Deloitte.

Deloitte & Touche LLP
Ten Westport Road
PO Box 820
Wilton, CT 06897-0820

Tel: +1 203 761 3000
Fax: +1 203 834 2200
www.deloitte.com

July 8, 2008

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. 6

File Reference No. 1500-100R
Re: Request for Additional Comments — Not-for-Profit Organizations: Mergers and Acquisitions

Dear Mr. Golden:

Deloitte & Touche LLP is pleased to comment on the FASB's request for additional comments on a potential revision to the October 2006 proposed Statement of Financial Accounting Standards, *Not-for-Profit Organizations: Mergers and Acquisitions*.

As we indicated in our comment letter dated January 29, 2007, certain mergers and acquisitions of not-for-profit organizations (NPOs) are specifically structured to be true "mergers of equals." Therefore, we generally agree with the Board's decision to distinguish a merger of two or more NPOs from an acquisition of an entity by an NPO. However, we recommend that the Board include additional guidance on how to apply the tentative criterion for distinguishing a merger from an acquisition. In addition, because of similarities between the Board's proposed definition of a merger and that of a joint venture (which is outside of the scope of the proposed Statement), we recommend that the Board also include guidance to assist in distinguishing a merger from a joint venture. The basis for our views and responses to each of the questions posed by the Board are included as an appendix to this letter.

Deloitte & Touche LLP appreciates the opportunity to comment on the potential revision to the proposed Statement. If you have any questions concerning our comments, please contact Stuart Moss at (203) 761-3042.

Yours truly,

Deloitte & Touche LLP

cc: Michael Fritz

Deloitte & Touche LLP
Appendix
Responses to Notice for Recipients

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

No. See our response to Question 2.

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 generally support the Board's objective to distinguish mergers between two or more NPOs from acquisitions of an entity by an NPO. In addition, we support the Board's efforts to provide a principles-based approach to defining an NPO merger. However, we have concerns about the ability of preparers and auditors to apply this principle without additional guidance. We do not believe that the "ceding of control" criterion and related definition of control will, by themselves, always provide a sufficient basis for distinguishing a merger from an acquisition of an entity or the formation of a joint venture. We recommend that the final statement include either or both of the following: (1) additional factors to consider when identifying whether a transaction is a merger, an acquisition, or the formation of a joint venture; or (2) examples of the application of the definition of a merger. Such factors might include (1) the missions of the combining NPOs (i.e., whether they are common, similar, or dissimilar); (2) the exchange of consideration, if any, between the NPOs, (3) the composition of the resulting entity's governing body; (4) the composition of the resulting entity's management; and (5) any prior affiliation of the combining entities (e.g., brother/sister NPOs).

As stated in our earlier comment letter, we believe that fresh-start accounting would produce the most relevant financial information for NPO mergers. However, we recognize that the Board hosted a roundtable and working group meetings with interested constituents and that at these meetings, numerous constituents indicated that they did not believe that the benefits of applying either the acquisition method or fresh-start method to NPO mergers outweighed the cost of application. We understand that the Board's decision that a carry-over method of accounting should be required for NPO mergers was based partly on the feedback it received at these meetings; however, we believe the Board should continue to seek and evaluate constituent input on this matter. If the cost of applying either the acquisition method or the fresh-start method to NPO mergers conclusively outweighs the benefits, then we would support the use of a carry-over method.

In addition, we believe that the Board should clarify how the factors in paragraph 11 of the proposed Statement for determining the acquirer in an acquisition interact with the tentative criterion for determining a merger. For example, under the proposed approach, would an NPO be required to first analyze the factors in paragraph 11 of the proposed Statement to determine whether there is an acquirer, and then, if no acquirer is identified, evaluate the definition of a merger (or vice versa)? As illustrated in the example below, lack of guidance in this area could lead to NPOs reaching different conclusions for identical transactions.

Example
Assume that NPO A and NPO B merge their organizations into a NewCo and (1) NPO A is larger than NPO B, (2) NewCo retains the legal form of NPO A but a newly formed governing body is

created, and (3) NPO A initiated the transaction. If the organizations first analyze the factors in paragraph 11 of the proposed Statement, NPO A may appear to be the acquirer and the acquisition method of accounting would be applied. Alternatively, if the organizations first analyze the definition of a merger, they may conclude that the combination should be accounted for as a merger.

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?

No. We believe that without the additional guidance described in our response to Question 2, preparers and auditors will have difficulty distinguishing an NPO merger from the formation of a joint venture, as well as determining the difference between "ceding control" of an organization and obtaining "shared control" of a newly formed organization. For example, assume that NPO A and NPO B each contribute a wholly owned subsidiary to a NewCo, and each organization shares control of NewCo. The proposed Statement is unclear about whether this transaction should be accounted for as a merger or a formation of a joint venture. Paragraph 12 of the proposed Statement appears to imply that an acquirer should be identified and consequently the acquisition method of accounting should be applied. However, we are not certain that the Board intended this outcome. Accordingly, we recommend that the final statement clarify how to distinguish between a merger and the formation of a joint venture.

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?

See our responses to Questions 2 and 3.

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? Some respondents asked the Board to consider whether retention of so-called opt-out clauses by the parties to a combination would indicate that a merger or acquisition had not occurred. The staff has been told that such contingent provisions sometimes are included in acquisitions of physician practices by not-for-profit organizations. However, presumably, such provisions could occur in mergers or acquisitions of other private practices, including acquisitions by business entities. The staff thinks that the specific terms of each contractual arrangement need to be assessed to determine whether the definition of a merger or acquisition has been met and would not expect a unique interpretation for mergers or acquisitions by not-for-profit organizations.

We agree with the staff's view that entities would need to evaluate each individual opt-out clause on the basis of all relevant facts and circumstances to determine whether a merger or acquisition has occurred. Because the nature of opt-out clauses can vary significantly from transaction to transaction, we believe that the Board should provide additional factors to consider in assessing whether a party has ceded control.

*****