November 7, 2005

Mr. Robert H. Herz, Chairman
Ms. Suzanne Bielstein, Director – Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
Norwalk, Connecticut 06856-5116

File Reference Nos. 1204-001 and 1205-001

Dear Sir / Madame,

We would like to take this opportunity to comment on the Proposed Statements, “Business Combinations - a replacement of FASB Statement No. 141” and “Consolidated Financial Statements, Including Accounting and Reporting of Non-controlling Interests in Subsidiaries- a replacement of ARB No.51.”

SUMMARY

We do not support the proposed standards and believe the existing accounting model and conceptual framework can continue to accommodate existing practice, which serves these areas well given a significant constraint – the inability to reliably determine fair value on a continuous basis. The Board continues to move forward converting the mixed attribute accounting model of historical cost and fair value toward a model more heavily based on fair value. While there is a need in certain areas for fair value, the Board should not overlook the benefits of historical cost including, objectivity, reliability, understandability, decision usefulness in predicting future cash flows, and simplicity. Fair value in accounting today is, for the most part, an "overlay" on a historical cost framework because information, technology and systems do not exist (and will not exist for the foreseeable future) to update fair values in a reliably measurable, objective and verifiable manner on a continuous basis at the transaction level.

We are concerned that accounting standards are becoming overly technical with too many disclosures that are not useful and understood only by the most technical of accountants. We believe the proposed changes are about “improving” the model and not about improving financial reporting of useful information. Financial reporting is not a science, it is what the standards established through due process define it as. Financial reporting needs to be understandable by general business users; it also needs to be informative, practical (considering the cost/benefit), and internally consistent, and not overly theoretical. The following represent the main points of our view regarding the proposed statements, with more detail contained later in our letter:

• Parent Company Model – The parent entity theory has long been the accepted and understood model for reporting financial results and financial position and there is no overwhelming reason to
change nor is there constituency seeking this change. This has been consistently communicated during the at least three iterations of this proposal over the years.

• Acquisition Costs – The cost of making an acquisition investment (with the objective of achieving a return on that investment) should include all the costs directly associated with making that investment, including restructuring of the business envisioned in the acquisition plan and professional and other costs necessary to acquire the company. Current standards provide for this by capitalizing these costs to the investment and this seems the most appropriate treatment of these types of costs.

• Intangible Assets – FAS 141 contemplated that intangible assets should be accounted for apart from goodwill if they “arise from contractual-legal rights or if they are separable”. We believe EITF 02-17 set new GAAP (without full due process) by requiring separate capitalization of customer relationships as a result of doing business with purchase orders. The Board did not communicate this intention in the development of FAS 141. This “asset” is extremely subjective and definitely not reliably measurable and should not be accounted for as a separate asset. Generally, we believe any asset that is not separable from the business should be subsumed into goodwill. We can accept that long-term legal rights may have an identifiable separate value for the duration of those rights at the acquisition date, but renewals should not be assumed where the right to renew must be earned based on future performance. When we question valuation experts about their ability to separate and reliably estimate the value of these “soft” assets, they agree there is a high degree of subjectivity and that different experts will likely get different answers but they must value these assets pursuant to the requirements of FAS 141. These “assets” cannot be observed in market transactions and we see no value in this accounting exercise. As you are aware, the current accounting model has a major flaw as internally created intangible assets are not capitalized but acquired intangibles are. Given the inability to reliably measure the fair value of intangibles, we agree the best solution today is to live with this inconsistency. Therefore, we believe the establishment of intangible assets apart from goodwill should be strictly limited to identifiable assets that are separable and the value of multi-year contracts based on their legal term (without the assumption of renewals).

• Contingent Liabilities – Contingent consideration and contingent liabilities should not be “fair valued” as these amounts are indeterminable and accounting for the resolution of these contingencies would be better understood by users of financial information at the time they are ultimately resolved. We see nothing inherently wrong with the current accounting model for these items. If a buyer and seller cannot agree on the fair value for a business, why should we pretend “fair value” can be determined at the acquisition date and record that amount on the balance sheet? Further, we believe the FAS 5 model of accounting for contingent liabilities should be retained.

