



Deloitte & Touche LLP  
Ten Westport Road  
PO Box 820  
Wilton, CT 06897-0820

Tel: +1 203 761 3000  
Fax: +1 203 834 2200  
www.deloitte.com

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Ms. Suzanne Bielstein  
Director, Major Projects and Technical Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

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**File Reference No. 1200-200 - Earnings Per Share- an amendment of FASB Statement No. 128**

Dear Ms. Bielstein:

We are pleased to comment on the December 15, 2003, Exposure Draft of the proposed Statement of Financial Accounting Standards, *Earnings Per Share- an amendment of FASB Statement No. 128* (the "Exposure Draft" or the "proposed Statement").

As we have indicated in previous comment letters, we support global convergence around high quality accounting standards. As such, we commend the Board on their continued efforts to work closely with the International Accounting Standards Board and other national standard setters to develop high-quality standards that will be applied globally. In general, we support the issuance of the proposed Statement as a final standard, as we believe its provisions, except for those addressing mandatorily convertible securities, represent an improvement to existing standards. We do not support the retention of the provisions addressing mandatorily convertible securities in a final standard for the reasons discussed below. Our views on each of the major points in the proposed Statement follow.

***Year-to-Date Diluted EPS Calculation***

We agree with the revision requiring the use of the average market price of common stock for the year-to-date computations of incremental shares included in year-to-date diluted EPS. The frequency of reporting should not affect the year-to-date calculation of diluted EPS.

***Contracts that May be Settled in Stock or Cash***

We believe that the amendment accomplishes the Board's objectives of simplifying existing computational guidance and increasing the comparability of EPS data for domestic and international reporting entities. Accordingly, we support the revision to paragraph 29 of FASB Statement No. 128, *Earnings per Share*, which eliminates the provisions that allow an entity to rebut the presumption that contracts with settlement alternatives (may settle with cash or shares) will be settled with shares. We believe that this amendment is consistent with the objective of diluted EPS which is to give effect to all dilutive potential common shares. Accordingly, if a contract can be settled in stock it should be assumed that the contract would be settled in stock and the resulting potential common stock is properly included in diluted EPS.

However, we recommend modification of the transition provisions to moderate and simplify the

retroactive treatment that the proposal requires for certain instruments. That is, we propose the following changes to the transition provisions:

- Not require retroactive application for those instruments that are not outstanding on the date of adoption (provided the instruments were, in fact, cash settled), and
- Not require retroactive application for instruments that are outstanding as of the adoption date if, prior to this date, the instrument has been modified appropriately to eliminate the issuer's ability to share settle.

#### ***Mandatorily Convertible Securities***

The proposed Statement requires the inclusion of mandatorily convertible securities in the weighted-average number of shares outstanding used in computing basic EPS. We do not believe this provision should be included in a final Standard as the proposed Statement does not clearly articulate the principle as to why such securities would be included in basic EPS nor does the proposed Statement provide for a definition of what securities would be considered "mandatorily convertible". In the absence of such guidance, we have a number of questions and concerns related to applying the proposed guidance as listed below:

- Is the underlying principle behind the proposed amendment based upon the fact the shares are issuable based solely on the passage of time (similar to contingently issuable shares in paragraph 10 of Statement 128) or is the principle behind the proposal based upon the conclusion that such financial instruments are in fact common stock equivalents (as one might conclude under International standards if the instrument is convertible into a fixed number of shares)?
- It seems inconsistent with the notion of basic EPS to apply the "if converted" method in the calculation. The if-converted method as described in paragraph 26 of the Standard is a method used to calculate the dilutive effect of convertible securities and is not used to describe the method for inclusion of securities in basic EPS following the guidance for contingently issuable shares in paragraph 10.
- Does the proposal include shares in basic EPS only related to "obligations" where the number of shares is fixed or does the requirement also extend to "obligations" such as stock settled debt when the obligation can only be settled by delivery of a variable number of shares?
- Is the proposed amendment intended to be limited to debt or preferred stock that can be settled only by delivery of shares or does the proposal apply to the many financial instruments in the market that have some similar characteristics of a "mandatorily convertible security" such as, forward contracts to sell shares (either prepaid where the strike price is zero or where the strike price is equal to the forward price at inception), warrants where there is a nominal exercise price, and highly structured debt instruments issued in connection with a detachable forward? It is not clear to us which of these types of arrangements would impact the number of shares used to compute basic EPS.

Where such securities have rights to participate in dividends with common stock, we agree that

inclusion in basis EPS is appropriate and as discussed below would already be required under existing guidance. However, non-participating securities, prior to conversion, have rights that differ from those of common shareholders (for example creditor rights, a right to receive a preferential return for interest or preferred dividends, lack of participation in dividends, and lack of a vote). Inclusion of these instruments in basic EPS further blurs the already somewhat confusing line between basic and diluted EPS. Accordingly we recommend that the final standard delete the requirement to include mandatorily convertible instruments in basic EPS. Further, we suggest that the Board address the classification of such securities (either as liabilities or equity) and address whether convergence is possible for such classification prior to providing additional EPS guidance associated with such securities.

If a mandatorily convertible instrument (or any other security) participates with the common stock (prior to conversion) such participation right is already captured in both basic and diluted EPS through application of the two class method. If such shares do not contain a current right to participate in dividends (with common) prior to conversion, we are not convinced that they should be reflected in basic EPS. Accordingly, while we support convergence of global standards, we do not believe that including mandatorily convertible securities in the denominator of the basic EPS computation represents an improvement over current guidance.

If the requirement to include mandatorily convertible financial instruments in basic EPS is retained, we suggest the FASB provide additional guidance on how to deal with situations whereby the inclusion of such shares in basic EPS is antidilutive.

#### ***Other Issues***

Currently there is an inconsistency in the treatment afforded contingently issuable shares between Statement 128 and International Accounting Standards. We noted in Illustration 3 in Appendix C of FASB Statement 128, the year-to-date calculation of diluted EPS for contingently issuable shares is based on the weighted-average of the contingent shares included in each quarterly period. We also note that the fact pattern in Example 7 of the amended IAS 33, *Earnings per Share* is similar to Illustration 3 of Statement 128 for the calculation of contingently issuable shares. However, in IAS 33, the year-to-date calculation of the number of contingent shares included in diluted EPS is calculated as of the beginning of the year-to-date period.

As discussed above, we believe that the frequency of reporting should not affect the year-to-date diluted EPS calculation. We propose that the final Statement include guidance that converges with IAS 33.

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We appreciate the opportunity to comment on the Exposure Draft. If you have any questions regarding our response, please contact Jim Kroeker at 203-761-3726 or Bob Uhl at 203-761-3705.

Yours truly,

Deloitte & Touche LLP