

January 22, 2016

Ms. Susan M. Cospers  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

By e-mail: [director@fasb.org](mailto:director@fasb.org)

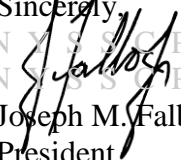
**Re: Proposed Accounting Standards Update—*Business Combinations (Topic 805):  
Clarifying the Definition of a Business***

**(File Reference No. 2015-330)**

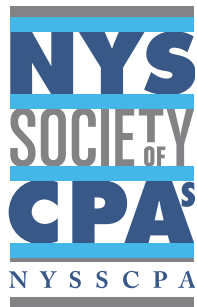
Dear Ms. Cospers:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs in public practice, business, government and education, welcomes the opportunity to comment on the above captioned exposure draft.

The NYSSCPA's Financial Accounting Standards Committee deliberated the proposed accounting standards update and prepared the attached comments. If you would like additional discussion with us, please contact Craig T. Goodman, Chair of the Financial Accounting Standards Committee at (212) 303-1058, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,  
  
Joseph M. Falbo, Jr.  
President

Attachment



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

**COMMENTS ON  
PROPOSED ACCOUNTING STANDARDS UPDATE—*BUSINESS COMBINATIONS*  
(*TOPIC 805*): *CLARIFYING THE DEFINITION OF A BUSINESS***

**(File Reference No. 2015-330)**

**January 22, 2016**

**Principal Drafters**

**Robert A. Dyson  
Craig T. Goodman  
Margaret A. Wood**

**NYSSCPA 2015 – 2016 Board of Directors**

Joseph M. Falbo, <i>President</i>	Scott M. Adair	Mitchell J. Mertz
F. Michael Zovistoski, <i>President-elect</i>	Jeffrey F. Allen	Michael E. Milisits
John Lauchert, <i>Secretary/Treasurer</i>	Edward L. Arcara	Jacqueline E. Miller
Christopher G. Cahill, <i>Vice President</i>	Paul E. Becht	Barbara L. Montour
Jennifer R. George, <i>Vice President</i>	Jack M. Carr	Iralma Pozo
Stephen T. Surace, <i>Vice President</i>	Anthony S. Chan	M. Jacob Renick
Michael M. Todres, <i>Vice President</i>	John F. Craven	Warren Ruppel
Joanne S. Barry, <i>ex officio</i>	Rosemarie Giovinazzo- Barnickel	Steven A. Stanek
	Elizabeth A. Haynie	Denise M. Stefano
	Elliot L. Hendler	Janeen F. Sutryk
	Jan C. Herringer	Tracy D. Tarsio
	Patricia A. Johnson	Mark Ulrich
	Jean G. Joseph	Beth Van Bladel
	Barbara A. Marino	Mark Weg
	Kevin Matz	David J. Wojnas
		David G. Young

**NYSSCPA 2015 – 2016 Accounting & Auditing Oversight Committee**

Jan C. Herringer, <i>Chair</i>	Lourdes Eyer	Rita M. Piazza
Robert M. Rollmann, <i>Vice Chair</i>	Craig T. Goodman	William M. Stocker III
Charles Abraham	Adam S. Lilling	Steven Wolpow
Matthew T. Clohessy	Renee Mikalopas-Cassidy	

**NYSSCPA 2015 – 2016 Financial Accounting Standards Committee**

Craig T. Goodman, <i>Chair</i>	Fred R. Goldstein	John J. McEnerney
Agwu Agwu	Abraham E. Haspel	Joseph Montero
Brian M. Aledort	Edward P. Ichart	Denise Moritz
Kenneth W. Bosin	Tamar Kadosh	Lingyun Ou
Christina Catalina	Min Jung Kang	Pedro D. Pile
J. Roger Donohue	Michael D. Kasperski	Richard M. Posen
Deepak K. Doshi	Angela V. Katehis	Renee Rampulla
Robert A. Dyson	Jeffrey A. Keene	Viktoriya Riggs
William Epstein	Kevin Lee	Robert M. Rollmann
Roseanne T. Farley	Martin Lee	Ahmed Shaik
Sharon Sabba Fierstein	Joseph A. Maffia	Daniel Shea
Christopher Gagliardi	Sean Martell	Mark Springer
Jo Ann Golden	Sean Matthews	Margaret A. Wood

**NYSSCPA Staff**

Ernest J. Markezin  
William R. Lalli

## New York State Society of Certified Public Accountants

### Comments on

### **Proposed Accounting Standards Update—*Business Combinations (Topic 805): Clarifying the Definition of a Business***

**(File Reference No. 2015-330)**

#### **General Comments**

We welcome the opportunity to respond to the Financial Accounting Standards Board's (FASB or the Board) invitation to comment on the Proposed Accounting Standards Update – *Business Combinations (Topic 805): Clarifying the Definition of a Business* (Proposed Update).

In general we agree with the Proposed Update and have limited our comments to those questions with which we had significant deliberations and additional thoughts for the FASB to consider. The areas of discussion included the effects on qualifying for business combination accounting of the following criteria: 1) the elimination of "market appreciation" and "lower costs" from output; 2) potential effect of the acquisition of a formerly outsourced service, function or process; and 3) acquisition of "temporary workforce" with knowledge and skills, such as researchers who are employed or contracted for a period that will last only until the completion of a project or phase.

