Bristol-Myers Squibb Company

Corporate Staff

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January 22, 2016

Technical Director
File Reference No. 2015-330
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Accounting Standards Update (ASU), *Business Combinations (Topic 805) Clarifying the Definition of a Business* (File Reference No. 2015-330).

Dear Technical Director:

Thank you for the opportunity to respond to the Exposure Draft Business Combinations (Topic 805), Clarifying the Definition of a Business (hereafter the "Proposed Guidance"). Bristol-Myers Squibb Company ("BMS") is a U.S. based Fortune 500 global specialty biopharmaceutical company with total revenues of $15.9 billion in 2014 and total assets of $33.7 billion as of December 31, 2014. In our experience, preparers, users and external auditors have been significantly challenged under Topic 805 in appropriately distinguishing between asset acquisitions and business combinations and related disposals of assets or divestitures of businesses. These challenges stem primarily from the following:

1. The current definition of a business being too broad,

2. The subjectivity involved in determining what constitutes a "substantive process",

3. The concept that *"A business need not include all of the inputs or processes that the seller used in operating that business if market participants are capable of acquiring the business and continuing to produce outputs, for example by integrating the business with their own inputs and processes,"* and

4. Vastly different views and application among prepares, users and external auditors on the interpretation of Topic 805 both within and across various industries.

As a result of these challenges, the current definition of a business is being applied too broadly in many instances. This application has a significant impact on financial statements as the Day 1 and Day 2 accounting implications of a transaction being classified as an acquisition of assets as compared to an acquisition of a business (likewise with the disposal of an asset as compared to the divesture of a business) are so significantly different.

Therefore, we highly support the FASB's objective of providing for greater consistency in applying the definition of a business, while concurrently reducing the cost and complexity of analyzing an acquired set under the definition. We specifically support the following with respect to the Proposed Guidance:

1. When substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets, the set is not considered a business.

2. Explicitly requiring that a business must, at a minimum, have an input and a substantive process that together contribute to the ability to create outputs and eliminating the need to evaluate whether a missing element can be replaced by market participants.

3. Eliminating ASC 805-10-55-7 as it related to development stage entities, and requiring that development stage entities have both an input and a substantive process that together contribute to the ability to create outputs if it includes an organized workforce that has the necessary skills, knowledge, or experience to perform an acquired process (or group of processes) that, when applied to another acquired input or inputs, is critical to the ability to develop or convert that acquired input or inputs into outputs.

Regardless of our overall support for the Proposed Guidance, we do believe the FASB should clarify certain aspects of the Proposed Guidance to realize more consistency and less complexity in its interpretation and application. We specifically would like to see the following in the revised Proposed Guidance:

1. Increased clarity around what is meant by an Organized Workforce including what is meant by a process that is *"critical to the ability to continuing producing outputs."* The current definition in the Proposed Guidance merely focuses on what is not considered a critical process without providing examples of what actually is considered a critical process.

2. Providing additional guidance on the definition of what *"substantially all"* means in paragraph 805-10-55-9A to avoid diversity in practice when evaluating this criteria.

3. Explicit guidance that contractual arrangements, like contract manufacturing arrangements, contract research arrangements, leases and supply arrangements are inputs and not substantive processes.

4. Further simplicity around the grouping of assets described in paragraph 805-10-55-9C along with more than one example on how to appropriately apply this guidance.

The following are our responses to the twelve questions posed in the Exposure Draft.

<u>Question 1:</u> Do you agree that to be a business a set of assets and activities must include, at a minimum, an input and a substantive process that together contribute to the ability to create outputs? If not, what other alternatives would you suggest?

We agree that to be a business, a set of assets and activities must include, at a minimum, an input and a substantive process that together contribute to the ability to create outputs. We agree with the FASB that the existence of a substantive process or substantive processes clearly distinguishes an acquisition of a business from an acquisition of an asset. Without these minimum requirements, the definition of a business would be too broad and potentially could include many transactions that we believe are economically asset acquisitions or disposals including licensing arrangements with certain transitional supply or service components.

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?

