

BDO Seidman, LLP Accountants and Consultants

233 North Michigan Avenue Suite 2500 Chicago, Illinois 60601 Telephone: (312) 616-4661 Fax: (312) 856-9019

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Mr. Russell G. Golden Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116



LETTER OF COMMENT NO. 13

Dear Mr. Golden:

BDO Seidman, LLP is pleased to offer comments on the FASB's May 9, 2008 Request for Additional Comments on a potential revision to the October 2006 Exposure Draft (ED), Not-for-Profit Organizations: Mergers and Acquisitions.

We agree with the central thrust of the Board's tentative decision that some combinations of not-for-profit organizations should be accounted for as mergers, rather than as acquisitions, because no acquirer exists. We recommended such an approach in our comment letter on the ED. While we recommended fresh start accounting, rather than carryover basis, for mergers, we understand and do not object to the Board's pragmatic decision to use carryover basis.

We believe that implementation of the tentative decision would be clearer, and that some of the concerns identified in the request for comment would be addressed, if the decision were articulated as follows:

- A presumption exists that a combination is an acquisition. The guidance in paragraphs 9 through 11 of the ED should be applied to identify an acquirer. If an acquirer can not be identified using the guidance in paragraphs 9 through 11, then the transaction is a merger if two conditions are satisfied:
 - The condition in paragraph 7 of the Request for Additional Comments that "the governing bodies of two or more not-for-profit organizations cede control of those organizations to create a new organization," and
 - o The organizations that are parties to the transaction are substantively absorbed into the new organization and cease to exist as separate organizations. The absorption must be substantive, genuine, and not temporary.

Responses to Questions in the Request for Additional Comments

Question 1: Is the definition of a merger appropriate for distinguishing mergers from acquisitions by not-for-profit organizations? If not, why?



We believe the definition should be expanded to include our second proposed condition that the parties to the transaction are substantively absorbed into the new organization and cease to exist as separate organizations. The additional condition distinguishes a merger from the formation of a joint venture. In a merger, two organizations are absorbed into, and replaced by, a new organization. That is, two organizations become one. In the formation of a joint venture, the two contributors continue to exist as separate organizations. The joint venture is an additional organization, not a replacement organization. That is, two organizations become three.

Question 2: Would the definition of a merger, together with the definition of control, be workable in practice? That is, can it be applied in practice with a reasonable degree of consistency, particularly in distinguishing a merger from the transactions noted in paragraph 6(a) and 6(b)? If not, why, and how might it be improved?

We believe that the definition distinguishes a merger from the gift transaction described in paragraph 6(a). We believe the addition of our second condition distinguishes a merger from a potential reversionary transaction as described in paragraph 6(b).

Question 3: Do the definitions of a merger and control, taken together, make it sufficiently clear that transferring an integrated set of net assets to a newly created joint venture in which the transferor retains shared control is not the equivalent of ceding control? If not, how might the Board clarify the definitions or make it clear that the creation of a joint venture is beyond the scope of the proposal?

See the response to Question 1.

Question 4: Does the definition of a merger require any additional criteria or guidance to address the concern noted in paragraph 10? That is, in general, will the ceding of control be discernable in practice from the surrounding facts and circumstances, despite the possibility that some entities may attempt to structure the new organization's Board composition, senior management, or charter to disguise circumstances in which one of the governing bodies retains control over the newly created organization?

We believe the addition of our second condition distinguishes a merger from the transaction described in paragraph 10(a), because the two parties to the transaction described in paragraph 10(a) continue to exist as separate organizations. We believe the addition of our second condition distinguishes a merger from a potential reversionary transaction as described in paragraph 10(b), because a party with an "opt-out" right has to continue in existence in order to be able to exercise the right.

Question 5: If one or more parties to a potential combination retains an opt-out



clause, would that alone be sufficient evidence to determine that that party has not ceded control?

We believe that an opt-out clause would be sufficient evidence that a party has not ceded control. An opt-out clause also fails our second condition, because transactions with opt-out clauses are potentially temporary. In addition, the existence of an opt-out clause means that the party continues to exist as a separate entity, because only a continuing entity can exercise an opt-out clause. If there were no continuing entity, then there would be no one to exercise the opt-out clause.

Additional Comments

We agree with the Board that common or similar missions should not be a condition for identifying a merger. We believe that true mergers occur between not-for-profit organizations with different missions.

We agree with the Board that it is unnecessary to have a condition that no consideration is exchanged. If consideration is exchanged, that would ordinarily indicate an acquirer under the criterion in paragraph 11(a) of the ED. If no consideration is exchanged, the other guidance in paragraphs 9 through 11 of the ED should be applied to identify an acquirer. If no acquirer can be identified, then the entities would consider the two conditions—cede control and cease to exist—to determine whether a merger occurred.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Ben Neuhausen at 312-616-4661.

Very truly yours, s/BDO Seidman, LLP