



Ernst & Young LLP
5 Times Square
New York, NY 10036
Tel: 212 773 3000
www.ey.com



LETTER OF COMMENT NO. 11

Mr. Russell G. Golden
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

10 July 2008

Request for Additional Comments on a Potential Revision to the October 2006 Proposed Statement, *Not-for-Profit Organizations: Mergers and Acquisitions* (File Reference No. 1500-100R)

Dear Mr. Golden:

Ernst & Young appreciates the opportunity to comment on the above-referenced request for additional comments (Request). As noted in our February 22, 2007 comment letter on the 2006 Proposed Statement, *Not-for-Profit Organizations: Mergers and Acquisitions*, we support the Board's decision to provide specific guidance on mergers and acquisitions of not-for-profit organizations using a differences-based approach. We noted in our comment letter that parties to certain transactions go to great lengths to ensure that the transaction is a "merger of equals" with no one party controlling the other after the transaction is completed. In those cases, we believe carry-over basis of accounting is most appropriate. Therefore, we support the Board's efforts to further explore and seek additional comments about potential 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 through a principles-based approach.

Provided below are our responses to the specific questions in the Request.

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

Yes, we believe the definition of a merger is appropriate for distinguishing mergers from acquisitions by not-for-profit organizations. Furthermore, consistent with a principles-based approach to setting standards, we suggest that that final standard provide examples of implementing the guidance.

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?

Yes, we believe the definition of a merger, together with the definition of control, would be workable in practice. We believe that true mergers that meet the definition in paragraph 7 of the Request can be distinguished from the transactions noted in paragraphs 6(a) and 6(b) of the Request. We

recommend, however, that the final standard note that the existence of an opt-out clause generally would preclude accounting for the business combination as a merger because in such cases, one of the parties to the transactions has not completely ceded control. In addition, as noted in our February 22, 2007 comment letter, we suggest that the Board continue to consider how opt-out clauses affect the accounting for acquisitions by not-for-profit organizations.

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?

Yes, we believe 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.

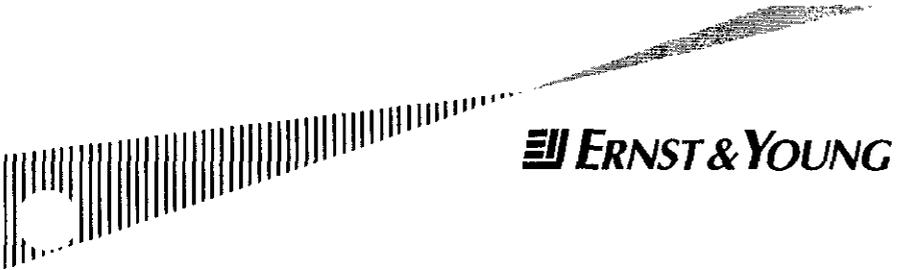
Question 4—Does the definition of a merger require any additional criteria or guidance to address the concern noted in paragraph 10? That is, in general, will the ceding of control be discernable in practice from the surrounding facts and circumstances, despite the possibility that some entities may 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?

Yes. In general, we believe the ceding of control will be discernable in practice based on the individual transaction’s facts and circumstances. However, as noted in our response to Question 2, we believe the final standard should indicate that the existence of opt-out clauses (or any other terms that provide any of the entities party to the transaction an ongoing interest in the net assets of the new entity) would generally preclude accounting for the transaction as a merger.

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.

Yes, consistent with our responses to Questions 2 and 4, we believe the existence of opt-out or similar clauses are inconsistent with the concept of a merger.

* * * * *



We would be pleased to discuss our comments with Board members or the FASB staff.

Very truly yours,

Ernst + Young LLP