We agree with the FASB's rationale that when outputs are not present, an entity will need to evaluate the acquired set further to determine whether the acquired set has a substantive process.

However, we believe that further clarity is necessary around what constitutes an organized workforce that is performing a substantive process. Paragraph 805-10-55-5A used the word "critical" twice, but does not define what "critical" means. Further, that section states that *"a process (or group of processes) is not critical if, for example, it is considered ancillary or minor in the context of all the processes required to create outputs"* but the Proposed Guidance does not explain what ancillary or minor actually means.

Additionally, we note that the definition of inputs in paragraph 805-10-554A includes "employees" as an example of an input, but an organized workforce is included in the definition of a process. Clarification around what the definition of a process is would be helpful in the revised Proposed Guidance.

Finally, paragraph 805-10-55-5D seems to indicate that certain contractual arrangements that take the place of employees (for example a property or asset management contract) and provide through a contractual arrangement the performance of an acquired process that is critical to the ability to create outputs when applied to another acquired input or inputs, could in fact be considered a substantive process. We normally view these contractual arrangements, like contract manufacturing arrangements, contract research arrangements, leases and supply arrangements as inputs and not substantive processes. It would be helpful for the FASB to provide additional guidance on how to determine whether a contractual arrangement represents an input or a process. The FASB recognizes, as noted in BC26 of the Proposed Guidance, that an entity will need to apply "significant judgment" in making this determination.

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

No, we do not believe that the Proposed Guidance would be operable in an appropriately consistent manner without the guidance in paragraphs 805-10-55-5A through 55-5D. Without this guidance, the definition of a business would be applied to broadly which would undermine the purpose of the Proposed Guidance. Further, without this guidance, there exists insufficient legacy guidance in U.S. GAAP about processes and this has directly contributed to Topic 805 being a challenging area to apply and interpret.

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?

No, we do not see the usefulness of this indicator in determining whether an acquired set represents a business or not. We believe this way because:

1) The concept of an *"insignificant amount of goodwill"* is an arbitrary $ amount and % of the excess of the purchase price paid over the net assets acquired and thus subject to judgment and interpretation.

2) It is not possible to quantitatively determine whether goodwill is present in a transaction without measuring the fair value of the net assets acquired.

3) Even if an excess of the purchase price paid over the net assets acquired is identified, it is not overtly clear whether that excess represents an overpayment that would be reported as goodwill in a business combination or an additional cost of the asset acquired in an acquisition of an asset.

4) We do not believe that this indicator is being currently utilized in practice.

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?

We generally agree with the proposed changes to the definition of outputs and the focus on goods and services provided to customers as aligning the definition with the description of outputs in the new revenue recognition standard (ASC 606 *Revenue from Contracts with Customers)* is appropriate. However, we suggest two enhancements to the definition of outputs for the FASB. First, provide examples of what *"other revenues"* consist of as many forms of revenue in the biotech industry come from research payments or milestone payments from collaborative partners and not from services provided to a customer. Second, consider the inconsistency of keeping *"lower costs"* in the definition of a business in paragraph 805-10-55-3A of the Proposed Guidance, but removing *"lower costs"* from the revised definition of outputs in the Proposed Guidance.

Question 6: Paragraphs 805-10-55-9A through 55-9C specify that if substantially all the fair value of the gross assets acquired is concentrated in a single identifiable asset, the set is not a business. Is it appropriate to include such a threshold, and would it be operable? If not, why?

Yes, we agree that an acquired set is not a business if substantially all the fair value of the gross assets acquired is concentrated in a single identifiable asset. We also agree that the inclusion of a threshold is a practical way to identify the acquisition of an asset and should reduce cost in applying the Proposed Guidance. As noted above, we ask that the FASB provide additional guidance to clarify what *"substantially all"* means to avoid diversity in practice and application of this threshold. Additionally, we believe it would be beneficial for the FASB to provide specific guidance on how acquired NOL's should be evaluated under Paragraphs 805-10-55-9A through 55-9C when an acquired set includes the acquisition of a legal entity.

Question 7: The threshold in paragraph 805-10-55-9A also applies to a group of similar identifiable assets. Would the identification of a group of similar identifiable assets be operable? If not, why?

