

June 18, 2009

Technical Director
Financial Accounting Standards Board
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By e-mail: director@fasb.org

**Re: Comments on FASB Discussion Paper
Preliminary Views on Revenue Recognition in Contracts with Customers
(File Reference No. 1660-100)**

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 Financial Accounting Standards and International Accounting & Auditing Committees deliberated the discussion paper and drafted the attached comments. If you would like additional discussion with us, please contact Mark Mycio, Chair of the Financial Accounting Standards Committee, at (212) 372-1421, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David J. Moynihan
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON FASB DISCUSSION PAPER

**PRELIMINARY VIEWS ON REVENUE RECOGNITION IN CONTRACTS
WITH CUSTOMERS**

June 18, 2009

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The New York State Society of Certified Public Accountants

Comments on FASB Discussion Paper

Preliminary Views on Revenue Recognition in Contracts with Customers

General Comments

We have reviewed the Discussion Paper issued by the Financial Accounting Standards Board, *Preliminary Views on Revenue Recognition in Contracts with Customers*, a joint project of the Financial Accounting Standards Board and the International Accounting Standards Board (the Boards) and appreciate the opportunity to provide our comments. In responding to each of the Board's questions below, we have repeated each question posed, followed by our response.

We are generally in agreement with the direction taken by the Boards regarding revenue recognition in contracts with customers. However, as reflected in our responses below, we have the following concerns:

1. The exceptions identified in the background materials to the standard should be included within the standard.
2. The Boards should consider whether the proposed guidance addresses issues unique to investment companies, such as mutual and hedge funds.
3. The proposed definition of a contract in the Discussion Paper conforms to the legal definition in Black's Law Dictionary, but does not conform to the definition of a contract in IAS 32 which is more broad-based.
4. The standard should provide clarity when an asset/performance obligation involves the provision of services.
5. The Boards should consider the impact of change orders on revenue recognition, particularly unapproved change orders, which arise when additional work needed to be performed has been defined, but the adjustment to the contract will be negotiated later.
6. Consideration of the initial time value of money in longer term contracts should be made.
7. Segregating the costs to obtain a contract as a performance obligation for purposes of allocation in revenue recognition may be confusing and difficult to apply in practice.
8. The Boards should consider whether the criterion for using seller estimated stand-alone selling prices is sufficiently rigorous to prevent such estimation from being used as a vehicle for financial statement manipulation or misinformation.

Specific Comments

Question 1:

Do you agree with the Boards' proposal to base a single revenue recognition principle on changes in an entity's contract asset or contract liability? Why or why not? If not, how would you address the inconsistency in existing standards that arises from having different revenue recognition principles?

Response:

We agree with the Boards' proposal to base a single revenue recognition principle on changes in an entity's contracts. However, as the background materials refer to certain exceptions, it is preferable to include these and any other exceptions in the standard itself and clearly delineate the basis why any limited exceptions are merited.

Question 2:

Are there any types of contracts for which the Boards' proposed principle would not provide decision-useful information? Please provide examples and explain why. What alternative principle do you think is more useful in those examples?

Response:

The exceptions identified in the Discussion Paper's *Summary of Preliminary Views* (S-11) are unlikely to be appropriately applied unless the specific exceptions are identified within the standard. Further, parameters should be set for creating exceptions within the standards although the granting of exceptions within the standards should be limited.

It is unclear whether the revenue recognition standard addresses issues unique to investment companies (mutual funds and hedge funds). The Boards should consider clarifying this issue within the standard and possibly including examples of how the principle would or would not apply to investment companies.

Question 3:

Do you agree with the Boards' definition of a contract? Why or why not? Please provide examples of jurisdictions or circumstances in which it would be difficult to apply that definition.

Response:

We do not agree with the Boards' definition of a contract. We believe that the definition of a contract should be revised to make it more broad based and should address economic consequences. In particular, the Boards should address inconsistencies in the definitions of a contract (as stated below) as it is used in today's business environment. As CPAs, we are concerned that the proposed accounting guidance contains a definition of a contract that might be intended to meet a legal definitional test in a court of law.

