

October 22, 2010

Mr. Kevin Stoklosa Acting Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Mr. Alan Teixeira
Director of Technical Activities
International Accounting Standards Board
30 Cannon Street
London, EC4M 6XH
United Kingdom

Re: File Reference No. 1820-100 Revenue from Contracts with Customers

Dear Messrs. Stoklosa and Teixeira:

The Bank of New York Mellon Corporation ("BNY Mellon") appreciates the opportunity to comment on the FASB's and IASB's (the "Boards") proposed accounting standards update; *Revenue from Contracts with Customers* (the "Exposure Draft"). BNY Mellon is a global financial institution with \$236 billion in assets. In addition, we provide services under contractual relationships with our customers covering \$1.1 trillion in assets under management, \$24 trillion in assets under custody and administration and \$12 trillion of client-issued outstanding debt

We appreciate the fact that the Boards have issued identical proposals on this topic. We are very supportive of one set of global standards of accounting, it is in the interests of all investors, issuers and markets as we believe one set of standards will assist the global capital markets and maintain a level playing field for companies around the world. As a U.S. company it is important that BNY Mellon use one accounting standard as dual accounting standards would create challenges in the capital markets, including comparability for investors and other users of financial information.

Overall, we support the Boards' efforts to create a single model for revenue recognition that can be applied across all industries. BNY Mellon agrees with the contractual basis model, identification of specific performance obligations and the recognition of revenue as those obligations are met. However, as discussed below there are certain areas with which we disagree or believe clarifications are necessary.

Variable Consideration

We agree with the concept that a company should consider the terms of the contract and its customary business practice to determine the transaction price for the contract with the customer and that transaction price reflects the probability-weighted amount of consideration that an entity expects to receive from the customer in exchange for transferring goods or services. And we agree that when the amount of consideration is variable, and the transaction price must be estimated at each reporting period to represent faithfully the circumstances present at the reporting date and the changes in circumstances during the reporting period. However, we believe that paragraphs 38 and 39 are overly prescriptive and cannot cover all possible cases where revenues are reasonably estimated or whether the factors mentioned that reduce the relevance of a company's experience will in fact be relevant in all cases. Accordingly, these should be deleted from the proposed standard so that a principles-based estimate can be made.

We strongly disagree with Example 18. We are concerned that some could read that example to conclude a fee which is fixed basis points of assets under management or assets under custody would not be estimable because the value of the managed assets or custody assets would not be fixed until the end of the period. Also, we disagree with the conclusion that the entity's experience with similar contracts is not relevant; it is entirely relevant. While we might reach the conclusion that the performance fee at the end of the year in the example contract should not be recognized because it was not estimable, but that would be based on the facts and circumstances, applying the principles in the exposure draft – including our experience with similar contracts.

While there may be conceptual justification for a probability-weighted approach, in many cases this will add complexity without adding additional value to the precision of estimated revenue. Accordingly, we recommend that a best estimate of transaction price be allowed in those cases where the company has a best estimate.

Onerous performance obligations

We agree that an entity should recognize a liability and a corresponding expense if a performance obligation is onerous. However, for contracts and customer relationships with continuous contract obligations, we believe it is appropriate to evaluate onerous contracts on a customer relationship basis, depending on the facts and circumstance. The management and potential re-negotiation and related profitability of a specific performance obligation may be impacted by other customer contracts; accordingly, when such contracts are evaluated as a group they would not result in loss recognition whereas a loss recognition might be required if one were merely looking at one specific performance obligation.

Customer credit risk as a component of the transaction price

We disagree that the transaction price should reflect the customer's credit risk if it can be reasonably estimated. Credit losses should be decoupled from the transaction price and separately reported. Decoupling provides more transparency to investors, faithfully represents how the risk is managed and is much less complex than embedding credit in the transaction price. We believe that customer's credit risk should be accounted for as a cost of doing business

and that revenue should reflect the amount earned for delivering the product or service as stipulated in the contract.

Disclosures

We have a large volume of contracts, substantially all of which would fall into the continuous contract obligation category. For such contracts, we disagree with the proposed requirements of 73(b), 75 and 76 to provide a detailed 9-element reconciliation of the opening and closing balances of contract assets and contract liabilities. This data will <u>not</u> help users understand the amount timing and uncertainty of revenue and cash flows arising from contracts from customers. The trends in revenue using the categorization requirements in paragraph 74 are much more useful than the voluminous details that would be required under 73(b), 75 and 76. If this detail were required for continuous contract obligations, investors may try to use it to develop view on future revenue prospects of the company and would not focus on those factors that are relevant.

