



September 30, 2010

Via Email to [director@fasb.org](mailto:director@fasb.org)

FASB Technical Director  
401 Merritt 7, P.O. Box 5116  
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Subject: File Reference Number 1820-100

Dear Financial Accounting Standards Board,

Thank you for providing us with the opportunity to comment on the Proposed ASU "*Revenue from Contracts with Customers*."

XenoPort, Inc. is a publicly held biopharmaceutical company focused on developing a portfolio of internally discovered product candidates that utilize the body's natural nutrient transport mechanisms to improve the therapeutic benefits of existing drugs.

We generally agree with the principles in the proposed guidance. However as a biopharmaceutical company, we have several concerns related to the specific questions posed by the Board, as follows:

Question 2:

We believe further clarification is needed for the proposed principle of determining when a good or service is distinct. For example, we found it difficult to determine whether the goods or service associated with a milestone payment for the completion of a clinical trial or future sales target in a collaborative agreement between a biotechnology entity and a pharmaceutical company would be classified as distinct based on the proposed principles. We believe it would be helpful if the Board developed more complex examples (perhaps as an extension to existing example 10) in the proposed guidance.

Question 3:

As it relates to our own industry, we do not believe the proposed guidance in paragraphs 25-31 (and the related implementation guidance) are sufficient for determining when control of a promised good or service has been transferred to a customer. For example, the proposed guidance would appear to defer revenue recognition of any milestones or other back-end payments until the successful completion of the activities keyed to the receipt of these milestones. Under current guidance there are various methods that can be employed depending upon the facts and circumstances of the specific case and this can for example lead to revenue recognition over the performance period (thereby matching costs with revenues). In paragraphs 32 and 33, the Board discuss continuous transfer of goods and services and it is possible this guidance is intended to apply to the performance of a clinical trial (or the provision of research and development services), but it is unclear whether this is the intention of the

proposed guidance or not. We also believe further implementation guidance surrounding the methods of recognizing revenue to depict the continuous transfer of goods or services to the customer in paragraph 33 are needed. For example, it is unclear which inputs that do not depict the transfer of goods or services to the customer the entity would need to exclude and the tracking of these inputs may be challenging. In addition, if the license right and research and development services are accounted as a single performance obligation for a biotechnology entity, it is unclear what the basis of revenue recognition would be under the output method.

Question 4:

We agree that an entity should recognize revenue on the basis of an estimated transaction price if the amount of consideration is variable. However, we believe the proposed criteria creates potentially too high of a hurdle for many biotechnology entities who typically do not have a significant transaction history for their often innovative drug products. This concept appears to differ from the core principle of this proposed guidance.

Question 5:

We agree that an entity should recognize revenue at the amount that the entity expects to receive based on an amount that can be reasonably estimated. We disagree with the proposal in paragraph 43 that the effects of changes in the assessment of credit risk associated with the right to consideration shall be recognized income or expense guidance. Instead, we believe subsequent adjustments should be recorded as adjustments to revenue.

Question 6:

We agree 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. However, we believe additional implementation guidance may be useful in specifying the length of time to consider when determining whether a financing component is material.

Question 7:

We agree 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. However, we believe additional implementation guidance and examples on suitable estimation methods would be necessary, specifically as it relates to suitable estimation methods for biotechnology entities. In particular, we believe it could be challenging for biotechnology companies to provide sufficient evidence to support an entity's estimation of standalone selling prices and would be interested in at least detailed example that cites the type of evidence a biotechnology company may use to generate evidence that its various components are appropriately valued.

Question 13:

We do not agree that an entity should apply the proposed guidance retrospectively as we believe this will create a significant cost and resource burden on preparers. We believe the proposed guidance should be applied prospectively while providing a one-time non-GAAP disclosure exemption option for those entities who may want to include disclosures to enhance comparability.

We would also be interested to know whether ASC Topic 808 Collaborative Arrangements would be superseded, amended or incorporated in some way into this proposal.

Question 14:

We believe that the current examples are clear and exhibit the Board's intent, however, we believe additional implementation guidance is needed to make the proposals operational. We believe the Board should work to provide additional, comprehensive, illustrations of how to account for complex contractual elements with multiple deliverable scenarios that resemble actual executed contracts within each of those industries that are likely to be most heavily impacted by this proposed guidance (e.g. biotechnology, construction and software etc.). Specific to the biotechnology industry, the example should address the determination of what constitutes distinct goods or services, periods over which certain contract elements can be recognized and how transaction price determinations can be made where an entity has little or no history.

Question 15:

We do not believe the distinction between the types of product warranties is necessary. We believe establishing distinctions between the types of product warranties dilutes the central intention of the new revenue recognition standard, that of moving to a more framework-based set of revenue principles.

Question 16:

We agree that the pattern of revenue recognition should depend on whether the license is exclusive. However, we believe additional implementation guidance is needed for when an entity grants a customer the exclusive right to use its intellectual property for substantially all of the property's economic life and how this interplays with other factors of interest such as the role of joint development and asset management committees in collaborative agreements.

Please feel free to contact us with any questions related to this comment letter.

Yours truly,

/s/ Martyn Webster  
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