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FASB's New Disclosure FSP Is Effective Immediately

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Introduction

The FASB recently issued FSP FAS 140-4 and FIN 46(R)-8,[1] which accelerates the requirement for **public companies** to provide disclosures that are similar to those proposed in the pending amendments to Statement 140[2] and Interpretation 46(R).[3] This disclosure-only FSP improves the transparency of transfers of financial assets and an enterprise's involvement with variable interest entities (VIEs), including qualifying special-purpose entities (QSPEs). The FSP introduces disclosure objectives that financial statement preparers must consider when preparing their disclosures. These disclosure objectives are supplemented with specific disclosure requirements. Some of the more significant new disclosure requirements are discussed below. Financial statement preparers should refer to the FSP for a complete list of the disclosure objectives and requirements.

Effective Date

The FASB has stated that the current economic environment has created an urgent need for additional disclosures. Accordingly, public companies are required to provide the additional disclosures in their first reporting period (interim or annual) that ends after December 15, 2008. **Calendar year-end public companies must provide the required disclosures in their December 31, 2008, annual filings, and public companies with non-calendar year-ends must provide the disclosures in their quarterly filings for their first quarterly period ending after December 15, 2008**. The disclosures are required in all subsequent annual and quarterly financial statements.

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Editor's Note: Under the FSP, a public entity or enterprise is one "(a) whose debt or equity securities trade in a public market either on a stock exchange (domestic or foreign) or in the over-the-counter market, including securities quoted only locally or regionally, (b) 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), (c) that makes a filing with a regulatory agency in preparation for the sale of any class of debt or equity securities in a public market, or (d) that is controlled by an entity (enterprise) covered by (a), (b), or (c)."

[1] FASB Staff Position (FSP) No. FAS 140-4 and FIN 46(R)-8, "Disclosures by Public Entities (Enterprises) About Transfers of Financial Assets and Interests in Variable Interest Entities."
[2] FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.*
[3] FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities.*

Navigating the Disclosure Requirements

The FSP amends both Statement 140 and Interpretation 46(R) to require public companies to disclose the information that is required by Appendix B through Appendix D of the FSP. Nonpublic companies must continue to apply the disclosure provisions currently in Statement 140 and Interpretation 46(R). The following table identifies which appendix in the FSP financial statement preparers should refer to when preparing the disclosures for their annual and quarterly financial statements.

Entity or Enterprise Affected	FSP Appendix to Apply
A public entity subject to the disclosure requirements of Statement 140.	Appendix B
A public enterprise that is any of the following: • The primary beneficiary of a VIE (i.e., consolidates the VIE). • The holder of a significant variable interest in a VIE but is not the primary beneficiary. • A sponsor of a VIE and holds a variable interest in the VIE.	Appendix C
A public enterprise that did not transfer assets to a QSPE but is either: • A sponsor of the QSPE and holds a variable interest in the QSPE. • A servicer of the QSPE and holds a significant variable interest in the QSPE.	Appendix D
Nonpublic entities or enterprises.	N/A — Continue to apply the existing disclosure requirements of Statement 140 and Interpretation 46(R)

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Editor's Note: The FSP does not define the term "sponsor." Determining whether an enterprise is a sponsor requires professional judgment and a consideration of all relevant details. In stating its rationale for not defining "sponsor," the Board noted that the term is already an accepted concept that is used but not defined in other literature (e.g., EITF Issue 96-21[4]).

Disclosures Related to Asset Transfers (Appendix B)

The additional disclosures related to asset transfers primarily focus on the transferor's continuing involvement with transferred financial assets and the related risks retained. Accordingly, transferors are required to disclose (1) whether they provided financial or other support to the transferee (or its beneficial interest holders) that they were not previously contractually required to provide, including the primary reasons for providing the support, and (2) details of any arrangements that could require any future financial support. The FSP states that this includes, but is not limited to, any future financial support that could result from **"explicit written arrangements, communications between the transferor and the transferee or its beneficial interest holders, and unwritten arrangements customary in similar transfers"** (emphasis added).

Financial statement preparers are also required to provide details about any SPEs involved in the transfer, including the nature, purpose, size, and activities of the SPE, and how it is financed.

[4] EITF Issue 96-21, "Implementation Issues in Accounting for Leasing Transactions Involving Special-Purpose Entities."

Disclosures Related to VIEs (Appendix C)

The additional disclosure requirements focus on an enterprise's involvement with VIE's and it's judgments about the accounting for them. For example, financial statement preparers are required to disclose their method for determining whether they are the primary beneficiary of a VIE, including the significant judgements and assumptions made and whether the consolidation conclusion has changed in the most recent financial statements.

The FSP also requires disclosure of the details of any financial or other support provided to a VIE that the enterprise was not previously contractually required to provide, and the primary reasons for providing the support. **The primary beneficiary of a VIE is also required to disclose the terms of any arrangements, including both explicit arrangements and implicit variable interests, that could require the enterprise to provide future support to the VIE.**

The disclosures required by the FSP for multiple transfers or multiple interests may be aggregated if separate reporting would not provide more useful information to financial statement users.

In addition, any enterprise that holds a significant variable interest or is a sponsor that holds a variable interest in a VIE, but is not the VIE's primary beneficiary, must disclose the "carrying amount and classification of the assets and liabilities in the enterprise's statement of financial position that relate to the [VIE]" and reconcile these amounts to the enterprise's maximum exposure to loss from such interest(s).

Disclosures Related to QSPEs (Appendix D)

Enterprises are exempt, with limited exceptions, from applying the consolidation and disclosure provisions in Interpretation 46(R) to entities that qualify as QSPEs. The FSP amends Interpretation 46(R) and requires that a nontransferor public enterprise provide certain disclosures if it is either (1) the sponsor of a QSPE and holds a variable interest in the QSPE or (2) the servicer of a QSPE and holds a significant variable interest. The FSP does not amend the accounting for these entities.

These disclosures include details about the QSPE, including the nature, purpose, size, and activities of the QSPE, and how it is financed. Further, the FSP states that any arrangements that could require the enterprise to provide financial support to the QSPE also must be disclosed, after all evidence is considered, **"including, but not limited to, explicit written arrangements, communications between the sponsor or servicer and the [QSPE] or its beneficial interest holders, and unwritten arrangements that are customary in similar relationships"** (emphasis added). Finally, an enterprise must also disclose (1) whether it has "provided financial or other support . . . to the [QSPE] that it was not previously contractually required to provide, including . . . the primary reasons for providing the support," and (2) its maximum exposure to loss as a result of the involvement with the QSPE.

Aggregation of Disclosures

The disclosures required by the FSP for multiple transfers or multiple interests may be aggregated if separate reporting "would not provide more useful information to financial statement users." However, to increase transparency, the FSP prohibits the aggregation of certain disclosures. For example, in asset transfers, the transferor must distinguish between transfers that are accounted for as sales and those that are accounted for as secured borrowings. Transfers accounted for as sales must further be disaggregated into (1) those transferred to a QSPE and (2) all other sales. In addition, for an enterprise that is involved with VIEs, financial statement preparers should not combine the disclosures about VIEs that are not consolidated with those that are consolidated.

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