BUSINESS COMBINATIONS

Definition of a Business
The proposed definition of what constitutes a business is too broad. While we understand that the Board was trying to broaden the definition of a business to include development stage businesses, the proposed definition goes too far. Purchasing a portfolio of securities would seem to meet the definition of a business since the investments will provide dividends to the investors. In fact, most groups of assets would meet this broadened definition of a business. The definition of a business in EITF 98-3 has worked well and should be retained. The Board can achieve its objective by modifying EITF 98-3 to include development stage businesses without expanding the definition of a business as proposed.
Restructuring and Acquisition-Related Costs
The proposal to exclude acquisition-related costs from the fair value of consideration given is inconsistent with GAAP for similar transactions. Debt issuance costs, including the costs of specialists for example, are capitalized. Legal, accounting, valuation, due diligence and other costs for specialized services are an integral part of the acquisition investment and must be incurred to consummate the transaction. Specialists offer expertise that may not be available internally and assist the acquiring company in determining a fair price for the acquiree. In addition, acquisition-related costs are necessary to bring the post-acquisition entity to its intended operation and benefit future periods, similar to costs related to the installation of machinery that are capitalized.

Two factors that drive most acquisitions are synergies and the opportunity for integration. Similar to acquisition-related costs, restructuring costs are integral to the future of the post-acquisition entity. The costs are more readily determinable at acquisition than contingent legal liabilities, for example, because they are contained in contracts (terminated leases or contracts) or can be reasonably estimated (employee severance costs). We fail to see why restructuring costs would be excluded from the fair value of liabilities acquired while the proposal requires contingent liabilities that are highly uncertain to be recorded.

In paragraph B94 of the Proposed Statement, the Board concluded that acquisition-related costs are not part of the fair value consideration because the buyer pays a third party and the contention is made that the asset is consumed as the services are rendered. We do not agree that these costs should be excluded simply because they are paid to a third party. These costs are necessary and must be incurred by any prudent buyer to complete the acquisition and are a part of the investment necessary to realize an appropriate return on investment in the future. We struggle to understand what accounting controversy this proposed change alleviates in practice.

As an alternative, although we believe less preferable, would be to define these costs as intangible assets and require amortization over an arbitrary life of fifteen years to provide recognition that these amounts contribute to the success of an acquisition over several periods.

Research and Development Costs
Paragraph A27 of the Proposed Statement requires that identifiable intangible and tangible assets acquired in a business combination that are used in research and development activities be measured at fair value at the acquisition date. We agree that research and development activities have value but we disagree with the inconsistent treatment of the costs between those acquired in a business combination and those generated internally. The proposed change will severely reduce comparability between companies. A company that realizes a high percentage of growth through acquisitions will have significant assets recorded on the balance sheet for research and development costs. Conversely, a company that focuses on organic growth will expense their research and development costs. This will confuse users and analysts and make earnings between companies harder to compare. We believe the Board should reconsider overall research and development accounting at the same time, including FAS 2, rather than on a piecemeal basis.

Fair Value Approach
The Board continues to push forward with its fair value agenda and it is the impetus behind many of the changes in this proposal. As such we believe it is appropriate to comment on the expansion of the use of fair value in the accounting model. The Board should not loose sight of the usefulness of historical cost in the accounting model as it is understandable, reliable, verifiable, representational faithful of the performance of the business, and it has predictive value in estimating future cash flows. In addition, simplicity is an attribute that should not be overlooked. In operational areas of our business, we try to make complex situations "simple"; simplicity is much easier for people to understand and to execute upon. While we recognize the need to have appraisals done on certain assets in an acquisition, we do not believe anyone has developed the ability to continuously determine the fair value of all the assets and liabilities of the business.
at acquisition or thereafter. Valuation experts believe they can calculate a value for most anything. However, they will readily admit that when there is no history or market for exchanges between third parties, the values can and do vary widely. Anytime a cash flow technique is used to carve out the value of an asset, such as customer intangibles, the number is very “soft.” Even after these values are established, the tools and systems are not available to readily update these values on a continuous basis at the transaction level. The Board continues to incorporate the fair value concept into more and more standards without relevant markets to objectively determine these values and without good tools for businesses to use. We believe this leads to accounting that is not representationally faithful of the economic performance of the business, nor reliable and verifiable. Pursuant to Concept Statement No. 1, the primary focus of financial reporting is to provide information about earnings and its components that are useful in making business and economic decisions, not to measure directly the value of a business. CON 1 goes on to state that although financial reporting provides basic information to aid investors, creditors and others, these users of the information do their own evaluating, estimating, predicting, and assessing. We urge the Board to refrain from expanding the use of fair value in accounting beyond current practice. For these reasons, we oppose the use of fair value accounting for inseparable customer relationships, contingent consideration, and contingent liabilities in this Proposed Statement. Fair value in accounting today is, for the most part, an “overlay” on a historical cost framework because information, technology and systems do not exist (and will not exist for the foreseeable future) to update fair value in a reliable, objective and verifiable manner on a continuous basis at the transaction level. Without an active market or observable arms-length, negotiated transactions, “fair value” is highly judgmental and subjective.

