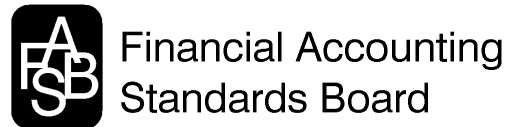


MINUTES



To: Board Members
From: Choi (x446)
Subject: Minutes of the June 11, 2008 Board Meeting for Not-for-Profit Mergers and Acquisitions **Date:** June 19, 2008
cc: FASB: Bielstein, Golden, MacDonald, Cosper, Mechanick, Choi, Vessels, Tully, Glotzer, Lott, C. Smith, Lapolla, Gabriele, Sutay, Willis (consultant) FASB Intranet, Chookaszian, Posta, Klimek, Allen; GASB: Reese, Schermann; IASB: Leisenring

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, Interpretation, or FSP.

Topic: Redeliberations—Donor-Related Intangible Assets
Basis for Discussion: Memorandum #7 dated May 20, 2008, and Memorandum #7A dated June 2, 2008
Length of Discussion: 1:00–1:30 p.m.

Attendance:

Board members present:	Herz, Batavick, Crooch, Linsmeier, Seidman, Smith, and Young
Board members absent:	None
Staff in charge of topic:	Bossio
Other staff at Board table:	Golden, Choi, and Prince; Mechanick and Willis by phone
Outside participants:	None

Summary of Decisions Reached:

The Board considered issues raised by respondents to the October 2006 Exposure Draft, *Not-for-Profit Organizations: Mergers and Acquisitions*, and decided to:

- a. Affirm that for acquisitions by not-for-profit organizations, the acquirer should apply the criteria for recognition and measurement of identifiable assets acquired, including intangible assets, that is consistent with Statement 141(R). Therefore, in accordance with paragraph 3(k) of FASB Statement No. 141 (revised), *Business Combinations*, an intangible asset is identifiable if it either:
 - (1) Is separable, that is, capable of being separated or divided from the entity and sold, transferred, licensed, rented, or exchanged, either individually or together with a related contract, identifiable asset, or liability, regardless of whether the entity intends to do so; or
 - (2) Arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.
- b. Communicate in the application guidance of the final standard that donor lists **normally** meet the separability criterion for recognition as intangible assets separate from goodwill. However, that criterion would not be met if, for example, an organization is bound by a confidentiality agreement that precludes the transfer of information about its donors.
- c. Communicate in the final standard that donor relationships would not be recognized as intangible assets separate from goodwill because the costs to separately recognize and measure the fair value of those relationships generally outweigh the benefits of providing that information.

Objective of Meeting:

1. The purpose of this meeting was for the Board to consider issues raised by those who responded to the Exposure Draft about the proposed accounting for donor-related intangible assets acquired in acquisitions by not-for-profit organizations. Those issues are:
 - a. Does the Board continue to support the decision to apply to not-for-profit organizations the Statement 141(R) criteria for recognition and measurement of identifiable assets acquired, including intangible assets?
 - b. Does the Board continue to support the proposed guidance that discusses how the criteria apply to (1) donor lists and (2) donor relationships?

The objective was met.

Matters Discussed and Decisions Reached:

Issue 1: Recognition and Measurement Criteria Consistent with Statement 141(R)

2. Mr. Bossio noted that under the differences-based approach used in this project, the Board previously concluded that the recognition and measurement criteria for intangible assets in an acquisition by a not-for-profit organization should be consistent with the criteria applicable to an acquisition by a business entity. (Statement 141(R) provides those criteria.) Therefore, the Exposure Draft explains that an intangible asset is identifiable if it either:

- (1) Is separable, that is, capable of being separated or divided from the entity and sold, transferred, licensed, rented, or exchanged, either individually or together with a related contract, identifiable asset, or liability, regardless of whether the entity intends to do so; or
- (2) Arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.

Furthermore, the Exposure Draft proposes that recognized intangible assets be measured at their acquisition date fair values.

3. Mr. Bossio noted that the Board received no significant disagreement with its decision to apply the recognition and measurement criteria in Statement 141(R) to **acquisitions**¹ by not-for-profit organizations. Constituents generally did, however, disagree with applying the criteria (and, more broadly, the acquisition method) to **mergers** of not-for-profit organizations.