We believe that, in the majority of instances, the identification of a group of similar identifiable assets would be operable based on the Proposed Guidance.

However, we believe that the meaning of a *"group of similar identifiable assets"* is not clear as the Proposed Guidance only gives examples of what should not be combined into a single asset or considered similar assets rather than what should be considered a single asset or should be combined into a single asset. For example, it is not clear whether an individual asset and its related deferred tax asset should be considered a similar asset. Another example, would be an in-place lease intangible that includes an intangible asset arising from favorable lease contract terms, which derives its value from the related leased assets. We also encourage the FASB to provide more than one example in the revised Proposed Guidance on how to appropriately apply this concept.

Question 8: Will the proposed guidance reduce the cost and complexity of applying the definition of a business? Why or why not?

Yes, we believe the Proposed Guidance will reduce the cost and complexity of applying the definition of a business in a number of circumstances, primarily those where single assets are acquired or disposed of without an assembled workforce. We specifically believe that the threshold related to a single asset or group of similar assets will provide a practical and logical approach of determining whether an acquired set is an asset or a business. We also believe that the requirement to have some organized workforce of the acquiree transfer to the acquirer that is critical to the ability to develop or convert outputs (no Day 1 outputs in the acquired set) or is critical to producing outputs (Day 1 outputs are included in the acquired set) in order to be classify the acquired set as a business will significantly reduce complexity in determining whether an acquired set is an asset or a business. While not all complexity and cost of applying the Proposed Guidance to the definition of a business will be reduced (due to the continued judgmental requirements to evaluate substantive processes and to identify whether a group of identifiable assets is similar), a substantial amount of the subjectivity that currently exists in Topic 805 should be alleviated.

<u>Question 9:</u> 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?

We believe that an effective date of one year after issuance of the final ASU and that date is at the beginning of the year so that all transactions are treated similarly would be appropriate. We also believe that early adoption should be permitted.

<u>Question 10</u>: Do you agree that the amendments in this proposed Update should be applied prospectively to any transaction that occurs on or after the date of adoption, and do you agree that there should be no explicit transition disclosure requirements? Why or why not?

Yes, we fully agree that this ASU should be applied prospectively to any transaction that occurs on or after the date of adoption. The intent of the ASU is to reduce cost and complexity of analyzing whether the definition of a business is met for a transaction and thus any type of retrospective application would be completely burdensome, confusing and unnecessary for preparers and users of financial statements.

Yes, we also fully agree that there should be no explicit transition disclosure requirements. This ASU is transaction-based and has no change in an entity's underlying accounting policy for previous acquisitions or disposals and divestitures of a business, assets or groups of assets.

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

As BMS is in the specialty biopharmaceutical industry, we will focus on <u>Case B: Acquisition of a Drug Candidate</u> and Case <u>E: Acquisition of Biotech</u> in the examples.

<u>Case B:</u>

- It would be helpful if the example elaborated as to why the conclusion was reached by Pharma Co. that there is no fair value associated with the clinical research contract and the clinical manufacturing organization contract in the acquired set.
- The example describes a legal entity purchased by Pharma Co. from Biotech that contains the rights to a Phase 3 compound being developed to treat diabetes (the IPR&D). It would be helpful to include what

rights Pharma Co. is actually obtaining from Biotech, including whether the rights to the IPR&D include rights to develop, manufacture and commercialize the asset.

Case E:

- It would be helpful in the example to know Pharma Co.'s plans for the acquired corporate headquarters, research lab and testing equipment of Target Biotech and the relative quantitative value of these assets when compared to the several pre-clinical compounds in IPR&D.
- It is not clear from the example why there is the presence of more than an insignificant amount of goodwill in this acquired set.

Question 12: Do the changes to the Master Glossary create any unintended consequences?

Please see our response to question # 5 with respect to the definition of outputs.

We greatly appreciate your consideration of our comments and invite you to contact us if you have any further questions regarding our above comments on the Proposed Guidance.

Sincerely,

Robert Owens
Vice President & Assistant Controller

Tim Kocses
Director, Corporate Technical Accounting