#### **Responses to Selected Questions for Respondents**

**Question 2: Paragraphs 805-10-55-5A through 55-5D provide guidance on determining whether a set contains an input and a substantive process that together contribute to the ability to create outputs. Are the criteria appropriate, and would they be operable in practice? If not, why?**

**Response:** We agree with the criteria, except that we believe that paragraph 805-10-55-5D needs to be clarified. The workforce threshold seems to exclude start up entities that are developing single or several related products such as medical and bio-technology companies developing products while seeking government regulatory approval. They often employ the lead researcher and either direct or contract research employees. Questions could arise over whether the lead researcher or research employees would transfer with the entity to the acquirer and if so, would such transfer be permanent or transitory. In these cases, many researchers leave the employ of an entity when their phase of the project is complete. The FASB staff should provide some clarification on this issue or add a case using a biotech or research and development acquisition acquiring a temporary workforce that will stay until the completion of a project or completion of the phase it is working on, and how this workforce fits the criteria.

**Question 3: Would the proposed guidance be operable without the criteria in paragraphs 805-10-55-5A through 55-5D? Why or why not?**

**Response:** The criteria in paragraphs 805-10-55-5A through 55-5D are necessary to make the proposed guidance operable. However, we believe that the criteria should be enhanced or cases provided to clarify them. See our responses to Questions 2 and 5.

**Question 4: Paragraph 805-10-55-9 provides that the presence of more than an insignificant amount of goodwill may be an indicator that an acquired process is substantive. Do you think this indicator is appropriate and operable? Why or why not?**

**Response:** The presence of more than an insignificant amount of goodwill is more than an indicator that an acquired process is substantive. ASC 350-20-35-1 associates goodwill with a reporting unit for public companies. In addition, ASC 350-20-35-60 requires such association for non-public companies either at the reporting unit level or at the entity level, provided that the entity level meets the definition of a reporting unit. ASC 350-20-35-34 describes a reporting unit as “a business or a nonprofit activity for which discrete financial information is available and segment management, as that term is defined in paragraph 280-10-50-7, regularly reviews the operating results of that component.” Thus, a reporting unit would appear to meet the definition of a business and the existence of goodwill would provide a rebuttable presumption that the activity in question is a business.

**Question 5: Do you agree with the changes proposed to the definition of outputs? That is, do you agree that for purposes of evaluating whether a transferred set is a business, outputs should be focused on goods and services provided to customers? If not, why?**

**Response:** We believe that the definition of outputs should be expanded to include market appreciation of assets and lower costs, as these items are generally deemed as outputs for entities contemplating entering into a business combination.

We had extensive discussion on the effect of eliminating lower of cost as an output and whether or not with the replacement of “goods and services to customers” would affect the accounting treatment for the acquisition of a former service provider such as a call center business, an internal service department which provides substantially all of its output to the different components of its reporting entity, the manufacturer of a component part in a product currently sold by the acquirer, or one of manufacturers of private label merchandise by a retailer would qualify for business combination accounting.

Paragraph 805-10-55-8 indicates that “Determining whether a particular set of assets and activities is a business should be based on whether the integrated set is capable of being conducted and managed as a business by a participant. Thus, in evaluating whether a particular set is a business, it is not relevant whether a seller operated the set as a business or whether the acquirer intends to operate the set as a business.” Due to the amount of discussion and questions that arose we believe further clarification was needed. The clarification can be made to paragraphs 805-10-55-4c, 5-5D or the addition of a case example in which the facility, equipment and workforce are acquired but the only continuing customer is the acquirer. In the

manufacturing examples the product is still being sold either as a component in a product sold to customers or to customers by the retailer.

**Question 9: How much time would be necessary to adopt the amendments in this proposed Update? Should early adoption be permitted? Would the amount of time needed to apply the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities?**

**Response:** The amount of time to adopt this amendment would not be excessive. However, the effective date should be the end of the reporting entity's annual reporting date.

**Question 11: Do the examples in paragraphs 805-10-55-51 through 55-88 clearly illustrate the application of the proposed guidance? Why or why not?**

**Response:** The examples in paragraphs 805-10-55-51 through 55-88 require some clarification. See our responses to question 2 and 5 above. In addition we believe the following cases need additional clarification:

- Case B, it is unclear if the acquirer is purchasing a legal entity from Biotech or just assets.
- Case H does not consider whether REIT (the buyer) is responsible for managing the property. The management of the property would include collecting rents, paying for security, insurance and other costs, as well as cleaning the common areas. Case H notes that the seller's personnel perform these services and that REIT intends to assume the function. This implies that REIT is responsible for those functions, but is using the seller's personnel in a contractual arrangement in place of REIT's employees, as permitted by proposed ASC 805-10-55-5D. The contractual arrangement would result in the same conclusions arrived at in Case I.

Consideration should be given to adding a case or clarifying an example in which the legal form is not acquired and the seller did not operate the assets, and workforce and processes are acquired as a business but qualifies for business combination treatment.