Question—Does the Board continue to support the decision to apply to acquisitions by not-for-profit organizations the Statement 141(R) criteria for recognition and measurement of identifiable assets acquired, including intangible assets?

4. **Issue 1 Staff Recommendation:** The staff recommended that the Board retain the Statement 141(R) criteria for recognition and measurement of identifiable assets acquired, including intangible assets, for acquisitions by not-for-profit organizations.

¹ The issues for this meeting are limited to acquisitions by not-for-profit organizations. In September 2007 the Board tentatively decided that a merger is different from an acquisition and, therefore, a different accounting treatment for mergers would be appropriate. (See [FASB web site](#) for details.)

5. **Issue 1 Board Vote:** The Board voted in favor of the staff's recommendation. All Board members agreed.
6. **Issue 1 Board Comments:** Mr. Linsmeier noted that it was difficult to vote on the recognition criteria before the staff had presented its analysis of how those criteria would apply to donor relationships. He questioned whether the staff believed that the criteria could apply to donor relationships differently than customer relationships. The staff explained that the primary concern of the first issue is whether the Board thinks a departure from the criteria used in Statement 141(R) is appropriate. The second and third issue is to determine how those criteria should be applied to intangible assets unique to not-for-profit organizations. Mr. Linsmeier explained that he would prefer to see an analysis of the differences between customer relationships and donor relationships.
7. The staff noted that some would argue that donors are different from customers because they engage in voluntary nonreciprocal transactions rather than exchange contracts. Furthermore, the link that donors have to an organization is unlike a customer's link to a vendor because customers often become dependent on the purchased goods or services. The same supply and demand relationship does not exist for donors. Mr. Linsmeier pointed out that neither of those attributes were discussed anywhere in the criteria.
8. Mr. Bossio noted that the staff thinks that if there is a problem it does not lie in the criteria, rather, it is in how broadly the criteria might be interpreted. It seems that in previous deliberations surrounding business entities and customer contracts and related customer relationships, the contractual-legal criterion has been broadly interpreted to include relationships that "arise from" a contract. He noted that developing favorable relationships with an entity's capital providers (whether they be creditors, equity investors, or donors) certainly is good business practice, yet there is no evidence of recognition of separate intangible assets for relationships with creditors and investors, which one might argue arise from past contracts. He explained that the Exposure Draft is inconsistent in its interpretation of the criteria

because the application guidance includes an example that suggests that relationships with core depositors are noncontractual customer relationships, which suggests a narrower interpretation of which relationships arise from contracts.

9. The staff also noted that donor relationships are more analogous to relationships with capital providers than to relationships with customers. Nonetheless, the staff acknowledged that if the Board were to determine that the notion of arising from contractual rights is to be applied similarly for both customer and donor relationships, it would be appropriate to recognize those donor relationships separately from goodwill provided they arise from previous contracts with the donor. That is, the donors had previously contracted to donate to the organization, rather than relationships cultivated with potential prospective donors for which there is no contract.
10. Ms. Seidman noted that she found that logic difficult to reconcile with the treatment of an assembled workforce under Statement 141(R). The rationale provided for nonrecognition of an assembled workforce is that it does not arise from a contract. Although an entity may have contracts with individual employees, the relationship as a whole is not subject to a contractual arrangement. She noted that the same reasoning should be applied to donor relationships.

Issue 2: Donor Lists

11. Mr. Choi noted that the Exposure Draft stipulates that donor lists acquired in an acquisition normally would be recognized as intangible assets separate from goodwill. The Board concluded that donor lists generally meet the separability criterion established for recognition. That is, donor lists are capable of being separated or divided from the acquiree and sold, transferred, licensed, rented, or exchanged.

Question—Does the Board agree with the staff’s recommendation that the proposed application guidance for donor lists be retained?

12. **Issue 2 Staff Recommendation:** Mr. Choi noted that the staff’s recommendation was consistent with the conclusions reached in the Exposure Draft regarding donor lists in that they generally do not arise from contractual rights but are frequently leased or exchanged and, therefore, **normally** meet the separability criterion. He also explained that it is important to qualify that donor lists **normally** meet the separability criterion to allow for those circumstances in which a confidentiality agreement may prohibit an organization from selling, leasing, or otherwise exchanging information about its donors.

