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January 23, 2009

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



LETTER OF COMMENT NO. 20

## **File Reference: Proposed FSP FAS 144-d**

Dear Mr. Golden:

We are pleased to comment on the proposed FASB Staff Position (FSP) FAS 144-d, *Amending the Criteria for Reporting a Discontinued Operation*. We generally support the direction that the proposed FSP is taking with respect to (a) attempting to reduce the number of activities being classified as discontinued operations and (b) aligning the definition of a discontinued operation with that of International Financial Reporting Standard (IFRS) 5, *Non-current Assets Held for Sale and Discontinued Operations*. However, we have some concerns that are presented in this letter. The most significant concerns (discussed in more depth later in the letter) are:

- The application of the proposed FSP by nonpublic business entities that do not report any goodwill and not-for profit entities that have not previously needed to consider FASB Statement No. 131, *Disclosures about Segments of an Enterprise and Related Information*.
- The effect of the deletion of the criteria in paragraph 42 of FASB Statement No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, related to elimination of cash flow and lack of significant continuing involvement in the component that has been disposed of or is held for sale.

This letter first addresses the issues on which specific comment is sought. Thereafter, the letter addresses other matters.

## **Comments on Specific Issues**

***Issue 1: The proposed FSP would amend the definition of a discontinued operation so that a discontinued operation is a component of an entity that is (a) an operating segment (as that term is defined in FASB Statement No. 131, Disclosures about Segments of an Enterprise and Related Information) and either has been disposed of or is classified as held for sale or (b) a business (as that term is defined in FASB Statement No. 141 revised 2007, Business Combinations) or a nonprofit activity that meets the criteria to be classified as held for sale on acquisition. Do you agree with the proposed definition of a discontinued operation? Why or why not? If not, what definition would you propose and why?***

We believe that the proposed definition would provide the benefit of consistency with the definition of a discontinued operation in IFRS 5, and also would help to address the concerns of certain users and

preparers, as discussed in paragraph A2.a of the proposed FSP. However, we have the following concerns related to the proposed change in the definition.

As we noted above and discuss further in our response to Issue 2, we are concerned that certain entities that have not been required to apply Statement 131 may encounter difficulties in applying the proposed definition.

We also believe that limiting the proposed revised definition of a discontinued operation to operating segments would appear to be inconsistent with the usage of reporting units in the goodwill impairment test in FASB Statement No. 142, *Goodwill and Other Intangible Assets*. Paragraph 30 of that Statement defines reporting units and components, and requires goodwill to be tested for impairment at the reporting unit level. It seems inconsistent that a reporting unit is significant enough to have a goodwill impairment, but the disposal of such a reporting unit would not be considered to represent a "strategic shift in operations."

The revised definition also appears inconsistent with the requirements of paragraph 10 of Statement 144, which requires entities to recognize and measure impairment losses by grouping assets at the "lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities."

We note the definition of an operating segment in Statement 131 requires the component's operating results be regularly reviewed by the enterprise's chief operating decision maker. In instances in which the entity provides discrete financial information to the chief operating decision maker on a product and geographical basis, the operating segments generally are determined based upon the product information. If such an entity disposed of a geographical segment, such disposal would not meet the proposed definition of a discontinued operation.

Additionally, we believe there may be dispositions below the level of operating segment that would significantly alter the comparability of continuing operations.

While we are sympathetic to the concern that "too many activities [are] being classified as discontinued operations in the income statement," we believe the Board should, in a separate project, look at the Statement 142 definition of reporting unit and the Statement 144 definition of asset grouping with a goal of reducing the number of definitions in different standards that are trying to define similar things. We also think the basis for conclusions in the final FSP should provide more rationale to support the change in definition than is provided in the proposed FSP. We note that the Board provided much more rationale for the existing requirements in paragraphs B100 to B109 in Statement 144.

