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October 1, 2004

Via E-Mail

Ms. Suzanne Q. Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
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Letter of Comment No. 29

File Reference: 1200-200 Date Received: $\frac{1200-200}{1000}$

Re:

Exposure Draft - Earnings per Share, an amendment of FASB Statement No. 128 (File Reference 1200-200)

Dear Ms. Bielstein:

We wish to express our views regarding the Exposure Draft of FASB's Proposed Statement, Earnings per Share, an amendment of FASB Statement No. 128 (the "Proposed Statement"). We apologize for delivery of this letter beyond the comment period, but appreciate your consideration of our concerns contained herein.

The purpose of this letter is to express our opposition to the proposed change to paragraph 29 of Statement 128 (contracts that may be settled in shares or cash), particularly its breadth of application, to require that (1) it should be assumed (replacing *presumed*) that the contract would be settled in shares and (2) the resulting potential common shares would be included in diluted EPS if the effect is dilutive.

While we understand the Board's reason for this change (to converge with international financial reporting standards), we are concerned that certain aspects of the Proposed Statement will be counterproductive to investors' and creditors' interests. We feel that the stated goal of convergence does not justify a change which (1) is conceptually inconsistent with other basic accounting principles and (2) results in accounting which does not reflect the economics of a transaction. Our concerns are illustrated below.

Under the proposed guidance, a company would have to include in diluted EPS calculations, shares that are issuable under contracts that require cash settlement in all cases except where the company is in default under such contracts. We understand the FASB Staff currently views such proposed standard to require the assumption of share settlement even if the likelihood of share settlement is deemed remote. This is inconsistent with the going concern assumptions in accounting standards which result in defaults not affecting the accounting absent evidence that a party is financially or otherwise unable to perform. If all financial statements were required to present the results that would occur upon a default, financial reports would be presented on a liquidation basis of accounting. Even if financial

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statements were not presented on a liquidation basis, if the possibility of default of debt was always assumed, all long term debt would be classified as current debt. Similarly, if the possibility of default was assumed for all major sales/service contracts, their values would always be discounted.

Although the Board is looking at the proposed guidance as a way to show "maximum possible dilution," such an approach will produce diluted EPS calculations that are inherently misleading. For example, if the possibility of share settlement is based on events deemed remote, *i.e.*, default by a financially stable company, and the company has the clear and publicly announced intention to settle in cash, and is in every realistically expected situation required to settle in cash, the inclusion of those shares in the diluted EPS calculation is inappropriate and creates further separation between GAAP and economics of the transaction.

Moreover, the Proposed Statement expressly contradicts the goals of the Securities and Exchange Commission that accounting principles should be principle-based and not rules-based. We agree with the SEC that accounting standards should be objectives-oriented and reflect economic reality. The Proposed Statement is, instead, a "bright-line" rule that does not always reflect economic reality.

For all of these reasons, we believe that the proposed change to paragraph 29 of Statement 128 is unnecessarily broad as proposed, and strongly urge the Board to consider one or more of the proposals specified below.

- (1) Modify the proposed guidance to make an exception to the inclusion in diluted EPS calculations, for a contractual share settlement obligation, if all of the following conditions are met: (a) absent a default under the contract, the company has no discretion to issue shares, but rather is required to settle in cash, (b) there is no situation where the company is required to issue shares other than if a default occurs and is continuing, (c) the company can demonstrate that the occurrence of a default is deemed remote and (d) the company is financially stable (e.g., has an investment grade credit rating).
- (2) Retain the rebuttable presumption in Statement 128, but raise the standard for rebutting the presumption such that a company must make a factual and/or legal showing that the possibility of issuing shares is deemed remote. One example of such a showing of remoteness would be where (a) shares are not issuable other than when a default has occurred, (b) the occurrence of a default is deemed remote because, as a practical matter, the only default to which the company is meaningfully exposed is bankruptcy and (c) due to the company's current financial position, bankruptcy itself is deemed remote.
- (3) Address this issue in an alternative approach through improved disclosure requirements regarding management's intention to settle the contract in cash.

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The proposals above suggest a few of the many ways available to the Board to narrow its proposed guidance to avoid the undesirable results specified above, while still creating an accounting structure that presents a consistent and realistic picture of the actual effects that potential issuances of shares have on a company's finances. However, if the Board does not agree to any of these proposals, the Board should, at a minimum, apply the provisions of the Proposed Statement prospectively, not retroactively, to contracts entered into on or after December 15, 2003, that contain provisions to settle in either cash or shares. Companies which have outstanding contracts with this feature, which entered into such contracts in reliance on current GAAP and which properly disclosed their mechanics in their notes to their financial statements, should not be penalized. Retroactive application will likely cause significant confusion among financial statement users who clearly understood the economic substance of these types of contracts, but find that such economic substance will no longer be reflected in the actual reported results, even though the contractual provisions still exist.

Finally, the word "restatement" in today's accounting environment, even if properly required by the Board through an amendment to an existing accounting standard, has a negative connotation and will result in confusion and frustration on the part of financial statement users. It simply makes more sense to allow company management and the financial markets to deal with this type of accounting standard amendment on a prospective basis with new financial instruments, rather than by requiring history to be restated.

Nabors Industries Ltd., a publicly traded company listed on the American Stock Exchange under the symbol "NBR," is the largest land drilling contractor in the world.

Respectfully,

Bruce P. Koch

Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)

cc: Mr. Jeffrey Johnson