

Technical Director

Dec. 20, 2008

File Reference: Proposed FSP FAS 141(R)-a

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LETTER OF COMMENT NO. |

Dear Sir:

I do not agree with the "Proposed Amendment" to FAS 141(R) nor do I agree with the change made to the guidance concerning contingencies that was made subsequent to the completed Bulletin on FAS 141(R) prior to June 30, 2007 - "Fall 07 Change".

The following are issues with the "Proposed Amendment" and the "Fall 07 Change" that I believe the Board should consider.

1. Standards should focus on the needs of the financial reporting users.

In the Summary of the "Proposed Amendment," the first sentence under "How Will This Proposed FSP Improve Financial Reporting?" refers to addressing concerns from preparers, auditors, and members of the legal profession. The "Proposed Amendment" places the concerns of these persons over those of the financial reporting user.

There usually are conflicts among the various participants in financial reporting and it is the responsibility of the Board to make judgments about those conflicts with the most weight given to the concerns of the Users. The concerns of the preparers, auditors, and members of the legal profession were known by the Board that completed the June 30, 2007 ballot. As noted in paragraphs C4 and C5, the Board that participated in the ballot believed they had adequately addressed the concerns of the preparers, auditors and legal profession in relation to the input received from users that financial reporting about contingencies was currently not adequate.

I do not know what additional information the Board has received subsequent to the issuance of Statement 141 (R) that had not been received and considered prior to June 30, 2007. The issue with the ABA/AICPA agreement was certainly known. The fact that the agreement was a problem with the efforts to improve financial reporting had been pointed out to the PCAOB by me at a number of SAG meetings. Also this situation had recently been addressed in the Board's issuance of FIN 48.

The "Fall 07 Change" also seems to place the concerns of preparers, auditors and the legal profession over those of the Users. The "higher of/lower of" approach had been discussed and dismissed prior to the June 30, 2007 ballot. When that approach was discussed it was easily seen that the approach produced

a result that was not neutral and would not provide representational faithful reporting.

I believe the "Fall 07 change" was made based on preparers (with the support of the SEC's Chief Accountant) desire to reduce the need to make fair value measurements. However, without the use of subsequent fair value measurements as required in the June 30, 2007 ballot statement, events that change an entity's exposure to contingencies are not reported in a timely manner. Events cause changes that both increase and decrease an entity's exposure and a subsequent fair value measurement reports those changes.

An example I have used to explain this problem is recording an environmental remediation liability (this liability is a contingency; unlike an ARO). As explained in SOP 96-1, a remediation liability for a site often involves more than one Responsible Party (PRPs). SOP 96-1 provides that an entity's liability should be based on that entity's estimate of its allocable share of the joint and several remediation liability. One of the major activities during the remediation process is identifying PRPs and allocating the remediation liability among the PRPs. In many situations a Responsible Party will meet the Statement 5 criteria for recognizing a liability for a remediation liability before the identification and allocation activity is very far along. Therefore in recording a business combination, ~~with~~ a fair value

measurement can be made on a reasonable basis of the assumed liability at the recognition date. Under the "higher of" approach put in by the "Fall 07 Change" and even with the "Proposed Amendment" changes, the recognition of events such as identifying PRPs and allocating the liability among the PRPs would be prohibited.

2. Should limitations concerning Attorney responses to auditors (and maybe a reporting entity's accounting personnel and audit committee) be disclosed in the footnotes?

As articulated in paragraphs C7 and C8, it is not clear to me how entities are complying with Statement 5's recognition, measurement and disclosure requirements. In fact a recent SEC report to Congress raised concern about this compliance.

I doubt users understand the lack of communication with Attorneys or the very "non-conservative" recognition and measurement guidance in Statement 5. Under Statement 5 a loss (liability) related to a contingency (say a lawsuit) is not recognized until it is considered "probable" (many times using a 80%+ likelihood that an ultimate payout will occur). Statement 5's use of "probable" is much higher than the "more likely than not" (over 50% probability) that is used in the current Statement 141(R) for recognizing an asset

or liability for a noncontractual contingency. The current Statement 141(R) were ~~not~~ designed to provide more information to users.

Also Statement 5 provides that once a contingency is recognized (using the 80%+ probability), if a reasonable estimate of the liability is a range and no amount within the range is a better estimate than any other amount, the minimum amount in the range is used to measure the liability.

Statement 141(R)'s current requirement to initially recognize all contractual contingencies and "more than likely" noncontractual contingencies at fair value provides much more information to users. The guidance in Statement 5 is weighted too much for the preparers, auditors, and members of the legal profession rather than for the needs of the users.

3. Judgments under current Statement 141(R) are subjective; but are they more subjective than those under Statement 5?

With respect to recognition, I believe the judgment required under current Statement 141(R) is less subjective than under Statement 5. Under a "more likely than not" requirement the target is clear (over 50% probable). Under Statement 5 the target is not clear. It is over 50% but how much over (75%, 80%, 90%) is most clear. It probably also varies from situation to situation.

Also, how is determining the difference between 79% or 80% any less subjective than determining the difference between 50% and 51%?

With respect to the measurement judgment, I believe similar problems exist. Statement 5 is not clear what a "best estimate" is or what does it include. A fair value measure has a clear definition.

4. Is disclosure in the footnotes the answer?

As noted in paragraph C24 the Board believes the disclosures provided in practice under Statement 5 are not adequate. Users have made this point many times. However, the "Proposed Amendment" ignores the users in favor of the preparers, auditors and the legal profession by restricting disclosures to those required by Statement 5. This action seems to signal how the Board will retreat from their ED on Disclosures about Contingencies.

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As stated earlier, I do not agree with the "Proposed Amendment" or the "Fall 07 Change." The guidance in the Bulletin draft should be in Statement 141(R).

The problem with the ABA/AICPA Agreement and issues with respect to "privilege" are not under the scope of

activities of the FASB. However, I don't believe actions will be taken in these areas will be taken without the FASB pushing to improve financial reporting for the benefit of the users. The guidance on business combinations and the contingency disclosure project is where the FASB should force the issue for the benefit of the users.

sincerely,

Edward W. Trott