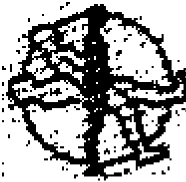

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October 28, 2005

Technical Director
Financial Accounting Standards Board (FASB)
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116

Letter of Comment No: 33
File Reference: 1204-001
Date Received: 10.28.05

File Reference No. 1204-001

Re: Exposure Draft – Business Combinations, a replacement of FASB Statement No. 141

Members of the FASB:

Medtronic is a world-leading medical technology company, providing lifelong solutions for people with chronic disease. We were founded in 1949 and today serve physicians, clinicians and patients in more than 120 countries. Our fiscal year 2005 net sales were $10.05 billion and our net earnings were $1.80 billion. Our market capitalization is approximately $68 billion.

We appreciate the opportunity to comment on the Business Combinations exposure draft. Although we understand and applaud the efforts of the board to both further U.S. accounting standards and converge with the international accounting standards, we have serious concerns with the conclusions reached in the proposed standard and the ramifications that these changes would have on future financial reporting. Our specific comments are organized according to the questions and paragraphs set forth in your invitation to comment (i.e. **Objective Definition and Scope, Definition of a Business, Measuring the Fair Value of the Acquiree, etc.**) but overall we have most concern with the following key changes:

- Recognizing assets and liabilities for contingencies that are not probable of being realized or incurred;
- Eliminating the accounting for restructuring type activities within the construct of the overall business combination accounting;
- Requiring the value associated with research and development assets be measured at fair value and recognized in the balance sheet;
- Excluding the costs that the acquirer incurs in connection with a business combination from the measurement of the consideration transferred for the acquiree; and
- Recording contingent consideration at its fair value on the date of acquisition and adjusting this value through earnings, post acquisition.

Measuring and Recognizing the Assets Acquired and the Liabilities Assumed (Questions 8&9)
The Board has concluded that all preacquisition contingencies that meet the definition of an asset or liability in FASB Concepts Statement No. 6, Elements of Financial Statements, should be recorded at fair value, even if it does not meet the recognition criteria under FAS 5. We believe that the current guidance under FAS 141 is more appropriate, which indicates that a FAS 5 probable and reasonable estimate model be applied where fair value cannot be determined. The fair value of contingent assets and liabilities is not usually determinable because they are not frequently exchanged or sold. Where fair value can be established, such as with certain warranty or workers compensation reserves, we agree that recording the contingent asset or liability at the

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determinable amount is appropriate. For other less frequently occurring contingencies, such as litigation, a FAS 5 model allows preparers to evaluate and properly record these items in the purchase price allocation. The requirement for using fair value in every case will create inconsistency from company to company in the application of the standard. The result will be valuation and ongoing income statement variability that will not aid the users of financial statements, but will merely allow for more subjectivity at the discretion of preparers, calling into question the accuracy and auditability of such values.

The Board has also concluded that costs associated with restructuring or exit activities that do not meet the recognition criteria in FAS 146 as of the acquisition date are not liabilities at that date. We believe that a buyer's assessment of the fair value of an entity includes costs that will be incurred to integrate the acquired business and achieve synergies. In assessing the merits of an acquisition, the value created in the transaction must be sufficient to cover such costs. We believe that capitalizing these costs is consistent with the treatment for other similar items, such as the guidelines surrounding fixed assets, where the amounts capitalized is equal to the amount paid to acquire and place the asset in service.

Additionally, the Board is proposing that in-process research and development (IPR&D) acquired in a business combination be recognized as an asset and measured at fair value, rather than written off as expense under current guidelines in accordance with FASB Interpretation No. 4. We believe that the proposed change is not appropriate in the short term, and will result in inconsistencies in the accounting for research and development (R&D). Costs incurred internally on acquired R&D would continue to be expensed, while IPR&D purchased as part of a business combination would be capitalized. Although we have an opinion on whether or not the research and development purchased has future value, we believe that if the standard is issued as proposed, it would result in a loss in comparability between companies. Until a comprehensive consideration of FAS 2 is conducted, we believe that the current guidance should be retained.

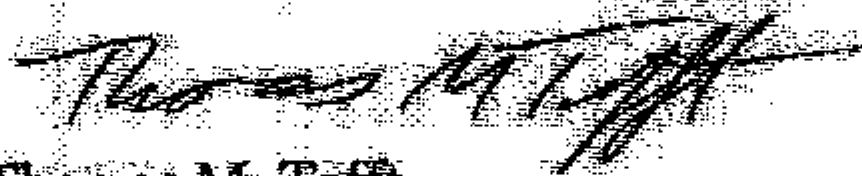
Measuring the Fair Value of the Acquiree (Questions 3-7)
The Board's proposed concept of fair value specifically excludes acquisition related costs from the measurement of the consideration transferred. The acquirer would account for these costs separately from the business combination accounting. We believe that costs paid to a third party, or incurred by the buyer or seller solely in transacting the exchange should be considered part of the fair value of the exchange. In practice, parties are often required to engage specialists such as lawyers, investment bankers, and valuation experts in connection with an acquisition. The costs incurred are not unlike origination costs incurred at the inception of a loan, or installation costs related to equipment. Acquisition related transaction costs are necessary to bring the acquired basket of productive assets to a state where they can begin to produce revenues. The fact that such costs are paid to third parties rather than directly to the seller does not mean they are not part of the fair value of the exchange, since the costs were incurred solely to execute the transaction.

As with the previous discussion on preacquisition contingencies, the Board has proposed that contingent consideration should be recorded at fair value, measured as of the acquisition date. Again, we believe that the conclusion of FAS 141 paragraph 28 is more appropriate, which states that contingent consideration should be recorded when the contingency is resolved. Contingent consideration in the form of earn-outs and milestone payments are typically used when the purchase price cannot be agreed upon between the parties. The likely range of possible outcomes vary given the differing opinions of the parties as to the set purchase price. Under this model,

establishing fair value will be highly subjective, and as previously discussed above related to valuation, will likely cause unnecessary future income statement variability that will only serve to hinder a user's understanding of a registrant's financial information.

Again, we appreciate the opportunity to comment. If you have any questions regarding this letter or would like to discuss any of our views further, please feel free to contact me at (763) 505-1510.

Sincerely,



Thomas M. Tefft
Vice President, Corporate Controller