

Letter of Comment No: 72 File Reference: 1204-001

October 27, 2005

Director of Major Projects and Technical Activities Financial Accounting Standards Board 401 Merritt 7 Norwalk, Connecticut 06856-5116

Sent via email to director@fasb.org

Re: File Reference: 1204-001

FASB Statement 141: Business Combinations

Dear Technical Director:

The National Association of State Credit Union Supervisors (NASCUS)¹ is pleased to submit comments in response to the Financial Accounting Board's (FASB) request for comments on proposed changes to FAS Statement 141: Business Combinations.

The purpose of this letter is to note our understanding and comment on the changes of provisions in the latest Exposure Draft of FAS 141.

Question 1—Are the objective and the definitions of a business combination appropriate for accounting for all business combinations? If not, for which business combinations are they not appropriate, why would you make an exception, and what alternative do you suggest?

Credit unions have many distinctive characteristics that differentiate business combinations between those of mutual enterprises and investor-owned entities. To begin, credit unions are cooperatively and democratically owned. Another distinguishable difference is that for the most part credit unions are exempt from federal income tax and many forms of state taxation. Additionally, credit unions lack market

¹ NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies that charter and supervise the nation's 3,800 state-chartered credit unions.

value of member/owner interests. Credit unions may serve only designated fields of membership, oftentimes occupational, associational or community groups.

As we stated in our October 25, 2001 comment letter, credit unions typically do not pay consideration in merger transactions, making the acquisition accounting method non sensible for credit unions. Further, in many cases credit union business combinations are entities of similar size, making it challenging at times to determine the acquiring institution, except by virtue of the surviving character.

We continue to believe that further consideration of the sum of net assets approach, often referred to as the fresh start method, should be considered for some credit union business combinations. We are pleased paragraph B29 of the Exposure Draft states that the Board is committed to further exploring in a future phase of its Business Combinations project whether the fresh start method might be applied to some combinations.

To recap the benefits from our earlier comment letter, the advantages include:

- Capital may be maintained on an aggregate basis and the substantial declines in capital and the potential supervisory concerns would be avoided.
- This method does permit the fair market valuation of assets and liabilities to be recognized in the transaction, thus avoiding the concern of understated valuation of assets and liabilities.
- The amount of contributed surplus would depend upon the fair market valuation of the assets and liabilities acquired.
- This approach is preferred over the purchase accounting method. (We recognize that other methodologies have additional advantages, as well.)

We do not agree with the Board's conclusion that the disadvantages of the two alternative accounting methods of business combinations outlined in B80-B85 of Statement 141 outweigh the advantages of the fresh-start method. [Paragraph B47]

Question 4—Do paragraphs A8-A26 provide sufficient guidance for measuring the fair value of an acquiree? If not, what additional guidance is needed?

Again, NASCUS points out that in a credit union merger, transactions where the institutions are of roughly equal sizes, determining of the acquirer and acquiree can be challenging. This is especially true when the boards of directors are combined or when surviving management comes from the non-surviving credit union; these examples illustrate that control is often disguised. Further, sometimes the surviving charter in a merger is based on the powers of the charter, as is the case of state-chartered credit union merging with a federal charter. This is the case, even when the non-surviving credit union has more assets.

Question 5—Is the acquisition-date fair value of the consideration transferred in exchange for the acquirer's interest in the acquiree the best evidence of the fair value of that interest? If not, which forms of consideration should be measured on a date other than the acquisition date, when should they be measured and why?

After review, NASCUS agrees that, without extenuating circumstances, the acquisitiondate fair value of the consideration transferred is the best evidence of the fair value of that interest.

Question 6—Is the accounting for contingent consideration after the acquisition date appropriate? If not, what alternative do you propose and why?

NASCUS is not aware of any credit union merger transactions that involve contingent consideration.

Question 8—Do you believe that these proposed changes to the accounting for business combinations are appropriate? If not, which changes do you believe are inappropriate, why, and what alternatives do you propose?

No, purchase accounting is not the best accounting method for business combinations between credit unions. As we stated in Question 1, our conclusions concerning business combinations for credit unions has not changed. Our reasoning is reflected in our answer to Question 1 and in the NASCUS comment letter to FASB dated October 25, 2001.

Question 9—Do you believe that these exceptions to the fair value measurement principle are appropriate? Are there any exceptions you would eliminate or add? If so, which ones and why?

NASCUS is not aware of a need for any specific exceptions to fair value.

Question 10—Is it appropriate for the acquirer to recognize in income any gain or loss on previously acquired noncontrolling equity investments on the date it obtains control of the acquiree? If not what alternative do you propose and why?

It is conceivable that a credit union with an equity investment in a specific company (i.e., data processing) or a CUSO could experience a gain or a loss prior to a merger transaction. NASCUS believes it is appropriate to recognize a gain or loss on previously acquired noncontrolling equity investments on the date the acquirer obtains control of the acquiree.

Question 13—Do you agree that comparative information for prior periods presented in financial statements should be adjusted for the effects of measurement period adjustments? If not, what alternatives do you propose and why?

We believe it is a consistent practice from an accounting standpoint to adjust comparative information for prior periods that are presented in financial statements to reflect the effects occurring during a specific measurement period.

Question 14—Do you believe that the guidance provided is sufficient for making the assessment of whether any portion of the transaction price or any assets acquired and liabilities assumed or incurred are not part of the exchange for the acquiree?

Credit union merger transactions are fairly non-complex and transparent; therefore, the guidance provided should be reasonably sufficient.

Question 16—Do you believe that an intangible asset that is identifiable can always be measured with sufficient reliability to be recognized separately from goodwill? If not, why? Do you have any examples of an intangible asset that arises from legal or contractual rights and has both of the following characteristics?

- a. The intangible asset cannot be sold, transferred, licensed, rented, or exchanged individually or in combination with a related contract, asset, or liability.
- b. Cash flows that the intangible asset generates are inextricably linked with the cash flows that the business generates as a whole?

NASCUS is not aware of any cases, based on past credit union business combinations, of intangible assets arising from legal or contractual rights that have both of the above characteristics.

Question 17—Do you agree that any changes in acquirer's deferred tax benefits that become recognizable because of the business combination are not part of the fair value of the acquiree and should be accounted for separately from the business combination? If not, why?

Since there are not tax consequences in a credit union merger transaction, this question is not applicable.

NASCUS welcomes the opportunity to discuss the state regulator perspective on Statement 141, concerning business combinations. If you require more information in your analysis, please do not hesitate to contact NASCUS at (703) 528-8354.

Sincerely,

National Association of State Credit Union Supervisors

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