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October 24, 2005

Technical Director  
File Reference 1204-001  
Financial Accounting Standards Board  
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Norwalk, Connecticut 06856-5116

**Letter of Comment No: 69**  
**File Reference: 1204-001**

Dear Board Members:

The Bank of New York Company, Inc. (the "Company"), a global financial institution appreciates the opportunity to comment on the Financial Accounting Standards Board's (the "FASB" or "Board") Proposed Statement of Financial Accounting Standards, "*Business Combinations*" a replacement of FASB Statement No. 141 (the "Exposure Draft"). While the Company agrees that the acquirer should measure the fair value of the acquiree, as a whole, to the acquirer as of the acquisition date; the Company believes that the measurement should include all relevant aspects of that valuation but only when they meet fundamental recognition criteria.

#### **Acquisition-Related & Restructuring Cost**

The Company disagrees with the FASB's proposal to exclude acquisition-related costs that the acquirer incurs in connection with a business combination. In business combinations, the acquirer performs a detailed assessment of all relevant costs and benefits of acquiring a specific business, inclusive of acquisition-related cost before deciding whether to complete the acquisition. The costs include not only the consideration transferred to the former owners of the acquiree, but also the direct costs of the acquisition and the restructuring costs anticipated to successfully integrate the acquiree.

Acquisition-related costs include incremental costs directly related to a business combination such as a finder's fee and fees paid to outside consultants for accounting, legal, or engineering investigations or for appraisals. The Company believes that although paid to third parties for services rendered in relation to an acquisition, these acquisition-related costs form part of the economics of a business acquisition.

In addition to acquisition-related costs, restructuring costs covered in EITF 95-3, *Recognition of Liabilities in Connection with a Purchase Business Combination*, are also included in the

acquirer's cost and benefit analysis of an acquisition and form an integral part of the economics of a business acquisition and resultant determination of the fair value of the acquiree, as a whole. Accordingly, the liabilities accrued for the restructuring of an acquiree to integrate it into the acquirer should be included in the business combination accounting.

In summary, the Company believes that acquisition-related and restructuring costs are part of the fair value of acquiring a business and that these cost are closely associated to the economics of a specific business acquisition. Current accounting guidance as prescribed by paragraph 24 of SFAS 141 and EITF 95-3 more closely accounts for the true economics of a business acquisition than the guidance as proposed in the Exposure Draft.

### **Contingent Consideration**

The Exposure Draft proposes that consideration transferred include the fair value of any contingent consideration at the acquisition date and subsequent changes in the fair value of contingent consideration be recognized in income in each reporting period. Unlike the valuation of individual assets and liabilities, in the Company's experience contingent consideration generally represents fair value of an acquiree at the acquisition date that can not be determined until future information (in some cases two or more years after the acquisition date) confirms that value.

The main issue is recognition of a contingent consideration when the acquirer does not have all facts at acquisition date to provide sufficient reliable estimates to calculate the fair value of the payment using the expected cash flow method. The fact that the buyer and seller can not reach agreement on a contingent consideration amount at the acquisition date is a clear indication an amount estimated at that point would not meet the fundamental recognition criteria of Concepts Statement No. 5 of measurability and reliability. Recognizing and measuring such contingencies using fair value based on hypothetical market or entity level inputs would not result in better reporting and would complicate rather than improve financial analysis by users of financial statements.

If such estimates were forced to be made at acquisition date, they would invariably require subsequent adjustment, as the information required to calculate the amount and probability of contingent consideration becomes more determinable. The Exposure Draft proposal to record such fluctuation in operating income would not meet the relevance criteria of Concepts Statement No. 5 since the adjustment relates to the fair value of the acquiree at the acquisition date and not current operating performance. To reflect an adjustment in current earnings would lead to financial reporting that does not faithfully represent the economic circumstances for that period. The Company believes the Board's deliberation in paragraph B207 and B208 regarding relevance and reliability provides substantial rationale to maintain existing accounting for contingent consideration.

The Company also believes that in practice, financial statement preparers are likely to overestimate contingent consideration so that any resulting difference is accretive to income. The consequence of this will be increased user concerns over the reliability of the financial statements.

October 24, 2005

Accordingly, the Company believes that contingent consideration should be recognized when it is determined that it is probable and estimable, similar to criteria in SFAS 5 and that the current accounting for contingent consideration as prescribed by SFAS 141 serves the purpose of properly recognizing and reliably measuring contingent consideration.

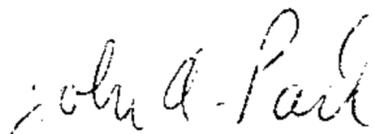
#### **Restatements During the Measurement Period**

Further, the Company disagrees with the Board's proposal to recognize any adjustments to the provisional values during the measurement period as if the accounting for the business combination had been completed at the acquisition date, which would require comparative information for prior periods presented in financial statements to be adjusted. In most acquisitions, estimates becomes more reliable through passage of time and are likely to be adjusted more than once. The Company believes that changes in future cash flows in determining fair value of a contingency is a change in accounting estimate. As prescribed by paragraph 19 of FASB Statement No. 154, *Accounting Changes and Error Corrections - a replacement for APB Opinion No. 20 and FASB Statement No. 3*, changes in accounting estimate shall not be accounted for by restating or retrospectively adjusting amounts reported in financial statements of prior periods. In addition, the Company believes that required disclosure requirements proposed in paragraph 76 of the Exposure Draft are sufficient for analysis by users of financial statements. The cost of changing comparative information for prior periods outweighs the benefits of comparability. Finally, continued restatements will cast doubt on the reliability of the financial statements.

#### **Summary**

In conclusion, the Company believes the current accounting for Business Combinations is wholly satisfactory, and that the proposed guidance in the Exposure Draft would result in less accurate, less reliable financial statements that are potentially subject to manipulation. This would not be a desirable outcome

Sincerely,



John A. Park  
*Managing Director*  
Corporate Finance and Accounting Policy