

AMERICAN CAMPUS COMMUNITIES
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October 27, 2005

Re: Comments on Exposure Draft, Proposed Statement of Financial Accounting Standards, "Business Combinations, a replacement of FASB Statement No. 141" – File Reference 1204-001

Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Dear Technical Director:

This letter is in response to the proposed Statement of Financial Accounting Standards ("FASB"), Business Combinations, a replacement of FASB Statement No. 141 (the "Proposed Statement") concerning the proposed accounting for business combinations. The Proposed Statement continues to require that all business combinations be accounted for under the purchase method of accounting, but many new concepts are being proposed that do not appear to improve financial reporting. These new concepts will actually lead to more complicated financial statements and disclosures for investors. In particular the income statement will not readily depict what the ongoing "normal" results of the company are to financial statement users and will result in many stock valuation ratios that investors utilize to be unreliable. In addition there are many business concerns discussed below which include earnings guidance, pro forma earnings, debt covenant violations and competitive disclosure concerns.

The Proposed Statement recommends the expensing of transaction costs and introduces other ongoing post-acquisition income statement adjustments to the buyer that will be unrelated to the current operating performance of the company, which is extremely troublesome for the following reasons:

- 1. Significant earnings fluctuations for companies.** The Proposed Statement contains numerous changes to current GAAP that would require immediate or future recognition on the income statement that is not related to the ongoing operations of the company. As a result, there could be negative market or investor

reaction to these earnings fluctuations that cannot be easily forecasted and communicated in earnings guidance or written as forward looking statements within the MD&A in SEC filings. Most, if not all, of the earnings fluctuations would be communicated to the financial statement users after occurrence. Certain of these items such as contingent consideration and acquisition-related costs are discussed below.

2. **Postponement of earnings guidance.** Companies may suspend giving earnings guidance as a result of the potential unpredictable earnings fluctuations previously discussed. This could result in less information being available to investors and analysts as companies would be more cautious about future earnings guidance and expectations.
3. **Pro forma earnings may be brought back to the forefront.** With an all too familiar and troubling past, pro forma earnings may be presented to investors and analysts to explain the company's "normal" operating results. Without such information, investors will not have a true picture of the recurring operating results of the company. Based on past history though, how accurate will such pro forma earnings be and what additional confusion will they cause?
4. **Confusion to investors.** Based on significant earnings fluctuations, lack of earnings guidance and potential pro forma earnings, how can investors not be confused? In addition, financial ratios that some investors utilize to determine what they will invest in will become skewed and may lead to inaccurate investment decisions.
5. **Possible company loan violations or required amendments.** As previously mentioned, the proposed GAAP for purchase accounting would require immediate or future recognition in the income statement. Most financial loan covenants are based on calculations in accordance with GAAP. The Proposed Statement would introduce a new form of GAAP which could have an impact on financial loan covenant ratios which would require the company to request amendments. Assuming such amendments could be obtained, additional fees would be incurred and expensed. This would add to the earnings volatility.
6. **Disclosure of acquisition activities to competitors.** The majority of acquisitions take time to reach a definitive agreement and as a result of expensing acquisition-related costs, expenditures could cross multiple reporting periods. Such items may rise to a level of materiality for some companies in which MD&A discussion would be required and thus may inappropriately draw competitor attention to activities of the company.

Comments on specific questions are discussed below.

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

Response: No. The value of acquisition consideration should include items that the Proposed Statement refers to as acquisition-related costs. Such costs are similarly incurred in the purchase of fixed assets or the construction of assets (such as sales taxes, finders fees, legal fees, freight costs, installation costs, capitalized interest, breaking-in costs and set-up costs), which are allowed to be capitalized. See response to question 7 for a further discussion concerning acquisition-related costs.

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?

Response: No. Contingent consideration should be measured as of the date in which the contingency is resolved and the amount can be firmly calculated. See response to question 6 concerning contingent consideration.

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

Response: No. As previously noted the proposed accounting for contingent consideration will cause significant fluctuation in earnings that will not be ongoing and would distort the financial statements to investors and other financial statement readers. The result may increase or decrease post-acquisition earnings and could mean that significant management judgment is needed to determine the value of these contingent considerations. In hindsight, such post-acquisition adjustments could draw into question the reliability of management's estimates used to calculate the value of such contingent consideration under the Proposed Statement, which may result in external auditors questioning the adequacy of internal controls related to the calculations and the users of the financial statements questioning the reliability of the statements.

