

January 16, 2008



LETTER OF COMMENT NO. 6

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

RE: Proposed FASB Staff Position No. 142-f, *Determination of the Useful Life of Intangible Assets*

Dear Mr. Golden:

We appreciate the opportunity to comment on the Proposed FASB Staff Position No. 142-f, *Determination of the Useful Life of Intangible Assets* ("Proposed FSP"). Since the adoption of FASB Statement No. 142, *Goodwill and Other Intangible Assets* (FAS 142), questions have arisen as to whether criteria in paragraph 11(d) were intended, in certain instances, to restrict or limit the estimate of the useful life of a renewable intangible asset to a shorter period than the period of cash flows that may have been used in measuring the fair value of the asset. Specifically, these questions have arisen due to concerns about how the *substantial costs* and *material modifications* criteria included in paragraph 11(d) are to be interpreted. As a result, we support the objective of the Proposed FSP to achieve consistency between the useful life of an intangible asset and the period of expected cash flows used to measure the fair value of the asset. However, we have several concerns about the Proposed FSP as currently written.

The Proposed FSP includes the following amendment to paragraph 11 of FAS 142:

"d. Any legal, regulatory, or contractual provisions that enable renewal or extension of the asset's legal or contractual life without substantial cost (provided there is evidence to support renewal or extension and renewal or extension can be accomplished without material modifications of the existing terms and conditions). The entity's own historical experience renewing or extending similar arrangements (consistent with the intended use of the asset by the entity), regardless of whether those arrangements have explicit renewal or extension provisions. In the absence of that experience, the entity shall consider the assumptions that market participants would use about renewal or extension (consistent with the highest and best use of the asset by market participants)."

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We agree with the proposed amendment to paragraph 11 of FAS 142, except to the extent that the words “adjusted for entity-specific factors” appear to have been omitted from the end of the last sentence of paragraph 11(d). We believe these words are essential to clarify the FASB’s intent with respect to the principle included in paragraph 7 of the Proposed FSP.

Paragraph 11, as proposed to be amended, also would indicate that if the income approach is used to measure the fair value of the intangible asset, the useful life of the asset should consider the period of expected cash flows used in measuring that fair value. We believe additional guidance is needed to understand what is considered “*expected* cash flows” when the probability of renewal is less than 100%. For example, assume Acquirer is an electronics manufacturer and purchases a license to manufacture DVD players with an initial term of ten years and two explicit five-year renewal options. Acquirer has historical experience in renewing similar license arrangements; however, due to rapid technological advances in the industry, Acquirer estimates that there is a 60% chance it will exercise the first renewal option and a 30% chance it will exercise the second renewal option. Acquirer uses the income approach to determine the fair value of the license. While there may be different applications of an income approach, that approach would in some manner take into consideration the probability of renewal for each period after the initial term. Do these renewal periods meet the criteria of expected cash flows such that they should be included in the useful life of the license? Should “expected” be interpreted to mean “probable,” as defined in FASB Statement No. 5, *Accounting for Contingencies*, or “more likely than not” as defined in FASB Statement No. 109, *Accounting for Income Taxes*, or some other threshold? We acknowledge that there is judgment involved in determining the useful life; however, if the Proposed FSP requires the consideration of expected cash flows when an income approach is used to measure the intangible asset, given the differing thresholds for recognition currently used in GAAP, we believe the Board should define the concept of expected cash flows.

Additionally, it appears that the requirements of the Proposed FSP are to be applied prospectively to assets *acquired* after the effective date. We believe the Proposed FSP should also be applied to intangible asset useful lives that are reassessed after the effective date. Paragraphs 14 and 16 of FAS 142 require the estimated useful lives of finite-lived and indefinite-lived intangible assets, respectively, to be reassessed each reporting period considering all pertinent factors, including those in paragraph 11 of FAS 142. The limitation of the requirements of the Proposed FSP results in different criteria being applied to the determination of the estimated useful life of assets *acquired* after the effective date and those previously acquired but *reassessed* after the effective date even though the paragraph 11 criteria have been amended. We believe that the information necessary to apply the requirements of the Proposed FSP to renewable intangible assets acquired prior to the effective date is likely available and obtainable. In our view, the lack of comparability that would result from indefinitely applying different (pre-FSP) criteria in the assessment of the

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useful life of previously acquired intangible assets outweigh any benefits that might be realized in limiting the scope of the Proposed FSP.