Specifically, the Boards' definition of a contract in paragraph 2.11: "A contract is an agreement between two or more parties that creates enforceable obligations" differs from the more explicit and broad based definition used in IAS 32 in paragraph 13: "... an

agreement between two or more parties that has clear economic consequences that the parties have little, if any, discretion to avoid, usually because the agreement is enforceable in law. Contracts ...may take a variety of forms and need not be in writing...”

These definitions, in turn, differ from Black’s Law Dictionary: “An agreement between two parties creating obligations that are enforceable or otherwise recognizable at law. (8th edition; page 341).” These three disparate definitions illustrate the need for clarity in an accounting context. The definition must be broad based so that preparers of financial statements will not be put in the position of making legal determinations and users of financial statements will better understand what is accounted for as a contract.

Question 4:

Do you think the Boards’ proposed definition of a performance obligation would help entities to identify consistently the deliverables in (or components of) a contract? Why or why not? If not, please provide examples of circumstances in which applying the proposed definition would inappropriately identify or omit deliverables in (or components of) the contract.

Response:

We do not believe that the Board’s proposed definition of a performance obligation would help entities to identify consistently the deliverables in a contract. We believe that clarity is needed to provide better or enhanced guidance for an asset involving a service. As stated, “...a service is not typically thought of as an asset...” Perhaps the Boards should consider adding more specific examples within the standard.

The Boards should also consider that there may be differences in understanding between a seller and a buyer related to implicit terms as these do not necessarily form part of a contract. There must be a means to identify implicit terms in a contract and their relation to the allocation of revenue streams. For example, consider the sale of an "i-Phone" by a telephone company with the expectation that it may provide multiple services to customer/users and the implications as to how the telephone company should recognize revenue for the multiple services.

Question 5:

Do you agree that an entity should separate the performance obligations in a contract on the basis of when the entity transfers the promised assets to the customer? Why or why not? If not, what principle would you specify for separating performance obligations?

Response:

We agree with this approach as the transfer of an asset (considered in the context of the asset/liability approach suggested by the standard) would provide a proper basis for separating performance obligations.

Question 6:

Do you think that an entity’s obligation to accept a returned good and refund the customer’s consideration is a performance obligation? Why or why not?

Response:

We agree with the notion that giving the customer the right to return goods and then refunding the customer's consideration is a deliverable/promise just like any other deliverable in a contract. The Boards should consider including examples in the standard of this rights impact on revenue recognition.

Question 7:

Do you think that sales incentives (for example, discounts on future sales, customer loyalty points, and "free" goods and services) give rise to performance obligations if they are provided in a contract with a customer? Why or why not?

Response:

We agree that sales incentives give rise to performance obligations if they are provided for in a customer contract. Our reasoning is similar to the reasoning described in our response to Question 6 above.

Question 8:

Do you agree that an entity transfers an asset to a customer (and satisfies a performance obligation) when the customer controls the promised good or when the customer receives the promised service? Why or why not? If not, please suggest an alternative for determining when a promised good or service is transferred.

Response:

We agree that when the customer controls the promised good or when the customer receives the promised service, the liability undertaken in a contract by the seller is settled or the performance obligation is satisfied and the seller has transferred an asset.

Question 9:

The Boards propose that an entity should recognize revenue only when a performance obligation is satisfied. Are there contracts for which that proposal would not provide decision-useful information? If so, please provide examples.

Response:

We agree with the Boards' proposal that an entity should recognize revenue only when a performance obligation is satisfied. However, for the exceptions already identified in the Discussion Paper, decision useful information would obviously not be provided and those exceptions are merited. Also refer to our response to Question 2 regarding Investment Companies (mutual funds and hedge funds).

Question 10:

In the Boards' proposed model, performance obligations are measured initially at the original transaction price. Subsequently, the measurement of a performance obligation is updated only if it is deemed onerous.

Question 10(a): Do you agree that performance obligations should be measured initially at the transaction price? Why or why not?