***Issue 2: Based on the proposed definition of a discontinued operation, an operating segment is the general level of aggregation for determining whether a component of an entity would be reported in the discontinued operation section of the income statement (or statement of activities for not-for-profit entities). The definition would no longer include certain subsidiaries and asset groups that do not meet the definition of an operating segment. Is it feasible for an entity that is not required to apply Statement 131 (that is, a nonpublic business entity and a not-for-profit entity) to determine whether the component of an entity meets the definition of an operating segment? Why or why not? If not, what definition would you propose for an entity that is not required to apply Statement 131 and why?***

We are concerned the proposed definition will be problematic for entities that are not required to apply Statement 131. Nonpublic business entities and not-for-profit entities may not be familiar with Statement 131, since they are not required to apply that standard. The application of Statement 131 is not well understood by many public companies that apply it. The staff of the Securities and Exchange Commission frequently raise questions about a registrant's application of Statement 131 and often require revisions to

disclosures after such comments. The SEC staff often mention compliance with Statement 131 in speeches and presentations as a frequent comment letter subject, including at the recent 2008 AICPA Conference on Current SEC and PCAOB Developments. Our experience is consistent with concerns raised by the SEC staff. Nonpublic business entities and not-for-profit entities may also struggle to apply the concepts of Statement 131 since the process and information used by management to review the operating results and allocate resources are often more informal than in public entities and may not be well documented. Additionally, nonpublic business entities that do not report any goodwill may not be familiar with FASB Statement No. 142, *Intangible Assets*, which requires entities to consider Statement 131 to determine reporting units.

***Issue 3: Do you agree with the proposed disclosure requirements? Why or why not? If not, what changes would you propose and why?***

The criteria for “discrete financial information” for Statement 131 purposes does not require that such information be reported in accordance with generally accepted accounting principles, and does not require allocations of revenues, expenses, gains or losses unless they are reported that way to the chief operating decision maker. Entities may be required to convert the internal reporting to GAAP and make allocations that were not made previously. We suggest the proposed disclosure requirements align with what is required to be disclosed for Statement 131.

***Issue 4: Under the disclosure requirements, income tax expense or benefit does not have to be calculated and disclosed for components of an entity that are reported within continuing operations and that have been disposed of or are classified as held for sale. Do you agree or do you believe it would be beneficial to require income tax expense or benefit to be calculated and disclosed for discontinued components of an entity within continuing operations? If so, how would you calculate and disclose the income tax expense or benefit?***

We concur that income tax expense or benefit should not be required to be calculated or disclosed.

***Issue 5: Do you agree with the disclosure exemptions for a business or a nonprofit activity that meets the criteria to be classified as held for sale on acquisition? Why or why not? If not, what changes would you propose and why?***

We agree with the exemptions for the reason included in the Basis for Conclusions.

***Issue 6: Are the effective date and transition provisions sufficient for compiling the information needed? Why or why not? If not, what would you propose and why?***

We do not believe that the requirement to use operating segments as the definition of a discontinued operation would result in problems meeting the proposed effective date for public entities. If the Board uses the same criteria for nonpublic business entities and not-for-profit entities, such entities should be provided a later effective date, such as years beginning after December 15, 2009, for implementation since they may not be familiar with the definition of a segment in Statement 131.

**Other Comments**

We question whether further guidance is necessary as a result of the decision to eliminate the criteria of paragraph 42 of Statement 144 related to elimination of cash flows and no significant continuing involvement and the related nullification of EITF 03-13, *Applying the Conditions in Paragraph 42 of FASB Statement No. 144 in Determining Whether to Report Discontinued Operations*. When an entity “disposes” of an activity that meets the definition of an operating segment, but has continuing cash flows and/or

continuing involvement, what should be reclassified in the prior financial statements? We also believe the cash flow and continuing involvement factors are important criteria to attain discontinued operations treatment and the Board should provide more rationale for why these criteria were eliminated.

Moreover, this nullification may impair comparability of financial statements. Assume a situation in which an operating segment of an entity sells services solely to other segments of that entity. The operating segment is then disposed, but after disposal, continues to provide those same services to the enterprise. In such a situation, the "costs" of the former segment would be included in continuing operations for the period after disposal, but not before.

Such situations could also give rise to noncomparability given the requirement in paragraph 19 of the proposed FSP requires retrospective application.

We would be pleased to respond to questions the Board or its staff may have about any of the foregoing comments. Please direct any questions to Jay D. Hanson (952-921-7785) or Richard Stuart (203-905-5027.)

Sincerely,

A handwritten signature in cursive script that reads "McGladrey & Pullen, LLP".

McGladrey & Pullen, LLP