We are not aware of managements' of companies that produce or use this data for continuous contract obligations in their business. We are hard pressed to understand how this complex disclosure would be useful to investors, if managements do not find it useful.

Because management does not produce this complex data on a routine basis, systems will have to be developed to collect and retain the data for each individual contract. This will be a costly, time consuming process affecting multiple business areas and multiple locations around the world. Accordingly, if the FASB nevertheless requires this data, a substantial multi-year transition period will be required.

Effective date and transition

We agree that retrospective application would be proper to ensure comparability of financial statement trends. We also recognize the significant amount of effort which will be required to accomplish this task. As noted above, significant time will be required to build the systems, review all contracts, develop data collection processes, input the data and test the systems and processes to meet the disclosure requirements in the proposal. We therefore recommend that significant lead time for implementation be provided to compile, analyze and properly reflect the impacts under the proposed standard.

Our responses to certain other items not covered above provided in Appendix A. Thank you for considering our comments regarding the revenue recognition exposure draft. If you have any questions or require further information, please contact me at 1-212-635-7080.

Sincerely.

John A. Park

Executive Vice President and Controller

Appendix A

Question 3

Do you think that the proposed guidance in paragraphs 25–31 and related implementation guidance are sufficient for determining when control of a promised good or service has been transferred to a customer? If not, why? What additional guidance would you propose and why?

We believe that additional clarification is needed for software contracts with significant customizations. Presently these types of contracts follow US GAAP guidance for construction-type contract analogizing the custom development of software to the long-term construction of tangible products. Under current guidance the entire arrangement is recognized using percentage of completion. Under the proposed guidance it is difficult to determine how a complicated and lengthy custom development transaction would be recognized. As a result, significant diversity in applying these rules could develop in practice in the software industry. Further, we believe that customization is an indicator of a continuous transfer of control and we would be in favor of the proposed guidance being clarified to ensure the consistent interpretation that revenue should be recognized over the customization period.

Question 5

Paragraph 43 proposes that the transaction price should reflect the customer's credit risk if its effects on the transaction price can be reasonably estimated. Do you agree that the customer's credit risk should affect how much revenue an entity recognizes when it satisfies a performance obligation rather than whether the entity recognizes revenue? If not, why?

We disagree that transaction price should reflect the customer's credit risk if it can be reasonably estimated. Credit losses should be decoupled from the transaction price and separately reported. Decoupling provides more transparency to investors, faithfully represents how the risk is managed and is much less complex than embedding credit in the transaction price. We believe that customer's credit risk should be accounted for as a cost of doing business and that revenue should reflect the amount earned for delivering the product or service as stipulated in the contract.

Certainly credit risk is considered during contract negotiations; however, after signing, collections and credit risk are separately managed at most companies. Managements actively focus on credit deterioration of their customers and manage past due receivables. Reporting the results separately reflects how the company manages this risk.

This is an important activity the results of which, where material, should be reflected separately in the financial statements for the owners' benefit. Burying credit losses (if material) in the revenue line obfuscates critical information to users.

Building new processes to incorporate credit in contracts' revenue margin adds complexity, which, as noted above, we believe is not warranted. With so many other more important

accounting changes that companies will be dealing with over the next several years, this will detract from efforts required on those other changes.

Question 9

Paragraph 58 proposes the costs that relate directly to a contract for the purposes of (a) recognizing an asset for resources that the entity would use to satisfy performance obligations in a contract and (b) any additional liability recognized for an onerous performance obligation. Do you agree with the costs specified? If not, what costs would you include or exclude and why?

We feel that substantive incremental direct costs that would not have been incurred if not for the contract should be deferred and recognized in the same manner as the related revenues. Recently the FASB issued "Accounting Standards Update (ASU) No. 2010-26, Financial Services - Insurance (Topic 944): Accounting for Costs Associated with Acquiring or Renewing Insurance Contracts." ASU No. 2010-26 allows for capitalization of incremental direct costs that are "directly from and are essential to the contract transaction and would not have been incurred by the insurance entity had the contract transaction not occurred." Further, the FASB recently issued the discussion paper "Preliminary Views on Insurance Contracts," that mirrors this view. We feel the proposed standard should allow for capitalization of similar incremental costs.

Question 10

The objective of the Boards' proposed disclosure requirements is to help users of financial statements understand the amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. Do you think the proposed disclosure requirements will meet that objective? If not, why?

