



**October 22, 2010**

*Submitted via email (director@fasb.org)*

Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
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***File Reference No. 1820-100, Exposure Draft (Topic 605):  
Revenue from Contracts with Customers (ED/2010/6)***

Dear FASB Technical Director:

Bristol-Myers Squibb Company (“BMS”) appreciates the opportunity to comment on the Financial Standards Board’s exposure draft of a proposed accounting standard on Revenue from Contracts with Customers, issued June 24, 2010. We support the FASB’s efforts on simplification and international convergence with respect to revenue recognition.

BMS is a global biopharmaceutical company, consisting of global pharmaceutical/biotechnology and international consumer medicines businesses, whose mission is to discover, develop and deliver innovative medicines that help patients prevail over serious diseases. We license, manufacture, market, distribute and sell products on a global basis. In 2009, we reported revenues of \$19 billion and total assets of \$31 billion.

In general, we agree with the conceptual framework of revenue recognition upon satisfaction of performance obligations. However, there is no specific guidance as to the applicability of any contingent or optional performance obligations that are subject to significant risk. In addition, we believe that pricing allocation to variable consideration should be based on a best estimate rather than a weighted average approach.

Collaborative research and development arrangements in Pharmaceutical related life sciences are a necessary economic and business reality as the risk of failure is extreme and the cost associated with any endeavor is significant. Clinical development, regulatory approval and ultimate commercial success are significantly at risk, creating the need for collaborative licensing and cost sharing. The parties to the collaboration generally do legally take the positions of licensor and licensee, however are generally not vendor/customer relationships. In arrangements for which it is not the business model of the parties to provide R&D services, the economic terms support cost sharing during development and profit sharing during commercialization, rather than product or service sales. We suggest that such collaborative R&D arrangements be specifically scoped out of the proposed standard as not meeting the definition of a customer relationship.

Other comments on specific questions follow:

**Recognition of revenue (paragraphs 8–33)**

**Question 1: Paragraphs 12–19 propose a principle (price interdependence) to help an entity determine whether to:**

- (a) combine two or more contracts and account for them as a single contract;**
- (b) segment a single contract and account for it as two or more contracts; and**
- (c) account for a contract modification as a separate contract or as part of the original contract.**

**Do you agree with that principle? If not, what principle would you recommend, and why, for determining whether**

- (a) to combine or segment contracts and**
- (b) to account for a contract modification as a separate contract?**

We agree that the guidance provided in determining the necessity to combine or segment contracts is appropriate, specifically the consideration for pricing independence, and that modifications should only be segmented if the requirements for a contract are met and pricing is independent of the original terms. However, it is not clear when to use the segmenting guidance versus the guidance for identifying performance obligations to assess independent pricing. In addition, it should be made clear that reassessment of performance obligation settlements should only be necessary if the modification is considered significant to the overall arrangement.

**Question 2: The Boards propose that an entity should identify the performance obligations to be accounted for separately on the basis of whether the promised good or service is distinct. Paragraph 23 proposes a principle for determining when a good or service is distinct. Do you agree with that principle? If not, what principle would you specify for identifying separate performance obligations and why?**

We agree that distinct function or utility is necessary to identify a performance obligation for goods and services related arrangements. However, when a good or service is not sold separately, the principles around determining whether a good or service is distinct is confusing particularly with respect to distinct profit margins, as anytime a good or service uses pooled resources it may not be considered distinct, despite the ability to allocate costs. In addition, the requirement to determine a distinct profit margin would seem onerous, and would be inherent in the development of a reasonable price estimate. We believe identification criteria would be better defined as having distinct risks rather than a profit margin as a more reasonable consideration.

Given licenses are in scope for this proposed standard, it is not clear how performance obligations would be identified in long-term projects that involve participation by both parties and realization is at risk, subject to significant contingencies. For example, under a licensing arrangement to share R&D risk and commercialize future products if successful, would prescription drug approval by the FDA preclude the need to consider any future contingent performance obligations (manufacturing/selling & marketing) to be satisfied post approval given the risk could be considered optional, contingent or in any event undeterminable at contract inception?

**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 agree that satisfaction of performance obligations upon transfer of control, as supported by legal title, physical possession and unconditional obligations to pay, applies well in arrangements to sell goods. It is not clear how the concepts would be applied to services. We suggest it be noted that control transfers as the service adds value to the customer. In addition, under long-term licenses which may have continuous transfers of control over long contract lives, it is not clear if that life should include a period of risk associated with significant contingent performance obligations or periods beyond the contract life if the customer continues to benefit.

