ICU Medical, Inc.

Letter of Comment No: 102
File Reference: 1204-001

October 28, 2005

Technical Director
File Reference No. 1204-001
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Statement of Financial Accounting Standards, *Business Combinations, a replacement of FASB Statement No. 141*

ICU Medical, Inc. is pleased to present its comments on the proposed Statement of Financial Accounting Standards. We are a developer and manufacturer of disposable medical devices. We have been public since 1992.

We do not support the proposed statement. It introduces a very different model in accounting for business combinations with no practical evidence that the model is any better than the model that has been used for many years. While we do not object to the "fair value' approach, we do not see it as a substantive improvement over current accounting.

Question 1:

We agree that the objective and the definition of a business combination are appropriate for all business combinations with one exception. We fail to see how achieving control through a contract alone rises to the level of a business combination. Also, the notion of control could be extended to contracts that through economic terms effectively give one party control of another, such as in a "captive supplier" situation. Achieving control through contract alone is infrequent and we recommend it be removed from the definition of a business combination.

Question 2:

The definition of a business and the guidance are useful. However, the second sentence of paragraph A3 which points out that not all inputs and processes of the seller need to be included in an acquired business confuses the issue when it points out that the seller could continue to produce outputs "for example, by integrating the business with its own inputs and processes." That example, if followed literally, would result in the acquisition of an empty factory being considered a business because the buyer can install its own inputs and processes. To be a business, the integrated set of activities and assets must be sufficient to create outputs independent of what the buyer will do with them.

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Question 3:

We do not take exception to recognition of 100 percent of the acquisition date fair value of the acquiree.

Question 4:

The guidance is useful, but it is unlikely that any guidance, no matter how comprehensive, will answer all questions.

Question 5:

We agree that the acquisition date fair value of the consideration transferred in exchange for the acquirer's interest in the acquiree is the best evidence of the fair value of that interest only if the fair value of that consideration can be reliably measured at the acquisition date. If it cannot be reliably measured at acquisition date, then it should be measured, or remeasured, at a later date when it can be reliably measured. Our concern relates principally to contingent consideration; in many cases, the buyer and seller have differing views as to the outcome of the contingency, which is why the consideration was not fixed at the acquisition date. It makes little sense to pretend that it can be valued for accounting purposes, when in reality it cannot be valued.

Question 6:

Consistent with our views in Question 5, when the contingency is remeasured after the acquisition, the transaction value should be adjusted. The adjustment should not be made to income.

Question 7:

We strongly disagree with the Board's proposal. Direct acquisition related costs are a necessary part of the business combination transaction and should be accounted for as such. Many acquisition transactions have costs which are not part of the consideration paid to a seller, but are nevertheless part of the cost of the asset acquired, such as sales taxes, freight, real estate broker commissions, lawyer's fees in a real estate purchase, and many other similar costs.

The fair value of the transaction for the acquirer differs from that for the seller, and the net amount of the transaction for each will differ. Both usually have direct costs in connection with a transaction, so the net cost to the acquirer will exceed the stated transaction value, and the net proceeds to the seller will be less than the stated transaction value. But, if done correctly, each will evaluate the transaction based on the net cost after considering direct acquisition or sale related expenses. From the acquirer's perspective, there is a piece of the fair value of the transaction that is paid to parties other than the seller because the acquirer cannot complete the transaction without incurring those costs, and that cannot be separated from the fair value of the transaction.

Question 8:

We do not believe that all the proposed changes are appropriate.

We do not believe that FASB Statement No. 5, *Accounting for Contingencies*, should be amended in the manner proposed by the Board. Statement No. 5 has worked reasonably well in practice, so there is no pressing need to amend it. Further, the Board is proposing an approach which may be theoretically more "pure" but is undesirable because it will introduce a less precise measurement of something that was already difficult to measure. Further, it could lead to the same entity measuring similar contingencies in two different ways, depending on whether or not they arose in a business combination; we believe that is not desirable.

We do not believe that the proposed change in accounting for research and development assets acquired in a business combination is appropriate. Research and development costs are not capitalizable under FASB Statement No. 2, *Accounting for Research and Development Costs*. Any change in that accounting should only be done as part of a reconsideration of FASB Statement No. 2, something we are not requesting. But until then, research and development assets that are purchased, whether in a business combination or otherwise, should be written off to expense. To require inconsistent treatment of the same asset is wrong.

Question 9:

We believe that the proposed exceptions to the fair value principle are appropriate at this time. We do believe employee benefit plans should not be subject to the exception, but realize that practical considerations suggest deferral of any change to a future date; we urge the Board to study this further.

Question 10:

We do not take exception to recording the entire acquired business at its fair value, regardless of the percentage ownership obtained, as proposed in the exposure draft. We do take exception to recording certain gains or losses on pre-acquisition equity investments. We do not agree that any gain or loss should be included in consolidated net income of the period, because that gain or loss has not been realized. Rather, it should be recorded in other comprehensive income. At the same time, if the additional equity investment were acquired at a lower per share cost than the initial equity investment, an assessment of whether the initial equity investment is impaired should be made, and any impairment loss should be recognized in net income.

Question 11:

We do not agree with the Board's proposal. There is no income in a bargain purchase. There is almost always a reason why the acquisition cost is less than the fair value of the assets acquired, and often it is adverse operating results for a period of time. This is "negative goodwill," which is the opposite of goodwill, which is attributed to excess earnings capacity. But, negative goodwill has a limited life; otherwise, the acquirer would not have done the transaction. Therefore, it should be amortized into net income over an appropriate period.

Question 12:

We do not believe that there are very often circumstances where an amount of overpayment could be reliably measured at acquisition date.

Question 13:

While we agree in theory that comparative information for prior periods should be adjusted for the effect of measurement period adjustments, we urge the Board not to permit such adjustment. We do not believe it serves any useful purpose and raises questions about the integrity of the financial reporting model. Adjusting in a current period is, quite simply, a risk of needing measurement period adjustments, and it should not be "buried" in a prior period.

Question 14:

We do not take exception to the guidance provided.

Question 15:

We agree with the disclosure requirements for transactions that occur during the reporting period. We do not agree with imposing the same, extensive disclosure requirements for transactions that occur after the reporting period but before the financial statements are issued. Some of the information may not be available, especially for transactions that close very near the scheduled issuance of the financial statements, and delaying issuance until it is available may not be an option because of SEC reporting deadlines. We suggest that basic information in paragraph 71 a through f be required, and that disclosure of other information be urged if it is available.

Question 16:

We believe that an intangible asset that is identifiable can always be measured with sufficient reliability to be recognized separately from goodwill.

Question 17:

We do not take exception to the Board's proposal concerning deferred taxes.

Question 18:

We have no comment.

Question 19:

We did not find it helpful, but would not take exception to use of bold type to state the main principles if others find it helpful.

We would be pleased to discuss our comments with the Board or its staff.

Very truly yours,

Francis J. O'Brien
Chief Financial Officer