Response 10(a):

We agree that performance obligations should be measured initially at the transaction price because it is an objective measure. However, the guidance should also consider the time value of money for periods in excess of at least a year.

Question 10(b): Do you agree that a performance obligation should be deemed onerous and re-measured to the entity's expected cost of satisfying the performance obligation if that cost exceeds the carrying amount of the performance obligation? Why or why not?

Response 10(b):

We agree that the performance obligation should be deemed onerous and re-measured to the entity's expected cost of satisfying the performance obligation if that cost exceeds the carrying amount of the performance obligation. However, the Discussion Paper guidance does not directly address change orders, which are not uncommon in the construction industry. Subsequent measurement should be required even if not deemed onerous for change orders. While change orders might be addressed indirectly by expected costs, we believe the guidance should explicitly address change orders.

Question 10(c): Do you think that there are some performance obligations for which the proposed measurement approach would not provide decision-useful information at each financial statement date? Why or why not? If so, what characteristic of the obligations makes that approach unsuitable? Please provide examples.

Response 10(c):

We believe that, in the case of the construction industry and in other similar circumstances, change orders are common performance obligations. Performance obligations arising out of change orders would have to be subsequently re-measured even if not deemed onerous in order to provide decision useful information at each financial statement date.

Question 10(d): Do you think that some performance obligations in a revenue recognition standard should be subject to another measurement approach? Why or why not? If so, please provide examples and describe the measurement approach you would use.

Response 10(d):

Subject to the exceptions identified in the background materials of the standard and in case of investment companies (mutual funds and hedge funds), we do not believe that some performance obligations in a revenue recognition standard should be subject to another measurement approach.

Question 11:

The Boards propose that an entity should allocate the transaction price at contract inception to the performance obligations. Therefore, any amounts that an entity charges customers to recover any costs of obtaining the contract (for example, selling costs) are included in the initial measurement of the performance obligations. The Boards propose

that an entity should recognize those costs as expenses unless they qualify for recognition as an asset in accordance with other standards.

Question 11(a): Do you agree that any amounts an entity charges a customer to recover the costs of obtaining the contract should be included in the initial measurement of an entity's performance obligations? Why or why not?

Response 11(a):

We do not agree that amounts an entity charges a customer to recover the costs of obtaining a contract should be included in the initial measurement of an entity's performance obligations. We believe that segregating these costs in the initial measurement of a performance obligation may be confusing and difficult to apply in practice. Therefore, we suggest that this concept not be considered in measuring revenue recognition under the approach proposed in this Discussion Paper.

Question 11(b): In what cases would recognizing contract origination costs as expenses as they are incurred not provide decision-useful information about an entity's financial position and financial performance? Please provide examples and explain why.

Response 11(b):

We agree with the Boards that an entity should recognize costs as expenses unless they qualify as an asset in accordance with other standards.

Question 12:

Do you agree that the transaction price should be allocated to the performance obligations on the basis of the entity's standalone selling prices of the goods or services underlying those performance obligations? Why or why not? If not, on what basis would you allocate the transaction price?

Response:

We agree that the transaction price should be allocated to the performance obligation on the basis of the entity's standalone selling prices for the goods or services, as it is an objective measure and is verifiable.

Question 13:

Do you agree that if an entity does not sell a good or service separately, it should estimate the standalone selling price of that good or service for purposes of allocating the transaction price? Why or why not? When, if ever, should the use of estimates be constrained?

Response:

We agree with the concept, but with certain caveats. We are concerned that by allowing an entity to estimate the standalone selling prices under the proposed guidance it might give the entity an avenue to manipulate its revenue recognition. We suggest that estimation should be based on certain vendor-specific criteria that would limit the possibility to manipulate a transaction price.

The proposed EITF 08-01, in fact, allows a seller to estimate the standalone selling prices for purpose of allocating sales consideration. As such, we support using standalone estimated selling prices provided that the criterion used is sufficiently rigorous to prevent manipulation, for example, using competitor based selling prices or other historically supportable criteria. Examples should be provided in the standards to demonstrate the application of the principles.