



July 7, 2008

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The Not-for-Profit Organizations Committee and the Accounting Principles Committee of the Illinois CPA Society (Committees) appreciate the opportunity to provide additional comments on the Exposure Draft of a Proposed FASB Statement, *Not-for-Profit Organizations: Mergers and Acquisitions*. The organization and operating procedures of the Committees are reflected in the attached <u>Appendix A</u> to this letter. These recommendations and comments represent the position of the Illinois CPA Society rather than any members of the Committees or of the organizations with which the members are associated.

Our comments in response to the questions raised in the document are as follows:

Question 1: Is the definition of a merger appropriate for distinguishing mergers from acquisitions by not-for-profit organizations? If not, why?

We believe the definition of a merger is a good start; however, we believe the definition needs to be expanded to better articulate the meaning of ceding control. We believe this would best be accomplished by adding examples of situations which may be considered mergers and the key factors that qualified the transaction as a merger versus an acquisition. We would encourage the FASB to share the results of the planned field tests in the form of examples or in separate implementation guidance to assist organizations required to apply the proposed statement.

Question 2: Would the definition of a merger, together with the definition of control, be workable in practice? That is, can it be applied in practice with a reasonable degree of consistency, particularly in distinguishing a merger from the transactions noted in paragraph 6(a) and 6(b)? If not, why, and how might it be improved?

As stated in our response to question 1 above, we believe the definition of a merger should be supplemented with examples to better articulate the definition. We do not believe the proposed definitions as drafted will be applied any less consistently than the existing consolidation guidance in AICPA Statement of Position 94-3 is currently applied; however, we believe there are diverse practices in place under the current guidance which may be interpreted several different ways. We believe that the proposed definitions of mergers and acquisitions require a significant amount of judgment and interpretation which may allow organizations (and their auditors) to reach different conclusions both which are supportable under the guidance. We would again advise providing specific examples to clarify these definitions.

Question 3: Do the definitions of a merger and control, taken together, make it sufficiently clear that transferring an integrated set of net assets to a newly created joint venture in which the transferor retains shared control is not the equivalent of ceding control? If not, how might the Board clarify the definitions or make it clear that the creation of a joint venture is beyond the scope of the proposal?

Subject to our response to question 1, we agree that the definitions make it sufficiently clear that a joint venture is not within the scope of this standard.

Question 4: Does the definition of a merger require any additional criteria or guidance to address the concern noted in paragraph 10? That is, in general, will the ceding of control be discernable in practice from the surrounding facts and circumstances, despite the possibility that some entities may attempt to structure the new organization's Board composition, senior management, or charter to disguise circumstances in which one of the governing bodies retains control over the newly created organization?

As stated in our response to question 1 above, we believe additional criteria and examples should be added to clarify these definitions. We would recommend that FASB consider expanding the definition of ceding control to include the factors identified in paragraphs 11b (the governing body) and 11d (management team) of the October 2006 exposure draft. We believe these criteria are relatively straightforward and can be applied consistently.

Question 5: If one or more parties to a potential combination retains an opt-out clause, would that alone be sufficient evidence to determine that that party has not ceded control? Some respondents asked the Board to consider whether retention of so-called opt-out clauses by the parties to a combination would indicate that a merger or acquisition had not occurred. The staff has been told that such contingent provisions sometimes are included in acquisitions of physician practices by not-for-profit organizations. However, presumably, such provisions could occur in mergers or acquisitions of other private practices, including acquisitions by business entities. The staff thinks that the specific terms of each contractual arrangement need to be assessed to determine whether the definition of a merger or acquisition has been met and would not expect a unique interpretation for mergers or acquisitions by not-for-profit organizations.

Although we do not frequently see opt-clauses in practice, we agree there is a question as to how an organization would be able to demonstrate control had been conceded if one (or both) of the parties can opt out of the arrangement. We agree that the terms of the contractual arrangement would need to be evaluated to determine if the definition of a merger or acquisition has been met. We would recommend that consideration be given to including criteria for determining the impact such a clause may have on these definitions. For example, if the opt out clause is temporary (i.e. expires at a specified date or with the occurrence of a specified event), the likelihood of the clause being exercised may be measurable versus if the opt out clause were to be available to either party indefinitely. We believe this matter could be addressed in the expansion of the definition of ceding control.