**Intangible Assets- Customer Relationships**

When FAS 141 was issued it represented a compromise from requiring amortization of goodwill to an impairment review method. The original proposal was to reduce the amortization period of goodwill, for example, from 40 years to 10 years. Since the issuance of FAS 141, the definition of an identifiable intangible asset has been interpreted by EITF 02-17 beyond any expressed original intentions of FAS 141 such that very significant amounts of intangible value are being classified as identifiable intangibles, particularly customer relationships, and amortized. The net result is the write-off of the acquisition investment over a very short period of time, in some cases close to the originally proposed 10-year amortization period, which numerous constituents opposed on the basis that a successful acquisition appreciates in value.

We agree with the criterion in paragraph A28 of the Proposed Statement concerning intangible assets, namely that intangible assets arising from contractual and other legal rights and those that are separable should be measured at fair value as of the acquisition date. However, we disagree with the proposed treatment of customer relationships where business is done merely using purchase orders or other similar arrangements. Prospective sales in years following the acquisition do not represent a contractual or legal right at the acquisition date simply because purchase orders have been received from customers in the past.

Paragraph A32 of the Proposed Statement states that potential contracts the acquiree is negotiating with prospective new customers would not represent identifiable intangible assets at the acquisition date. We do not see the distinction between future potential contracts with existing customers and potential contracts with new customers. The past history of sales with an existing customer is no guarantee of future orders. Most customer relationships are renewable only if the business continues to be competitive on price, quality, performance and all other terms and conditions in order to continue receiving orders from their customers. As a result, there is no separable inherent value associated with potential future sales as there is for existing outstanding orders. Future orders not yet received are not separable from the business because other resources from the business must be employed to secure the orders in the first place, such as the acquired company’s sales force. Future orders are similar to the value of work forces, which are not recognized as separate identifiable intangible assets. Existing customer relationships and potential purchase orders cannot be sold separately from other assets of the business. Any sales and marketing executive will explain that a
customer relationship is only as good as the last order successfully filled to the customer’s satisfaction. Valuation experts can only value these relationships using a cash flow model and tend to attribute all the future profits to these relationships that are not accounted for elsewhere in their models. While we recognize there is more value in having a customer versus not having one, the value allocated to a customer is being significantly overstated. Most of these cash flows should be attributed to goodwill, which is the benefit of all the facets of the business working together (technology, manufacturing operations, distribution, sales and marketing, etc.) to deliver products and solutions to current and future customers, permitting the business to continually evolve, maintain and create new value with changing market dynamics.

Further, the valuation of identifiable intangible assets is extremely subjective; this calls into question whether the values calculated are reasonably estimable and reliable. After battling with taxpayers in the courts for years over the value and life of intangible assets, the Internal Revenue Service recognized the futility of determining the value of intangibles and that is why all intangibles (both identifiable and goodwill) are amortized over an arbitrary statutory life of 15 years in the United States for tax purposes. FAS 141 proliferates this debate in the accounting arena wasting time and money on valuation experts over something that provides little, if any, information value to investors trying to project future cash flows and value the company. Anyone can perform a discounted cash flow analysis of expected cash flows from future sales to create an asset, but this does not make the amount calculated objective, reliable and verifiable.

Based on the discussion above, we believe only customer relationships represented by existing non-cancelable, long-term legal contracts be assigned fair value for their legal term. Prospective future sales from existing customers should not be assigned a separate fair value, but rather, should be subsumed into goodwill and be subject to impairment testing.

**Contingent Consideration**

The Proposed Statement would require contingent consideration to be measured and recognized at fair value at the acquisition date. This is a significant departure from current practice in which most companies employ the FAS 5 model in paragraph 40 (b) of FAS 141, which requires recognition if the contingency is probable and reasonably estimable. Contingent consideration results from a compromise between buyer and seller, the outcome of which is not known at the acquisition date. We believe the uncertainty of the amount that will ultimately be settled calls into question the feasibility of determining an accurate fair value. Applying a fair value methodology to contingent consideration would involve probabilities that would result in an expected value that is neither the best estimate nor economic reality, as the ultimate amount settled would almost certainly be different. A fair value approach will always result in some amount above zero being recognized even if the chances of payment are remote. In fact, these mechanisms are put into place precisely because buyer and seller cannot agree on fair value.

We believe that requiring fair value measurement will not result in a reliable measure because it results in an average amount, not the most likely “price at which an asset or liability could be exchanged in a current transaction between knowledgeable, unrelated willing parties.” Nor do we believe that the information resulting from a fair value measurement would be useful due to the many assumptions that must be made to determine and then update this “fair value” from the closing of the acquisition until its ultimate settlement.

