

Financial Accounting Standards Board  
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LETTER OF COMMENT NO. 5

Regarding: Amending Discontinued Operations, Components of Operating Segments  
and Either Disposed or Classified or Held for Sale or a Business Held for Sale on Acquisition  
FSP-FAS 144-d  
By : Dr. Joseph S. Maresca CPA, CISA Due 1-23-2009

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Colleagues,

Thank you for the opportunity to comment on this Statement.

#### Background

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The contents of FSP-FAS - 144-d amend discontinued operations, components of operating segments and either disposed of or classified or held for sale or a business held for sale on acquisition. The issuance defines when components of an entity should be reported in the discontinued operations section of the income statement. In addition, Statement 144-d is enhanced since the disclosure requires that all components of the entity disposed of or classified as held for sale be addressed regardless of whether or not a component of the entity is reported in the income statement as a discontinued operation or within continued operations. The intent is to articulate a discontinued operation..

In practice, the discontinued operation consists of an operating segment which has been disposed of or is classified as held for sale. For components of an entity that have been either disposed or held for sale, the entity shall provide financial data enabling users of financial statements to assess the financial effect of disposal of the entity. Disclosure shall be in notes to the financial statements.

Major income and expense items included in Profit and Loss are impairment, interest, depreciation and amortization. Pretax profit or loss is reported as discontinued operations on the income statement. If a component of the entity includes a non-controlling interest, the profit and loss is attributed to the parent. The objective is to have fewer components being reported as discontinued operations. Some discontinued operations are now presented as continuous operations.

The disposal activity should be made a discontinued operation only when the entity has made a strategic shift in operations.

#### Critique

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The most obvious area regarding a strategic shift in operations for a discontinued operation is in a Quasi - Reorganization in Bankruptcy; wherein, the entity articulates a new mission . The entity promises to cease the activities which caused the financial distress in the first instance.

The objective of a Quasi-Reorganization is to eliminate the deficit or negative retained earnings of an enterprise provided that it is able to continue operations as a going concern with good business prospects. In a Quasi-reorganization, assets are revalued together with liabilities at fair values. The deficit is eliminated by utilizing differences resulting from the revaluation between revalued amounts and carrying amounts.

Disposal of a whole operating segment is in the nature of a strategic shift in operations. Under the Statement, many discontinued operations may now be classified as continuing operations. There may be added disclosure since the entity or part thereof is no longer considered to be a discontinued operation .

PP. 17 articulates the resolution of contingencies. These are directly related to operations of discontinued segments prior to disposal; such as, environmental and product warranties. The major problem with contingencies involves the probability of a Court reversal on "principal to principal" transactions. The critical question to be answered by the legal counsel is whether or not the risk of loss can be reversed in a Court of law. The job of the legal counsel will be to probe the recent decisions with regard to reversal of risk of loss. A good example of a reversal of risk of loss is in the 6th Circuit analysis of derivative transactions, although the door is open to a plethora of other applications like contingencies in general.

The 6th Circuit (below) decided that there is no legal authority to support a claim that a seller of derivatives owes a duty of "appropriateness" to an end user. In essence, the Court is saying "Let the buyer beware ! " in certain derivative transactions. The Court made this determination because "principal to principal" transactions are conducted with financial experts on both sides of the transaction.

*Power & Tel. Supply Co. v. SunTrust Banks Inc. 2006 , United States Court of Appeals 6th Circuit Appl Lexis 12087 2006 FED APP. 166P ( 6th Circuit TENN. 2006)*

In today's environment, entities like AIG, GM, Chrysler and others may have significant discontinued operations. The challenge will be to disaggregate the discontinued operations without disrupting profitable ones. A concurrent problem will be to allocate major losses from derivative transactions. If losses are immaterial or they are settled after the passing of time ( due to timing differences), there should be no problem in allocation in accordance with a rational scheme to do so. Material losses in discontinued operations or material global losses of the entire entity will be more problematic because the burden sharing for major contingencies may be borne by both profitable and unprofitable segments.

Discontinued operations in a host country have important implications because there may be questions as to which country laws and venues predominate. Since the parent may be guided by USA law and the sub guided by the host country, the contractual venue will be dispositive. The theory of force majeure may apply . Prior planning by the legal counsel may help to clarify contractual rights, duties and obligations unequivocally. Otherwise, valuations of the discontinued operations may be less clear and subject to Court reviews and reversals of initial determinations by the legal counsel.

Major discontinued operations may have significant data processing audit issues. i.e. Can the data center cost centers be disaggregated from the parent entity? What constitutes a rational disaggregation of operations, costs , audit risks and contingencies ?

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