on Interpretation 48's implications to pass-through entities. As written, the Interpretation does not contain specific examples illustrating how it impacts those entities.

5. Mr. Glotzer noted that several arguments have been presented in opposition to the PCFRC's recommendations. Those arguments include (a) by granting a delay for nonpublic entities, the Board is acting as an enabler so that nonpublic entities will not have an incentive to keep current and (b) nonpublic entities and their CPA practitioners should be responsible enough to keep up to date on their own and not rely on the methods currently used for GAAP updates.

6. Mr. Glotzer commented that the staff has identified three alternatives: (a) defer the effective date of Interpretation 48 for nonpublic entities to fiscal years beginning after December 15, 2007, (b) defer the effective date of Interpretation 48 just for pass-through entities to fiscal years beginning after December 15, 2007 or (c) retain the current effective date.

7. Mr. Glotzer then stated that the staff considered arguments both pro and con and recommended that the Board delay the effective date of Interpretation 48 for nonpublic entities to fiscal years beginning after December 15, 2007. The staff believes that it is not the FASB's responsibility to change the way nonpublic entities keep up with professional standards. Also, because the Interpretation did not provide guidance on how it applied to S-corporations and partnerships, the staff recommended that the Board add a project to its agenda to develop specific guidance for those entities.

8. Mr. Golden commented that while pass-through entities are clearly in the scope of Interpretation 48, he believes that the Interpretation was never clear on how it applied to pass-through entities and, therefore, understood how pass-through entities could have misunderstood its applicability. He commented that the Board's reasoning for scoping in pass-through entities in Interpretation 48 was because an entity could have taken an aggressive tax position in determining its pass-through status. He continued commenting that if it is less than more likely than not that upon audit by the Internal Revenue Service an entity's assertion that it is a pass-through entity would be sustained, then the entity should follow all aspects of Statement 109 and Interpretation 48. The confusion stems from the fact that Interpretation 48 did not

provide examples of how it could apply to pass-through entities. Mr. Golden commented that he does not believe it is necessary to add a project to the Board's agenda to provide formal guidance; rather he believes that the staff should be able to work with the private company constituents and resource groups in developing and disseminating guidance.

9. Mr. Herz stated that although he supported a deferral, he was concerned about the awareness issues for private constituents the staff had raised. He questioned how the process might be improved so that deferral requests such as this one would not occur in the future.

10. Mr. Linsmeier stated that he disagreed with the notion that CPE cycles should drive effective dates and deferral requests. He said that basing effective dates and deferral requests on whether newly issued standards have been included in CPE cycles opens the door to potential manipulation. Mr. Linsmeier further stated that constituents should be following the standard-setting process, rather than relying on third party providers for updates on new standards. Mr. Linsmeier commented that he believes the only legitimate reason for deferral in this instance is because of the confusion created by the applicability of Interpretation 48 to pass-through entities.

11. Mr. Herz said that although he agrees with Mr. Linsmeier in principle, he recognizes that to have good financial reporting, preparers must be able to obtain information and education about new standards in a timely manner. Mr. Herz suggested that the Board might benefit from better understanding how information about new standards are disseminated in the small private company market so that this type of issue does not occur again.

12. Mr. Golden also echoed Mr. Linsmeier's comments. He stated that it was not the staff's intention to provide a deferral based on what third-party providers had or had not included in their publications or education seminars. He commented that the staff's request for deferral was based on the confusion over the applicability of Interpretation 48 and Statement 109 to pass-through entities and the resulting need for guidance.

13. Mr. Batavick commented that he supported a deferral for all nonpublic entities, however, that decision was not based on the fact that information about the Interpretation was not published in educational materials. He commented that his decision to defer was based on the confusion that arose from the scoping in of pass-through entities for an interpretation of Statement 109 without providing guidance on how the Interpretation would apply to those entities. Mr. Batavick also commented that he thought guidance could be issued without adding a project to the Board's agenda.

14. Ms. Seidman commented that the letter from the PCFRC raised two issues that the Board needs to consider, one of which is the confusion brought on by the application of Interpretation 48 to pass-through entities and the other is what appears to be a breakdown in the education system, that is, constituents' awareness of newly released accounting standards and an understanding that they need to be in a position to implement those new standards by their effective dates. Ms. Seidman questioned why constituents were relaying on third-party providers to educate themselves about the release of new standards. Ms. Seidman commented that she would like to examine the reasons for this phenomenon and the Board's role in educating constituents so that this type of situation would not occur in the future. Ms. Seidman stated that although she did not find the educational materials argument persuasive, she did support a deferral for all nonpublic entities.

15. Mr. Linsmeier stated that he supported a deferral for nonpublic pass-through entities only. He believes that confusion created by the Interpretation's applicability to pass-through entities is sufficient to warrant a deferral for those constituents.

16. Mr. Young commented that he is also concerned about the potential precedent that a deferral could set, but at the same time believes that the standards release process for small businesses is overly complicated. He believes that it is difficult for the small entrepreneur to keep up with new standards based on the way those standards are currently released to the market place. He believes that the release process could be improved by packaging new standards together and releasing that package annually.

17. Mr. Smith commented that although he supports a deferral, he does not find the educational materials argument compelling. He did, however, understand how there could be confusion surrounding the applicability of Interpretation 48 to pass-through entities. However, rather than supporting a deferral for nonpublic pass-through entities only, Mr. Smith indicated that he supported a deferral for all nonpublic entities. Mr. Smith commented that a deferral for nonpublic pass-through entities only overly complicated the deferral mechanism.

18. Mr. Herz also commented that he supported a deferral for all nonpublic entities for the same reason Mr. Smith supported a deferral for all non public entities.

19. Mr. Golden clarified that an entity would only qualify for this deferral if that entity had not already adopted Interpretation 48. Mr. Golden also clarified that a non-SEC registrant would be used to determine whether an entity would be considered nonpublic.

20. The Board agreed with the staff's recommendation to defer the effective date of Interpretation 48 for all nonpublic entities, including not-for-profit entities, to fiscal years beginning after December 15, 2007. Nonpublic entities that have already adopted the provisions of Interpretation 48 would not be eligible for the deferral. (Five agreed [RHH, LWS, GJB, LFS, GMC by proxy]; two did not [TJL, DMY].)

21. Mr. Golden then asked if the Board wanted to proceed to a preballot draft of the proposed FSP with a 30-day comment period. The Board unanimously agreed to proceed to a preballot draft of the proposed FSP with a comment period of 30 days. (All Board members agreed [RHH, TJL, LFS, LWS, GJB, DMY, GMC by proxy].)

<u>Follow-Up Items:</u>

None.

General Announcements:

None.