Also, we foresee significant earnings fluctuations each period after the acquisition date as the liability is revalued. We agree that the consideration given at the acquisition date should reflect the obligation for contingent payments but we disagree that the acquisition represents the triggering event. In our view, the resolution of the contingency is the triggering event that results in the proper measurement of the liability. Financial statement users understand current accounting practice in this area and it should be retained.
Contingent Liabilities
We have similar concerns for contingent liabilities assumed in an acquisition expressed above for contingent consideration in the areas of valuation and volatility. Contingent liabilities should be accounted for on a consistent basis, whether obtained in an acquisition or otherwise. Certain contingent liabilities, such as legal claims, can take several years to resolve, are highly subjective in nature, and cannot be reasonably estimated based on historical experience in most cases. We do not believe legal and other contingent liabilities are appropriate for the fair value approach because of their highly uncertain nature. While a fair value approach may be more appropriate for situations where there is a high volume of these claims that can be aggregated and predicted on an actuarial basis, individual liabilities are unpredictable and require judgment and analysis of the facts and circumstances. The current model accommodates both scenarios and should be retained. We believe financial statements users would be confused by the different treatment of contingent legal liabilities when acquired through acquisition compared to contingent legal liabilities incurred through other means. We believe the current approach in FAS 141 and FAS 5 should continue to be followed by recording the probable amount expected to ultimately be paid considering all facts and circumstances, defenses and whether a cause of action will ever be brought. Probable should be the determining factor of whether a liability is recorded for financial accounting purposes, as well as in the measurement of the liability. We opposed the use of fair value for asset retirement obligations in the Exposure Draft of FAS 143 and oppose its use here for contingent liabilities, as well as in the FASB Invitation to Comment – “Selected Issues Relating to Assets and Liabilities with Uncertainties.”

Inventory
We believe finished goods and work-in-process inventory should be assigned fair value less cost to complete and a normal profit margin for manufacture, distribution and sale at the acquisition date; basically, the current cost to manufacture. FAS 141 and the Proposed Standard overstate the value of inventory and understate the earnings and the earnings potential of the ongoing business on the first turn of inventory after acquisition as only a distribution profit is recognized, for example, for finished goods. This results in a distorted representation of the financial performance of the business shortly after acquisition, especially for a manufacturing company. In most situations, the buyer does not pay fair value less the cost to dispose for inventory acquired in an acquisition. The buyer of bulk inventory would receive a discount for purchasing all the inventory of the business. The buyer bears all the manufacturing and distribution risks associated with the inventory including obsolescence, disposal, post-sale warranty and product liability claims and should recognize the full, normal profit margin associated with the inventory.

Accounts Receivable
Monetary assets expected to be liquidated within one year are normally stated at their face amount and we believe this is also appropriate in acquisition accounting, less an allowance for uncollectibility. This approach approximates fair value and provides practical accounting that blends into the basic accounting system the same as post-acquisition receivables. Keep this basic area simple; keep it non-technical.

Income Taxes
We believe the purchase price should be allocated first to tax assets that become realizable by the acquired company or acquirer as a result of the acquisition. This value would clearly be considered in the acquisition pricing agreed to by both parties and it is impossible to determine the amount allocated to the acquisition price paid versus tax asset realized during the negotiation process.

Adjustments of Prior Periods
Recent standards encourage restatement of prior periods. We believe adjustments of prior periods are confusing to users and should be limited to rare events. Acquisition related adjustments of prior periods should not be made unless material at a significant threshold (e.g. 10%) to the consolidated entity. These adjustments should be treated similar to other accounting estimates, for example, accruals, that are “trued
up” in subsequent periods. Disclosure of the impact of refinements of the acquisition accounting process should suffice in nearly all situations.

NON-CONTROLLING INTERESTS

The Exposure Draft supports the use of an Economic Unit model, which we do not believe results in improvements in relevant and reliable financial reporting. We support continued use of the Parent Company model because it is well understood and satisfies the needs of parent company shareholders, analysts, and creditors. We fail to see how the Economic Unit model represents an improvement over the existing model.

Users of Financial Information

We are not aware of any user group calling for more disclosure of non-controlling interests within financial statements nor are we aware of major practical issues in the application of the Parent Company model. In our opinion, the changes called for in accounting, presentation and disclosure will only result in increased confusion to the various user groups without enhancing the usefulness of financial statements. The income statement, balance sheet, retained earnings and comprehensive income statement disclosures for controlling and non-controlling interests for multiple periods would be extremely confusing and unwieldy such that the important information about financial performance will be lost in the minutia. We do not understand what is “broken” with the model that the Board is attempting to “fix.” The workload internally for impacted companies in implementing the Statement would increase and it may be necessary to reeducate users, without requisite benefit.

