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July 7, 2008

Mr. Russell G. Golden
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

By e-mail: director@fasb.org

Re: Proposed Revision to the October 2006 Proposed Statement, *Not-for-Profit Organizations: Mergers and Acquisitions* (issued 10/09/06)
File Reference No. 1500-100R

Dear Mr. Golden:

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned release. The NYSSCPA thanks the FASB for the opportunity to comment.

The NYSSCPA's Not-for-Profit Organizations and Financial Accounting Standards Committees deliberated the proposed revision and drafted the attached comments. If you would like additional discussion with us, please contact Derek A. Flanagan, chair of the Not-for-Profit Organizations Committee, at 201-933-3780, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

Sharon Sabba Fierstein

Sharon Sabba Fierstein
President

Attachment

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COMMENTS ON PROPOSED REVISION TO THE OCTOBER 2006 PROPOSED STATEMENT, *NOT-FOR-PROFIT ORGANIZATIONS: MERGERS AND ACQUISITIONS* (ISSUED 10/09/06)

File Reference No. 1500-100R

July 7, 2008

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New York State Society of
Certified Public Accountants

Proposed Revision to the October 2006 Proposed Statement, *Not-for-Profit Organizations: Mergers and Acquisitions* (issued 10/09/06)

General Comments

The New York State Society of Certified Public Accountants welcomes the opportunity to comment on, and supports the FASB's proposed statement *Not-for-Profit Organizations: Mergers and Acquisitions* (issued 10/09/06) (the "Statement") that would enhance financial reporting of mergers and acquisitions of not-for-profit organizations.

Specific Comments

You have requested that constituents provide comments on five questions pertaining to the Request for Comments. Each question is reprinted below in italics. [*Our response follows the questions*.]

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

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 a transaction noted in paragraph 6 (a) and 6 (b)? If not, why, and how might it be improved?*

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 definition or make it clear that the creation of a joint venture is beyond the scope of the proposal?*

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?*

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?...*

Response –

[*This response is in the form of a single answer to all five questions, due to the inter-related nature of the questions.*]

The proposed definition of a merger is appropriate and useful in distinguishing between what is to be accounted for as a merger and what is to be accounted for as an acquisition. We agree that, as stated in Paragraph 5, mergers of not-for-profit organizations occur with greater frequency than commercial entities; however, they are not commonplace occurrences. We believe that this should be clearly conveyed in the Statement.

The definition of a merger, together with the definition of control, would be workable in practice with a reasonable degree of consistency. In the case of the acquisition of one entity by another via gift (Paragraph 6 (a)), the "acquiring entity" is not ceding control. We concur with the thought expressed in Paragraph 10 that detailed guidance and lists of criteria should be avoided: however, we do believe that it would be helpful to provide implementation guidance such as examples of transactions that clearly meet the definitions, as well as examples of transactions that do not meet the definitions. It should be made clear that the facts and circumstances of each case must be evaluated carefully, and that the substance of the transaction should prevail over the form.

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. We believe that, as defined in Paragraph 4(i) of the proposed Statement, such a transaction results in the transferor retaining an "*indirect* ability to determine the direction of management and policies…" In such a situation, we believe it clear that control has not been "ceded."

With regard to the concerns expressed in Paragraph 10, we believe that the ability to "opt-out" of the combined activity (Paragraph 10(b)) clearly demonstrates that control has not been ceded; therefore, the transaction would not meet the definition of a merger. Instead, such a scenario would likely be classified as a joint venture. Although joint ventures are not specifically addressed in this proposed Statement, it seems appropriate to include at least one example of a fact pattern that would result in a joint venture, thereby helping to clarify the contrast between combinations that would be termed mergers or acquisitions. We also think it helpful for the Statement to include examples of both mergers and acquisitions.

The situation described in Paragraph 10(a) is more challenging. It would be helpful to include some broad examples of criteria to consider in the implementation guidance, such as the composition of the senior management of the "new" entity.