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Letter of Comment No: 46
File Reference: 1204-001

October 28, 2005

Mr. Robert H. Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference 1204-001

Dear Mr. Herz:

The American Council of Life Insurers (ACLI) would like to offer our comments on the *Business Combinations – a replacement of FASB Statement No. 141 Exposure Draft* (ED). ACLI is the principal trade association of life insurance companies, representing 356 member companies that account for 80 percent of total assets, 78 percent of the life insurance premiums and 84 percent of annuity considerations, in the United States.

In general, we appreciate and support the convergence of US Generally Accepted Accounting Principles with International Accounting Standards. However, we find that several features of the exposure draft seem to reduce rather than increase the meaningfulness of financial statement presentation for business combinations.

We offer the following comments in response to specific topics raised in the ED:

Objective, Definition, and Scope

We do not believe the objective and definition of a business combination should apply to business combinations involving only mutual entities. A mutual merger is a true pooling of interest transaction with no consideration exchanged between the parties. With no consideration in a transaction, it is not practical to determine an accurate fair value of the acquired company to the acquirer. We are concerned that by using purchase accounting for a mutual merger, the results may be misleading to the financial statement users, who for the most part are regulators, bondholders and policyholders. The factors that motivate a merger between two mutual companies are very different than the factors that motivate an acquiring company paying cash or stock for a business. For example, Mutual Company A merges with Mutual Company B for no consideration. The fair value that Mutual Company B would demand in an auction of the company is \$100 million with \$20 million of goodwill. Mutual Company A may not even be willing to enter into a cash transaction to acquire Mutual Company B for \$100 million. However, \$100 million of equity is added to Mutual Company A's balance sheet following the transaction. Then

at some point in the future, Mutual Company B may be underperforming relative to the market expectations used to determine the hypothetical purchase price and an impairment charge to goodwill may be required. It does not seem to make sense that Mutual Company A would have an impairment charge in earnings for the goodwill on a transaction that it would not have been willing to enter into as a cash acquisition in the first place. For these reasons, we believe that mutual mergers should be excluded from the scope of this statement.

Definition of a Business

We recommend that the FASB consider a change to the definition of a business that is not as broad and encompassing as the current proposal. We are concerned about the impact that the definition of a business may have on acquired blocks of insurance policies through reinsurance or coinsurance transactions. These transactions have historically been accounted for under FASB Statement No. 113 but may be scoped into the proposed guidance. We do not believe that it is the Board's intent to include this activity and we suggest that reinsurance transactions subject to FAS 113, without other characteristics of a business, be excluded from the definition of a business.

Measuring the Fair Value of the Acquiree

We recommend that the FASB retain the existing guidance pertaining to the valuation date of a business combination. We understand that the FASB desires to use the same date to determine the cost of the acquired entity as well as value the assets acquired and liabilities assumed. We believe these are different events and the cost of the acquired entity should be determined on the date of agreement and the value of the assets and liabilities should be at the closing, when they are controlled.

The guidance in the ED will cause the valuation (at fair value) of contingent considerations to be complex and difficult. This guidance will also create illogical income statement results in the future. Better than expected results may increase the contingent payment and result in a charge to income in the future and vice versa for less than expected results. Accordingly, we recommend that the FASB preserve the current accounting guidance for contingent consideration. If the Board prefers to measure contingent consideration using management's best estimate at closing, we would propose that changes to that value be reflected through the purchase price with adjustment to goodwill as opposed to charges to earnings so long as those adjustments occur in a reasonable time subsequent the acquisition.

Measuring and Recognizing the Assets Acquired and the Liabilities Assumed

We recommend that the FASB retain the current accounting for contingent assets and liabilities contained in FASB Statement No. 38, *Accounting for Preacquisition Contingencies of Purchased Enterprises* (FAS 38).

However, we have concerns that contingent liabilities will be recognized differently based on whether the liability was generated before or after the acquisition. Post-acquisition liabilities will retain accounting treatment under FASB Statement No. 5, *Accounting for Contingencies* (FAS 5), creating administrative and valuation challenges for companies in tracking liabilities and comparability issues between enterprises.

Measurement Period

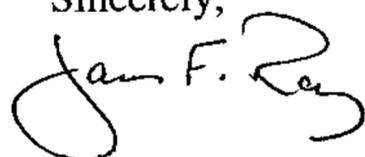
We recommend that the FASB retain current guidance associated with the treatment of acquisition related changes within one year of the acquisition date. We feel that restatements should not be required in this instance. Furthermore, the FASB should maintain existing guidance for the treatment of tax benefits realized after the one-year period.

We have an overriding concern with the benefits of the proposed changes over what exists in current practice. We believe that these changes may actually have an adverse impact on financial statements by creating difficulty in comparing entities and adding complexity that makes financial statements more difficult for users to understand. The proposed guidance may affect how shareholders perceive value, forcing companies into greater use of non-GAAP measures to explain their periodic performance. Additionally, it may create more room for subjectivity in financial reporting, thereby increasing the audit risk and effort and enhancing the risk of manipulation.

We believe that the FASB should carry forward to existing accounting principles for business combinations and only address the specific issues that may persist through the issuance of an interpretation or other implementation guidance. We do not believe that the current model should be rewritten because we believe that the current model has worked effectively. It has been vetted and accepted by financial statement users. We do not feel that the investment community perceives a need for a rewriting of the accounting principles for business combinations.

Thank you for this opportunity to express our concerns on this developing accounting guidance. Should you have any questions or wish to discuss our concerns in greater detail, please feel free to contact us.

Sincerely,

A handwritten signature in black ink that reads "James F. Renz". The signature is written in a cursive style with a large, looping initial "J".

James F. Renz
Director, Accounting Policy