In our opinion, the equity section of the consolidated entity should represent the interests and rights held by shareowners of the parent. We recommend that the Board revisit the Conceptual Framework and consider adding an element for non-controlling interests once the required research is conducted. Non-controlling interests in a subsidiary do not represent equity in the consolidated entity and should not be recorded in such a manner. The Board has selected equity as the element where non-controlling interests should be recorded simply because it does not meet the definition of a liability in the conceptual framework. However, we believe equity is the wrong element, illustrated by the fact that non-controlling interests bear no risk in the fluctuation of a Parent Company’s stock price nor do they receive dividends paid by the Parent Company.

We fail to see how the proposed presentation and disclosures would be any more useful to non-controlling interests in a subsidiary of a consolidated entity. Assuming that a large company might have more than one subsidiary with non-controlling interests, most information will be of an aggregated nature that would not be meaningful to a minority shareholder of an individual subsidiary. The most useful information for a non-controlling shareholder is available elsewhere. A minority shareholder would have SEC filings and annual report information at their disposal for publicly-traded subsidiaries. Privately held subsidiaries would, in most cases, also be required to have an audit and issue financial statements that would be available to the minority shareholder. This information is more specific with respect to the performance and financial condition of the subsidiary and exponentially more useful.

Analysts and controlling interests focus on earnings, earnings per share, and operating cash flow generated by the Parent Company when valuing the Company and making investment decisions. The Board’s decision to only require Parent Company earnings per share on the income statement would seem to support this. We have yet to note any questions from analysts regarding minority interests in quarterly web conferences. Their focus is properly on the performance of the Parent Company. Majority shareholders are interested in their rights to the underlying entity’s net assets and earnings. The proposed presentation and disclosure changes do not fill any information gaps the Board may perceive for any potential user.
**Step Acquisitions**
The Proposed Statement would allow gains to be recognized on step acquisitions where a company increases their interest in another company from non-controlling to controlling. We do not believe a company should be able to record a gain on the remeasurement to fair value of an existing investment because such gain has not been realized. The proposed treatment is inconsistent with existing GAAP rules governing gain recognition.

The Exposure Draft would have the acquiring company account for additional purchases of shares of an already-controlled entity as an equity transaction instead of charging or crediting goodwill. The resulting assets and liabilities would not reflect the fair value of the additional interest acquired. The amounts recorded to equity would remain in perpetuity even though the subsidiary in which the amounts relate could have been sold subsequent to the acquisition. We do not believe purchases of additional shares of an already-controlled entity should be accounted for as if it was a treasury stock transaction. Unlike treasury stock purchases, the purchase of additional shares of a subsidiary are not transactions with owners of the parent company and therefore, should not be reported in their equity. More guidance surrounding situations where a multiple arrangement acquisition could be deemed a single arrangement acquisition is also needed to avoid manipulation.

**Step Dispositions**
Similar to our comments concerning step acquisitions, we do not believe a reduction of a majority owner’s share of a subsidiary that does not result in loss of control to be accounted for as a treasury stock transaction. Additional guidance is needed to avoid misinterpretation and to prevent gaming where a company might sell a subsidiary in multiple steps to achieve desired accounting results.

**Goodwill**
We are concerned with the Exposure Draft allocating a portion of goodwill to the non-controlling interest at the time of acquisition. An annual goodwill impairment review is required by FAS 142 for each reporting unit of a business. If an acquired entity is included within a larger reporting unit, it becomes difficult to arrive at an appropriate allocation of any subsequent impairment charge to the non-controlling interest because the non-controlling interest only has a partial share in a component of the larger reporting unit and the component may or may not have contributed to the impairment. An acquired entity’s operations could have also been allocated to multiple reporting units, further complicating the impairment allocation to non-controlling interests. The Exposure Draft proposes a pro-rata allocation of impairment charges between controlling and non-controlling interests but we believe this approach might not reflect economic reality and could misstate earnings for controlling and non-controlling interests.

We appreciate the opportunity to respond to the Board’s Proposed Statements and trust that our comments will be seriously considered in future Board deliberations on these issues.

Sincerely,

Richard J. Schlacter
Vice President & Chief Accounting Officer

cc: Walter J. Galvin
Senior Executive Vice President & Chief Financial Officer