Letter of Comment No: 36
File Reference: 1123-001
Date Received: 9|24|01

September 24, 2001

Via E-mail: director@fasb.org

Mr. Timothy S. Lucas
Director of Research and
Technical Activities
Financial Accounting Standards
Board
401 Merritt 7
Norwalk, CT 06856-5116

Re: Proposals for New Agenda Projects:

REPORTING INFORMATION ABOUT THE FINANCIAL PERFORMANCE OF BUSINESS ENTERPRISES: FOCUSING ON THE FORM AND CONTENT OF FINANCIAL STATEMENTS ("FINANCIAL PERFORMANCE")

DISCLOSURE OF INFORMATION ABOUT INTANGIBLE ASSETS NOT RECOGNIZED IN FINANCIAL STATEMENTS ("INTANGIBLE ASSETS")

Dear Mr. Lucas:

I am writing on behalf of the Committee on Law and Accounting, Section of Business Law, American Bar Association, in response to the FASB's requests for comments on its proposals for agenda topics on Financial Performance and Intangible Assets. This letter does not represent the views of the American Bar Association or the Section of Business Law and, due in part to the disruptions from recent events, I cannot speak for the full membership of the Committee. However, by far the majority of those members of the Committee with whom I have consulted are in general agreement with the views expressed in this letter.

Those with whom I have consulted believe that the subject matter of the proposed agenda items are sufficiently persuasive and feasible to warrant serious consideration by the FASB and that alternative approaches of sufficient relevance, reliability and comparability are unlikely to be developed by others as well qualified to address these subjects as is the FASB.

A. Financial Performance

1. We believe that serious consideration should be given to the need for a new financial reporting model. This is evident not only from the fact that analysts have been seeking information both within and without published financial statements in order to evaluate a company, but also from the fact that many companies are now publishing various forms of "proforma" earnings. While it is not imperative that the FASB undertake this project, we can think of no other body that is either better equipped to do so or which can do so with equal authority. The fact that the IASB also is embarking on a similar project is another reason for the FASB to do so, hopefully, in coordination with the IASB.

2. We are generally in accord with the proposed scope of the project. We do, however, have some reservations about relating any such new reporting standards to "comprehensive income" which we believe should be reassessed in view of this project. Our concern is that the project should be market driven. Any new reporting requirements should focus on the types of data that those who evaluate and manage businesses feel are useful to them. The object should be to standardize the disclosure of data which end-users deem to be important.

3. We believe a discussion of accounting for the effect of financial instruments should be considered as a separate topic.

4. The new model might also comprehend operating measurements not previously considered financial statement items which might be important to financial analysis. For example, items which tend to measure operating efficiency, such as unit costs. Such data while not measuring what the entity has achieved during the past operating period, may indicate the entity's ability to increase market share in the future. Since the value of an enterprise is largely a function of its future cash flows, measures of operating efficiency may help an analyst to estimate future revenues.

B. Intangible Assets

1. While we believe that there is a need for better accounting with respect to intangible assets (since various forms of intellectual property can be worth far more than most tangible assets), we do not view this proposed project to be as critical as one on performance measurements, largely for the reason that the latter represents a far greater percentage of an enterprise's total value. However, this is also a project which the FASB is uniquely qualified to undertake. Therefore it probably should not cede this project to another organization.

2. We believe that this is a sufficiently difficult area for the accounting profession to tackle that it would be a mistake to adopt a broad scope to this project. We, therefore, suggest that it be limited to a few classes of intangibles that are currently recognized in some circumstances but are not recognized in others. In this way comparability can be achieved. Moreover, this will likely address those types of intangibles that will have the greatest impact on the enterprise's balance sheet. By establishing too broad a scope, the FASB might be inviting failure.

3. It is possible that the FASB might be forced to take an approach similar to the approach taken in Statement No. 5 with respect to contingencies; that is, that intangibles would have to be recognized if they meet certain criteria, disclosed if they meet certain lesser criteria, and neither recognized nor disclosed if they do not reach certain thresholds. We are not sure that the amount of expenditures made with respect to a given intangible is particularly relevant except to the auditor who would have to review any value attributed to the intangible asset. The idea should be to recognize value, not to reclassify prior costs which have been expensed.

4. We do not believe that there is any real danger in defining the scope of this project narrowly, as even a narrowly defined project on this subject will be quite difficult for the FASB to handle.

Representatives of our Committee would be pleased to discuss these matters further with you or your colleagues.

Very truly yours,

/s/ Richard H. Rowe

Chair Committee on Law and
Accounting

DRAFTING GROUP

Dan S. Goldwasser, Esq.
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cc: Dan L. Goldwasser