Patricia Lapolla

From:

Director - FASB

Sent:

Wednesday, July 16, 2008 1:47 PM

To:

Patricia Lapolla

Subject: FW: File Reference No. 1500-100R (FASB M&A Comments)

LETTER OF COMMENT NO. 14

From: Olson, Cheryl [mailto:COlson@girlscouts.org]

Sent: Wednesday, July 16, 2008 1:27 PM

To: Director - FASB

Cc: Ron Bossio; Corsello, Florence; Wright, Vicki; Tisdale, Catherine **Subject:** File Reference No. 1500-100R (FASB M&A Comments)

July 16, 2008

Technical Director,

Girl Scouts of the USA (GSUSA) is providing comments on the potential revision to the October 2006 proposed Statement, Not-for-Profit Organizations: Mergers and Acquisitions. GSUSA is in the midst of a three year nationwide realignment of Girl Scout councils which will result in 80 mergers taking the organization from 312 to 109 councils, which will be completed by the end of 2009. We would like to share our experience to help the FASB develop criteria for distinguishing a merger between two or more not-for-profit organizations from an acquisition of another entity by a not-for-profit organization. We support the development of such criteria and believe mergers can and should be distinguished from acquisitions.

Ouestion 1 – GSUSA believes the tentative definition of a merger is appropriate for distinguishing mergers from acquisitions by not-for-profit organizations. In the merger model used by GSUSA, the councils being combined came to the negotiating table as equal partners to develop the initial plans and structure for the new council. No one council has more control of how the new council would be formed than the other. This differs from an acquisition, where one council would have more control over the outcome of and/or one council would in essence be "taken over" by another council.

Upon advice of legal counsel, the legal merger process was used by all Girl Scout councils. This requires the designation of one corporate entity (council) to be named as the surviving corporation with all assets and liabilities being transferred to that entity on Day 1. However, this is merely the "shell" of the new council - Tax ID number, Employer ID, etc. This process was chosen to reduce the cost and time necessary to complete the mergers. We believe your language "... a new legal corporation is not a prerequisite to qualify as a merger" to also be appropriate.

Each legacy Girl Scout council's governing bodies (board of directors and delegate body) approve the merger and "cede control" on Day 1 of the new entity. The ownership of all assets and liabilities of each legacy council becomes the assets and liabilities of the newly created entity. All title is changed over to the new entity's name and tax identification number.

Question 2 – GSUSA believes the definition of a merger, together with the definition of control, may not be workable in practice alone without additional criteria. We agree with the reservations of some

board members that auditors may not be able to reach common judgments when consistently applying that criterion in the field. Please see Question 4 for suggested additional criteria.

Question 3 – GSUSA believes that shared control in the combined entity is not evidence that the board is not ceding control. From a legal perspective, in either a merger or acquisition, the legacy organizations "cede" control to the new entity. What differentiates a merger form an acquisition is whether a "new" organization is created. In our experience, nonprofit mergers are negotiated so that an entire new board is created, although there will be initial representation from each legacy council; no one council has control of the board. We also recommend that in addition to reserving some seats on the board for legacy council representation, there also be individuals who have no affiliation with any council. Additionally, our recommendation to councils is that the policies, procedures, bylaws, etc. are newly created as a combination of the legacy councils current practices or created completely new.

Retaining representation from legacy boards is important to the merger process as a way to not lose institutional knowledge and history as the new entity begins to function. Our formula for balancing legacy positions with "new blood" is that approximately 2/3 of a new board comes from legacy councils and 1/3 comes from outside the organization with no current council ties.

In our experience with acquisitions, one corporation is usually significantly larger than the corporation being acquired. The "acquired" organization gets some representation on the new board, but the "acquiring" organization maintains control of the majority of the board seats. And, most, if not all policies, procedures, bylaws, etc. will remain in place as the "acquiring" corporation has existed.

Adding a percentage would be of benefit, for example shared control is permissible as long as one of the entities does not have more than 75% (for example) of the representation on the board.

Question 4 – GSUSA believes the definition of merger does require additional criteria. All Girl Scout councils have the same mission, serve the same customers, but are separately incorporated, with different boards of directors. During the realignment process, we recommend a Council Realignment Committee be formed with equal representation from all councils involved in the merger. This Committee is charged with making preliminary decisions for the new entity, which will have a new name, new bylaws, new policies and procedures and a new board of directors. Although the new entity assumes the liabilities of all legacy councils, there is no consideration exchanged.

We suggest requiring one or more of the following criteria to be present to qualify for merger accounting:

- common or similar missions
- common or similar customers
- · no monetary consideration exchanged
- new bylaws
- new policies and procedures

Question 5 – GSUSA has not dealt with nor allowed an "opt-out" clause and thus has no experience with this concept. Consequently, we take no position on the "opt-out" clause as evidence that control has not been ceded.

Thank you for the opportunity to provide additional comments on the proposed statement about potential criteria for distinguishing a merger from an acquisition. If you have any follow up questions, don't hesitate to contact Florence, Vicki or myself.

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