We appreciate the opportunity to offer our comments.

Sincerely,

Floyd Perkins, CPA
Chair, Not-for-Profit Organizations Committee

John Hepp, CPA Chair, Accounting Principles Committee

APPENDIX A ILLINOIS CPA SOCIETY ACCOUNTING PRINCIPLES COMMITTEE ORGANIZATION AND OPERATING PROCEDURES 2008-2009

The Accounting Principles Committee of the Illinois CPA Society (Committee) is composed of the following technically qualified, experienced members appointed from industry, education and public accounting. These members have Committee service ranging from newly appointed to more than 20 years. The Committee is an appointed senior technical committee of the Society and has been delegated the authority to issue written positions representing the Society on matters regarding the setting of accounting standards. The Committee's comments reflect solely the views of the Committee, and do not purport to represent the views of their business affiliations.

The Committee usually operates by assigning Subcommittees of its members to study and discuss fully exposure documents proposing additions to or revisions of accounting standards. The Subcommittee ordinarily develops a proposed response that is considered, discussed and voted on by the full Committee. Support by the full Committee then results in the issuance of a formal response, which at times, includes a minority viewpoint.

Current members of the Committee and their business affiliations are as follows:

Public Accounting Firms:

Large: (national & regional) John A. Hepp, CPA Alvin W. Herbert, Jr., CPA

Michael J. Maffai Matthew G. Mitzen, CPA Laura T. Naddy, CPA

Reva B. Steinberg, CPA Jeffery P. Watson, CPA

Medium: (more than 40 employees)

Barbara Dennison, CPA Marvin A. Gordon, CPA Ronald R. Knakmuhs, CPA Small: (less than 40 employees)

Walter J. Jagiello, CPA Kathleen A. Musial, CPA

Industry:

John M. Becerril, CPA Gloria M. Evans-Melton, CPA Melinda S. Henbest, CPA James B. Lindsey, CPA Anthony Peters, CPA

Educators:

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BDO Seidman, LLP

Virchow Krause & Company, LLP Crowe Chizek and Company LLC

BDO Seidman LLP Blackman Kallick LLP

Selden Fox, Ltd.

Frost, Ruttenberg & Rothblatt, P.C.

Miller, Cooper & Co. Ltd.

Walter J. Jagiello, CPA Benham, Ichen & Knox LLP

Cabot Microelectronics

National Council of State Boards of Nursing

The Boeing Co. TTX Company

McDonald's Corporation

University of Notre Dame

Ohio University University of Chicago

Illinois CPA Society

ILLINOIS CPA SOCIETY NOT-FOR-PROFIT ORGANIZATIONS COMMITTEE 2008-2009

The Not-for-Profit Organizations Committee of the Illinois CPA Society (Committee) is composed of the following technically gualified, experienced members appointed from industry and public accounting. These members have Committee service ranging from newly appointed to more than 20 years. The Committee is an appointed technical committee of the Society and has been delegated the authority to issue written positions representing the Society on matters regarding the setting of accounting and audit and attestation standards for not-for-profit organizations. The Committee's comments reflect solely the views of the Committee, and do not purport to represent the views of their business affiliations.

Current members of the Committee and their business affiliations are as follows:

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Rainbow Push Coalition

Neighborhood Housing Services of Chicago

KPMG LLP

Crowe Chizek and Company LLC American Academy of Pediatrics

Grant Thornton LLP Susan E. Budak CPA

Association Forum of Chicagoland

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RSM McGladrey LLP

Virchow Krause & Company, LLP

Alzheimer's Association Illinois State Museum

Virchow Krause & Company, LLP

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Ostrow Reisin Berk & Abrams Ltd Mann, Weitz & Associates LLC

Community Counseling Centers of Chicago

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