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Technical Director – File Reference 1204-001 Financial Accounting Standards Board of the Financial Accounting Foundation 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116



LETTER OF COMMENT NO. 58A

Dear Sir or Madam:

The intent of this letter is to express our concern over the conclusions reached during the recent deliberations of the exposure draft on Business Combinations and reemphasize our position regarding future issues that the Board will be discussing. We previously submitted a comment letter dated 28 October 2005. Air Products is a major supplier of industrial gases and related equipment, chemicals, and environmental and energy systems with consolidated annual sales over \$8 billion.

During the Board's deliberations, it was affirmed that in a step acquisition, the acquirer should remeasure its previously held noncontrolling interests with the adjustment recorded to earnings. We do not agree with recognition of a gain or loss for a step acquisition. A purchase transaction is not the culmination of an earnings process and should not result in recognition of a gain or loss in earnings. Most users of financial statements would interpret the gains or losses as one-time events and simply omit them when evaluating the earnings of the company. However, in future periods the gain or loss on the previously acquired interest will be amortized into earnings and it won't be easily identified by readers. Costs will be recognized in the income statement that never represented a cash outlay. Another problem with the proposed standard is that the potential exists for business combinations to be structured in such a way that would manipulate the rules. The proposed rules would enable companies to enter into step acquisitions with the sole intention of recording a gain on previously held noncontrolling interests.

It is our understanding that the Board's deliberations in September will include a discussion on the measurement period and treatment of contingent consideration subsequent to the acquisition date. We would like to take this opportunity to reiterate that while we agree with recording contingent consideration at fair value on the acquisition date, we disagree with the exposure draft's treatment after the acquisition date. Subsequent adjustments made to contingent consideration reflect the fair value of the business acquired at the acquisition date. Contingent consideration agreements are entered into because of significant differences in opinion between buyers and sellers concerning the fair value of a business. We believe that the subsequent adjustments should be included in the purchase accounting and not generate an earnings impact as per the exposure draft.

As written, the proposed rules for contingent consideration provide companies the opportunity to manipulate their results by conservatively determining the fair value of contingent consideration based on subjective factors such as projected performance. A company is much more likely to record an excessive accrual which can be taken to earnings when the results of the acquisition fall short of

projected bonus or earnout levels. We are also concerned that the proposed rule would permit entities to structure transactions to achieve particular objectives. For example, an acquirer who was interested in keeping its asset base low could engineer a transaction that had a significant portion of the consideration under a contingent arrangement. The buyer could value that contingent arrangement conservatively. When it pays out in the future at a greater value, the entity would take a "one-time charge" for the arrangement's excess cost above the original valuation. Investors and analysts usually ignore these types of adjustments. The result is that the returns on assets and capital would be artificially inflated by undervaluing the assets acquired initially and not adjusting for the final consideration. A self-serving acquirer could portray this acquisition as a success due to the under-valued asset base as the one-time charge would be ignored. We believe that investors would be better served by these adjustments being recorded through the purchase accounting.

We believe that the Board should establish the principle that measuring acquisitions at the actual consideration paid is the best method and that regardless of whether the acquisition is done in steps or has contingent consideration paid in the end, the users of financial statements are best served if the value of the acquisition is measured by the value of cash and securities delivered on the day they are paid. This will prevent abuses and financially engineered transactions that are designed to produce certain accounting results or objectives of an acquirer. It will also maintain consistency across business combinations that would allow better comparison of companies by investors and users.

We thank you again for the opportunity to express our views on this important issue and would welcome any further inquiry by the Board to ensure our position is fully understood.

Sincerely,

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