



## GALLAGHER, FLYNN & COMPANY

◆ Alert ◆

~ October 16<sup>th</sup>, 2008 ~

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### **FASB Expands Scope of FIN 48 Deferral to Include All Private Entities**

At its October 15, 2008 meeting, the Financial Accounting Standards Board (the Board) reconsidered the scope of its proposed one-year deferral of the effective date of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48) for certain private enterprises. **The Board voted to expand the scope of the deferral so that it now includes all private entities.**

Two weeks ago, at its October 1<sup>st</sup> meeting, the Board had originally proposed limiting the deferral only to pass-through entities such as Subchapter S corporations, partnerships and LLC entities. Today's vote means that all private entities, including privately-owned regular corporations, are eligible for the proposed deferral.

By including all private entities within the scope of the deferral, the Board avoided the complexities of addressing a related issue of how to define the term "pass-through". Questions had been raised as to whether the original proposal would apply to all entities within a chain of entities if a pass-through entity existed anywhere within the chain. Additionally, questions had been raised regarding whether cooperatives, REITs and hedge funds were considered to be pass-through entities.

Under the expanded proposal, FIN 48 will be effective for private entities for **annual** periods beginning after December 15, 2008 if they **have not yet issued a full set of U.S. GAAP annual financial statements incorporating the recognition, measurement, and disclosure requirements of FIN 48.** Early adoption is still permitted.

#### **Certain Enterprises Are Not Eligible for the Deferral**

Similar to the last time the Board deferred FIN 48 for nonpublic enterprises, we believe certain nonpublic enterprises will not be eligible for the current deferral. Accordingly, we believe that nonpublic consolidated entities of public companies that apply U.S. GAAP will not be eligible for the deferral for their stand-alone financial statements.



However, a nonpublic company that is wholly- or majority-owned by a publicly traded company and that is included in the public company's consolidated financial statements at fair value (for example, a private company owned by a publicly traded private equity group) is eligible for the deferral for its stand-alone financial statements.

Conduit bond obligors for conduit debt securities that are traded in a public market do not meet the definition of a nonpublic enterprise (as provided in paragraph 289, as amended, of FAS 109, *Accounting for Income Taxes*). Therefore, those conduit bond obligors would not be eligible for the deferral. FSP FAS 126-1, *Applicability of Certain Disclosure and Interim Reporting Requirements for Obligors for Conduit Debt Securities*, issued in October 2006, addresses entities that are included in the definition of a public enterprise.

U.S. subsidiaries of a foreign public company that applies U.S. GAAP also would not be eligible for the deferral.

Please contact your Gallagher, Flynn advisor if you have any questions or require any additional information at 802.863.1331 or 603.643.0043.