The level of detailed disclosures proposed goes far beyond what is required to manage our business. The significant amount of both qualitative and quantitative disclosures proposed will be costly and time consuming to assemble and ultimately will not advance the users overall knowledge or understanding of cash flows beyond where they are today. The downside to including such detail is that at some point it may actually present a distraction and may well represent a disservice to the financial statement user. A qualitative discussion, similar to what is provided today, of the business and other economic factors is important and sufficient in helping the financial statement users understand the effects of timing and uncertainty of cash flows.

Question 11

The Boards propose that an entity should disclose the amount of its remaining performance obligations and the expected timing of their satisfaction for contracts with an original duration expected to exceed one year.

Do you agree with that proposed disclosure requirement? If not, what, if any, information do you think an entity should disclose about its remaining performance obligations?

We believe that disclosures proposed in paragraph 78 related to the detailed projection of remaining contractual performance obligations would be operationally burdensome and costly from both a systems and maintenance standpoint. This level of detail and extrapolation is not currently generated on a contract by contract basis in managing the business and would not provide incremental value to the users of financial statements, beyond what they have today.

The proposed update also requires a reconciliation or rollforward of contract assets, contract liabilities and onerous performance obligations that detail the amounts recognized in the statement of comprehensive income. This level of detailed information will not provide incremental value to users of the financial statements.

Question 14

The proposed implementation guidance is intended to assist an entity in applying the principles in the proposed guidance. Do you think that the implementation guidance is sufficient to make the proposals operational? If not, what additional guidance do you suggest?

We believe that more examples should be included and that specific examples contained should be revisited to ensure that consistent interpretation and application will result. For specific examples please refer to our response to question number 4.

Question 16

The Boards propose the following if a license is not considered to be a sale of intellectual property:

- (a) if an entity grants a customer an exclusive license to use its intellectual property, it has a performance obligation to permit the use of its intellectual property and it satisfies that obligation over the term of the license; and
- (b) if an entity grants a customer a nonexclusive license to use its intellectual property, it has a performance obligation to transfer the license and it satisfies that obligation when the customer is able to use and benefit from the license.

Do you agree that the pattern of revenue recognition should depend on whether the license is exclusive? Do you agree with the patterns of revenue recognition proposed by the Boards? Why or why not?

With the overall objective being to remove inconsistencies and improve comparability, we feel that the economic substance of both an exclusive and nonexclusive license is comparable and that the accounting recognition should also be comparable. We would not recommend differing accounting treatments for the two similar types of transactions. Consistent to the proposed approach for a nonexclusive license, we believe that the grantor of an exclusive license satisfies the performance obligation at the date the customer is able to use and benefit from the license.

Question 18

Should any of the proposed guidance be different for nonpublic entities (private companies and not-for profit organizations)? If so, which requirement(s) and why?

BNY Mellon would see no reason to differentiate between public and nonpublic companies. The intent of the proposed standard is to promote consistency and transparency. By applying the proposed standard to all companies, that goal would come that much closer to fruition.

Additional Comment - Onerous Performance Obligations

Paragraphs 54-56 discuss onerous performance obligations and the proposal that an entity shall recognize a liability and a corresponding expense if a performance obligation is onerous. This liability would be revised at each subsequent reporting period to update the measurement of the liability. We are in agreement of the overall concept.

However, for contracts and customer relationships with continuous contract obligations, we believe it is appropriate to evaluate onerous contracts on a customer relationship basis, depending on the facts and circumstance. The management and potential re-negotiation of a specific performance obligation and its related profitability may be impacted by other customer contracts; accordingly, when such contracts are evaluated as a group they would not result in loss recognition whereas a loss recognition might be required if one were merely looking at one specific performance obligation.

For example, in our asset management business we may have contracts to provide investment management services to multiple funds within a mutual fund complex and stand ready to provide advice to each of those funds on a continuous basis. If one or more asset management continuous contract obligations become onerous due to a specific event or market factors for a period of time and they are more than compensated for by contracts with other funds in the same mutual fund complex, we would not consider the relationship with that mutual fund complex a loss; and, accordingly, do not believe it should be recorded as a loss event.

Once the initial liability is recorded for an onerous performance obligation, the proposal requires subsequent evaluations to be performed in each subsequent reporting period. Due to the amount of effort involved in doing a diligent analysis of every contract or customer relationship, this subsequent evaluation requirement should be modified. We recommend that a subsequent evaluation be performed only if a reconsideration event would occur. Reconsideration events could be defined as changes to significant contract factors or material modifications that would materially change the previous amount recorded.