13. **Issue 2 Board Vote:** The Board voted in favor of the staff’s recommendation. All Board members agreed.

14. **Issue 2 Board Comments:** None.

Issue 3: Donor Relationships

15. The Exposure Draft provides guidance that suggests that donor relationships meet the criteria for recognition as an intangible asset separate from goodwill. The guidance specifies that, like customer relationships, donor relationships meet the contractual-legal criterion. Based on feedback received in comment letters and further research conducted on this matter, the staff recommends that donor relationships not be recognized separately from goodwill in an acquisition.

Question—Does the Board agree with the staff’s recommendation that the Board remove references of donor relationships as an example of a recognizable intangible asset? If so, the staff would like to know why so that it might strengthen the Board’s basis for conclusions.

16. **Issue 3 Staff Recommendation:** The staff recommended that donor relationships not be recognized as intangible assets separate from goodwill in acquisitions by not-for-profit organizations. Constituents provided the following four potential arguments against the recognition of donor relationships.

- a. *Donor relationships do not meet the definition of an asset.* Some constituents argued that donor relationships do not meet the second of the three essential characteristics of an asset. That characteristic of an asset is that “a particular entity can obtain the benefit and control others’ access to it.”

- b. *Donor relationships do not meet the contractual-legal criterion or the separability criterion established for identifiable intangible assets.* While paragraph A28 of the Exposure Draft asserts that donor relationships meet the contractual-legal criterion, many constituents refuted that claim. They noted that voluntary nonreciprocal transactions do not establish contractually-based rights for the organization and that no legally enforceable rights to collect unpledged contributions exist as of the acquisition date. Furthermore, many constituents argued that a donor's affinity to a particular organization and its relationship with that organization cannot be sold or transferred to another entity.
- c. *Donor relationships cannot be reliably measured.* Constituents identified specific difficulties with measurement, including estimating donor-turnover and the unpredictable effects of the organization's structural change on donor relationships and the pattern of future contributions.
- d. *The costs of measuring donor relationships outweigh the benefits provided to users of financial statements.*

The staff noted that it believes donor relationships have value and meet the definition of an asset. However, the staff also believes (b), (c), and (d) are valid reasons for not recognizing donor relationships separately from goodwill.

17. **Issue 3 Board Vote:** Six Board members voted in favor of the staff's recommendation (Batavick, Crooch, Herz, Seidman, Smith, and Young). Mr. Linsmeier voted against the staff's recommendation, which would preclude recognition of donor relationships.
18. **Issue 3 Board Comments:** Mr. Batavick explained that both the identification and valuation of donor relationships would be a very costly process for not-for-profit organizations. Those costs would generally outweigh the benefits of recognition of donor relationships separate from goodwill.
19. Ms. Seidman and Messrs. Smith, Young, Herz, and Crooch all agreed with Mr. Batavick. Ms. Seidman noted that given that this is a unique asset for not-for-profit organizations, it would not be appropriate for the Board to remain silent on this issue. She also noted that feedback from users suggested that they would not include donor relationships in their evaluation of an organization.

20. Mr. Linsmeier stated that he could support remaining silent on donor relationships, but he would not support precluding donor relationships from separate recognition. He believes that reliable measurement and cost-benefit arguments are not viable reasons to prohibit recognition of donor relationships because the Board has not conducted a similar analysis for all other types of intangible assets. He argued that this approach would single out donor relationships as an exception to the rule without examining other possible exceptions. Since there is nothing in the recognition criteria that suggest they should be applied to donor relationships differently than customer relationships, he argued that there is no basis for denying recognition.

21. Ms. Seidman reiterated that because donor relationships are unique to not-for-profit organizations, it is appropriate in this project for them to be evaluated separately from other intangible assets. Mr. Batavick noted that the staff's recommendation calls for removal of donor relationships as an example of a separately recognized intangible assets, but he questioned the staff on its plans for discussing the Board's considerations in the final Statement. Mr. Bossio noted that the basis for conclusions would contain that discussion. (Other considerations for drafting include an explicit mention in the standard or application guidance, similar to that for the nonrecognition of workforce as an intangible asset.)

Follow-Up Items:

None

General Announcements:

None