#### **Measurement of revenue (paragraphs 34–53)**

**Question 4: The Boards propose that if the amount of consideration is variable, an entity should recognize revenue from satisfying a performance obligation only if the transaction price can be reasonably estimated. Paragraph 38 proposes criteria that an entity should meet to be able to reasonably estimate the transaction price.**

**Do you agree that an entity should recognize revenue on the basis of an estimated transaction price? If so, do you agree with the proposed criteria in paragraph 38? If not, what approach do you suggest for recognizing revenue when the transaction price is variable and why?**

We agree that revenue should be recognized on the basis of an estimated transaction price, and that the criteria including relevant experience is necessary to establish that estimate. However, we do not agree that the complexity of a probability weighted exercise is warranted, and that a reasonable best estimate assertion should be used. The criteria also includes a consideration for expected significant changes in circumstances which are not defined, and as such it is not clear if those events would need to include economic, contractual, competitive or legal events that are significant only to the contract, to the entity, or both. If a reasonable estimate cannot not be established and/or the value is associated with a contingent performance obligation, we suggest it be made clear that the contingent or optional portion of the transaction price should be excluded from the immediate revenue recognition consideration.

**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 do agree that in principle credit risk should be considered in determining the value of revenue, but only as it is generally considered in contract pricing negotiations, and not whether the entity should recognize revenue. The concept of collectability outside of contract pricing negotiation should be applied in assessing revenue to be recognized only to the extent that the customer is deemed to have control over such terms, such as in certain government arrangements. Credit considerations are used in determining whether a vendor is willing to conduct business with a customer and is reflected in contract pricing, and any subsequent events of default generally should not be part of the original pricing or revenue recognition consideration unless controlled by the customer or inherently linked to the original terms of the arrangement.

**Question 6: Paragraphs 44 and 45 propose that an entity should adjust the amount of promised consideration to reflect the time value of money if the contract includes a material financing component (whether explicit or implicit). Do you agree? If not, why?**

We believe that the practical application of this concept creates unnecessary complexity, particularly in multiple element arrangements, and that the concept of adjusting revenue for a financing component should be on an exception basis, and only when it is clear there is a financing component. The time value of money should only be applied to contracts with definitive long term payment terms.

**Question 7: Paragraph 50 proposes that an entity should allocate the transaction price to all separate performance obligations in a contract in proportion to the standalone selling price (estimated if necessary) of the good or service underlying each of those performance obligations. Do you agree? If not, when and why would that approach not be appropriate, and how should the transaction price be allocated in such cases?**

Agree in principle, although the necessity for future or ongoing reallocation of variable consideration to specific performance obligations as economic or operational changes occur can be difficult to apply and additional guidance regarding the necessary frequency of reapplication to non-significant changes should be provided.

#### **Contract costs (paragraphs 57–63)**

**Question 8: Paragraph 57 proposes that if costs incurred in fulfilling a contract do not give rise to an asset eligible for recognition in accordance with other standards (for example, Topic 330 or IAS 2; Topic 360 or IAS 16; and Topic 985 on software or IAS 38, Intangible Assets), an entity should recognize an asset only if those costs meet specified criteria.**

**Do you think that the proposed guidance on accounting for the costs of fulfilling a contract is operational and sufficient? If not, why?**

**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 suggest that further definition and examples of the types of costs that would be permitted to rationally capitalize be provided, as the current proposed guidance is unclear. Start up costs, development costs currently capitalized under IFRS (IAS 38), and most importantly costs associated with long-term projects where the likelihood of success is significantly at risk, would require careful consideration. The concept of feasibility, applicable to all proposed assets, would need to be inherently defined similarly to capitalized software. Otherwise the assets would generally be expected to have fairly short lives, which would question the benefits associated with this proposal.

In addition, it is not clear if onerous performance obligations would apply in arrangements having obligations contingent on future events that are optional or contingent and subject to significant risk. Any assets and corresponding liabilities created on future royalties based on new product launches or those subject to regulatory, legal or general risk of commercialization would be subject to feasibility standards not inherently determinable at contract inception. It is also unclear if onerous performance obligations would include those arrangements where a profit is not expected until some future event or upon a necessary level of volume which is not determinable at contract inception.