Under current GAAP and International Financial Reporting Standards, contingent consideration does not generally affect earnings because it is recorded as part of the cost of the acquired business. Such current accounting should be carried forward into the Proposed Statement. In my experience, the majority of contingent consideration clauses are a result of differing views of the buyer and seller that cannot be resolved prior to signing a definitive agreement. Thus, both parties are willing to set aside a portion of the purchase price to be considered later. Expensing this additional investment under the Proposed Statement because of the differing views of the buyer and seller does not make sense and distorts the measurement of the return on the true investment by the buyer.

Question 7 - Do you agree that the costs that the acquirer incurs in connection with a business combination are not assets and should be excluded from the measurement of the consideration transferred for the acquiree? If not, why?

Response: No, costs that the acquirer incurs in connection with a business combination should be included in the measurement of the consideration transferred for the acquiree

as consistent with past practices of paragraph 24 of Statement 141 and paragraph 76 of Opinion 16. When companies purchase assets to be utilized in the business such as computers, furniture, machinery, etc., the total capitalized cost includes direct purchase cost from the vendor, shipping costs, sales taxes, installation costs, and any other reasonable cost involved in bringing the asset to the buyer and incurred prior to the company using the asset and getting it ready for its intended use.

Just like costs incurred in a company's normal purchase of fixed assets, acquisition-related costs are incurred in a business combination prior to getting the acquisition assets ready for their intended use. In paragraph B97 of the Proposed Standard, the Board concluded that a seller would not accept less than fair value for their business because the buyer incurs acquisition-related costs, and therefore, such costs should be excluded from the measurement of the consideration transferred for the acquiree. A seller usually has a range in mind of what they are willing to accept and the buyer usually considers this range and any acquisition-related costs prior to making an offer. The vast majority of acquisition-related costs are incurred to ensure that a fair offer of the business is made to the seller and that all risks have been identified and properly considered in the offer. These costs also assist the buyer in obtaining knowledge of the business that is utilized to run the future operations of such business. Thus the determination of the amount of acquisition-related costs to be assigned to the purchase of a business should be accounted for no differently than the costs assigned to the purchase or construction of other assets made by the company.

The expensing of acquisition-related costs in this Proposed Statement also appears to contradict with paragraph 40 of Statement 34 which states "Some assets are ready for their intended use when purchased. Others are constructed or otherwise developed for a particular use by a series of activities whereby diverse resources are combined to form a new asset or a less valuable resource is transformed into a more valuable resource...On the premise that the historical cost of acquiring an asset should include all costs necessarily incurred to bring it to the condition and location necessary for its intended use..." Based on the justification recommended in this Proposed Standard for expensing acquisition-related costs, will companies be required now or in the future to only capitalize the invoice cost of other assets purchased and utilized by the company, thus expensing freight, sales taxes, installation costs and other such expenses? After all, based on the Proposed Statements subjective reasoning, the seller of the asset to the company would not accept less even though the company has to incur costs necessary to bring the asset to its designated location and to make the asset ready for its intended use.

Paragraph B98 states that "Board members agreed, however, that this Statement improves financial reporting by eliminating inconsistencies in accounting for acquisition-related costs..." Under current GAAP and International Financial Reporting Standards, direct costs (fees paid to investment bankers, attorneys, accountants, etc.) of the business combination are capitalized and do not immediately affect earnings. Paragraph B98 does not make sense to me because in this day of following internal controls, if the current standard in accounting for such costs was not consistently and correctly followed, there

would be material control deficiencies. As such, what inconsistencies are being eliminated with this Proposed Statement concerning acquisition-related costs?

Question 19 - Do you find stating the principles in bold type helpful? If not, why? Are there any paragraphs you believe should be in bold type, but are in plain type, or vice versa?

Response: The exposure draft was very difficult to read and designating the principles in bold type just added to the confusion.

Thank you for the opportunity to respond to this Proposed Standard.

Sincerely,

Jon A. Graf
Chief Accounting Officer
American Campus Communities