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Mr. Russell G. Golden
Chairman Emerging Issue Task Force
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5446

Re: *EITF Issue No. 09-2, Research and Development Assets Acquired in an Asset Acquisition*

Dear Mr. Golden:

We are writing to provide you with comments regarding EITF Issue No. 09-2, *Research and Development Assets Acquired in an Asset Acquisition.* We consider the matters addressed by this EITF Issue to be extremely important and appreciate the opportunity to provide input.

Forest Laboratories is a S&P 500 pharmaceutical company with revenues of approximately $4 billion and a long track record of building partnerships and identifying, developing and delivering pharmaceutical products that make a difference in people's lives. In order to provide innovative and effective medicines Forest typically licenses promising new development projects from innovative companies worldwide at every stage of development. We then perform further R&D on licensed products in order to obtain regulatory approval.

We believe that there are significant differences between In Process Research and Development (IPR&D) acquired in a business combination and those acquired in an asset acquisition as it relates to the pharmaceutical industry. In an SFAS 141R, *Business Combinations* transaction, there is typically a fixed payment and if there are contingencies they are generally tied to more measurable metrics such as earnings or operating profits. This usually is not the case in determining the costs and values of contingent consideration in a license agreement, (asset purchase) as typically structured in the pharmaceutical industry. There is a major distinction between the outright acquisition of development projects and license arrangements, which revolves around the transference of risk and the economic benefits to be potentially earned.

In a business acquisition, typically all of the risk and earnings potential is transferred to the acquirer. However, because of the significant cost and risk associated with pharmaceutical product development programs, license arrangements are a common tool that is utilized to manage the risks of clinical development, regulatory review and commercialization and share the economic rewards. Typically, contingent consideration is earned by the licensor as the licensee advances the product through the various stages of development and specific contractual milestones are achieved. If the project fails at some stage of development, which is not uncommon, the project is cancelled with no further consideration exchanged. Upon approval and commercialization, in addition to a running royalty, additional consideration may be exchanged upon attaining contractually agreed commercial thresholds.

The question of "how an entity should account for contingent consideration related to the acquisition of tangible and intangible research and development assets in an asset acquisition" as mentioned in Issue 3 at the June 18, 2009 EITF meeting, highlights our concern. An asset acquisition is more likely to have contingent consideration included in it's structure, as the specific performance of the product under development is measured and quantified. A major component of our business model has included consideration for products that have not been approved and have no guarantee of providing future economic benefits. Our asset acquisitions are typically structured to include contingent consideration for the acquired IPR&D to further compensate the seller as the product moves through its development phases and the probability of commercialization increases. If we were to change from current accounting for R&D as stated in SFAS 2, *Accounting for Research and Development Costs*, to an SFAS 141R, *Business Combinations* method, we would have to consider how to account for the various types of contingent future payments. Examples of these payments include development and product approval milestones, sales or performance milestones, milestones for downstream compounds or future development and royalty payments. It is unclear whether these payments would need to be assessed as contingent consideration and, if so, how we would value them, considering their highly uncertain probabilities.

The following is an example of a typical arrangement:

> EXAMPLE: Upon signing a license agreement for rights to a product that is still under development and does not have marketing approval, a significant up-front payment is made to the licensor. The licensee also agrees to make additional milestone payments upon achieving important clinical development thresholds (e.g. successful Phase I, II, or III studies) and FDA marketing approval for the product and additionally, upon achieving certain sales levels. During the term of commercialization a royalty is normally paid to the licensor. If upon signing the deal the commercial viability is unknown, the licensee could not assign a reasonable value to the three different types of contingent consideration in this example.

If the EITF agrees that these contingent payments should not be capitalized then compatibility with SFAS 141R will not be achieved. In light of this we ask you to revisit the issue as to whether it is appropriate to capitalize any of these payments relating to IPR&D, including the initial up-front payments.

We believe our current method of expensing IPR&D acquired in an asset acquisition presents our investors and other users of our financial statements with a fair, accurate and unambiguous portrayal of company activity versus the proposed capitalization method would as it is highly subjective and dependant upon estimates of activities and probabilities that can span 15 to 20 years. If changed, there would be considerable investor confusion, both upon adoption and in assessing on-going performance.

Once again we appreciate this opportunity to comment. If requested, we would be pleased to discuss our observations with you.

Sincerely,

Y. David Feit
Senior Director of Corporate Accounting
Forest Laboratories, Inc.