In order to address these implementation issues, we suggest that the Proposed FSP clarify that the useful life of an acquired intangible asset include renewal periods if it is probable (or, alternatively, more likely than not) that the renewal will occur. We also suggest that the requirements of the Proposed FSP be applied to all renewable intangible assets. Further, the likelihood of renewal should be required to be reassessed on at least an annual basis and the useful life extended, if the likelihood of renewal becomes probable (or, alternatively, more likely than not) or, conversely, the useful life shortened, if the likelihood of renewal becomes less than probable (or, alternatively, more likely than not).

Other Comments

Additionally, we have comments about specific aspects of the Proposed FSP that we believe will improve the final staff position.

Reacquired Rights

In FASB Statement No. 141, *Business Combinations* (revised 2007) (FAS 141(R)), the FASB noted that upon acquisition of a reacquired right, some entities have assumed indefinite renewal of the contract and, thus, classified reacquired rights as indefinite-lived intangible assets. FAS 141(R) amends footnote 9 to paragraph 11 of FAS 142 and limits the measurement and useful life of a reacquired right to the remaining contractual term. If the effective date of the Proposed FSP is not changed to conform with the effective date of FAS 141(R), we believe the Proposed FSP should contain the same amendment of footnote 9. Otherwise, the application of the Proposed FSP prior to the adoption of FAS 141(R) may result in an increase in the classification of reacquired rights as indefinite-lived intangible assets.

Disclosures

We suggest that the additional disclosures required by paragraph 44 of FAS 142, as amended by the Proposed FSP, be modified as follows:

“d. For intangible assets with renewal or extension terms (both explicit and implicit), the duration of the renewal period(s), the weighted-average contract period prior to the next renewal, and the entity’s history of renewal for similar intangible assets, by major intangible asset class.”

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In our view, this proposed disclosure would provide users of the financial statements with an understanding of the extent to which the expected future cash flows associated with the assets are affected by the entity's intent and/or ability to renew or extend the arrangements, consistent with the disclosure principle included in paragraph 12 of the Proposed FSP.

We also suggest that the additional disclosures required by paragraph 45 of FAS 142, as amended by the Proposed FSP, be modified as follows:

“c. For intangible assets with renewal or extension terms (both explicit and implicit):

- (1) A qualitative description of any material changes in the likelihood of renewal from the prior reporting period ~~for contracts with initial contractual periods or renewal periods ending within the next fiscal year~~, by major intangible asset class.”

We believe that the disclosure requirement should be extended to all contracts with renewal periods. Otherwise, no disclosure would be required until the fiscal year preceding the end of the contract term even if prior to the final year of the contract an entity determines the likelihood of renewal has changed materially and that change has a significant effect on the entity's future cash flows.

Effective Date

We agree that the information necessary to apply the requirements of the Proposed FSP is generally available or obtainable. However, as noted in the preceding paragraphs, we believe there are implementation issues that should be addressed in the Proposed FSP. Also, the Proposed FSP introduces the concept of the “highest and best use of the asset by a market participant” that does not currently exist in generally accepted accounting principles outside of FASB Statement No. 157, *Fair Value Measurements* (FAS 157), which is currently being considered for a limited deferred effective date. Finally, FAS 142 will be amended and its application significantly affected by the adoption of FAS 141(R) and FAS 157. As a result, we recommend that the effective date of the Proposed FSP be changed to be consistent with the effective date of FAS 141(R) and if deferred, FAS 157. We believe a deferred effective date is even more appropriate if the FASB agrees with our recommendation and the final FSP also applies to the reassessment of the useful life of previously acquired intangible assets.

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Paragraph 9 of the Proposed FSP

We recommend that paragraph 9 of the Proposed FSP should be modified as follows:

“In addition to considering the entity-specific factors in paragraphs 11(a)–11(f) of Statement 142, an entity shall consider its own historical experience consistent with the entity’s intended use of the asset or, alternatively, if the entity lacks historical experience, the assumptions that market participants would use consistent with the highest and best use of the asset, adjusted for the entity-specific factors in paragraphs 11(a)-(f) of Statement 142. Accordingly, this FSP amends paragraph 11(d) of Statement 142 so that an entity is not precluded from using its own assumptions about renewal or extension of an arrangement, even when there is likely to be substantial cost or material modifications.”

As currently written, we believe that paragraph 9 of the Proposed FSP is not consistent with the principle in paragraph 7 of the Proposed FSP.

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

Very truly yours,