#### **Disclosure (paragraphs 69–83)**

**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?**

**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?**

**Question 12: Do you agree that an entity should disaggregate revenue into the categories that best depict how the amount, timing, and uncertainty of revenue and cash flows are affected by economic factors? If not, why?**

We would agree that disaggregated disclosure of revenue sources based on timing, uncertainty and cash flows would provide some benefit for readers to understand the nature of the business, although further guidance regarding information about the difficulties and risks associated with satisfying performance obligations seems a more reasonable approach. We would strongly disagree that projecting the timing of satisfying performance obligations is appropriate or operational, especially for long-term at risk projects. As noted earlier, the ability to establish the likelihood of development achievements, regulatory approval and ultimately commercial success for clinical projects are significantly at risk and as such the timing of satisfying performance obligations would be considered indeterminable.

#### **Effective date and transition (paragraphs 84 and 85)**

**Question 13: Do you agree that an entity should apply the proposed guidance retrospectively (that is, as if the entity had always applied the proposed guidance to all contracts in existence during any reporting periods presented)? If not, why?**

**Is there an alternative transition method that would preserve trend information about revenue but at a lower cost? If so, please explain the alternative and why you think it is better.**

We believe retroactive application will require unnecessary complexity, cost and effort, without significant resulting impact in adopting this proposed standard. We would propose a prospective application to new contracts and any significantly modified existing arrangements.

#### **Implementation guidance (paragraphs IG1–IG96)**

**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?**

Responses to other questions address our implementation concerns.

**Question 15: The Boards propose that an entity should distinguish between the following types of product warranties:**

**(a) a warranty that provides a customer with coverage for latent defects in the product. This does not give rise to a performance obligation but requires an evaluation of whether the entity has satisfied its performance obligation to transfer the product specified in the contract.**

**(b) a warranty that provides a customer with coverage for faults that arise after the product is transferred to the customer. This gives rise to a performance obligation in addition to the performance obligation to transfer the product specified in the contract.**

**Do you agree with the proposed distinction between the types of product warranties? Do you agree with the proposed accounting for each type of product warranty? If not, how do you think an entity should account for product warranties and why?**

We agree that a warranty to provide a customer with coverage for latent defects is a criteria in evaluating the satisfaction of a performance obligation (shipping conforming goods), provided the value of product recalls (at the time of the event) and expiry (upon delivery) can be established based on available best estimates. We agree that a warranty to provide coverage to customers for defects that arise after the product is transferred should be a performance obligation, with deferral of revenue until satisfied, however it is not clear if satisfaction can be achieved through transferring such risk through insurance with third parties and customers as beneficiaries.

**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?**

We do not agree that exclusivity is a critical criteria to be used in determining the pattern of revenue in connection with a long-term license arrangement. It is the licensor's ongoing participation and continuing benefit derived from its intellectual property, for which the licensee has acquired rights, that should be the key determinant of the licensor's recognition period. In addition, it is not clear if continuous satisfaction of performance obligations would include periods associated with onerous or contingent/optional performance obligations subject to significant risk or if possible extensions or renewals should be included in this consideration.

Further clarity should be provided regarding the concept of material rights acquired in arrangements with upfront non refundable fees. We agree that fair value options should not constitute material rights, however while the period of recognition should be commensurate with the period of benefit associated with the material right, there is no indication that such rights would include any contingent or optional performance obligations to be satisfied by the licensor. We believe such contingent or optional performance obligations should specifically be excluded from such consideration.

## Consequential amendments

**Question 17: The Boards propose that in accounting for the gain or loss on the sale of some nonfinancial assets (for example, intangible assets and property, plant, and equipment), an entity should apply the recognition and measurement principles of the proposed revenue model. Do you agree? If not, why?**

We would agree that proposed guidance as amended for the above noted considerations should be used in determining the recognition criteria for sales of intellectual property. Most importantly, significant on-going involvement and continuing benefit should be considered in determining if performance obligations inherent in the transfer have been satisfied.

## Nonpublic entities

**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?**

We would not support any different accounting for private, public or not-for-profit organizations. There is strength in consistency of application, especially as a principle based standard.

We appreciate the opportunity to comment on this exposure draft and would be pleased to discuss this further at your convenience. I look forward to participating in continuing deliberations and roundtable sessions.

Sincerely,

*David Levi*

David Levi  
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CC: Joseph Caldarella  
Vice President and Corporate Controller