

March 23, 2004

Letter of Comment No: /  
File Reference: FSPFAS129A

Mr. Lawrence Smith  
Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

**RE: Proposed FASB Staff Position FAS 129-a, Disclosure Requirements under FAS 129  
Relating to Contingently Convertible Financial Instruments**

Dear Mr. Smith:

PricewaterhouseCoopers LLP appreciates the opportunity to comment on Proposed FASB Staff Position FAS 129-a, *Disclosure Requirements under FASB Statement No. 129, Disclosure of Information about Capital Structure, Relating to Contingently Convertible Financial Instruments* (the "Proposed FSP"). We agree that a clarification of FAS 129's requirements relating to contingently convertible financial instruments will be useful and should help ensure that those requirements are applied consistently. Overall we concur with the Proposed FSP's guidance, except in the following two areas:

- **Paragraph 5:** This part of the Proposed FSP requires disclosures about derivative transactions that were entered into *in connection with* the issuance of a contingently convertible financial instrument, including how those transactions *relate to* the contingently convertible instrument. Although we believe such a disclosure can provide useful information, we do not interpret FAS 129 to encompass such a requirement. Accordingly, it appears to us that paragraph 5 adds a new requirement to disclose the economic *relationship* between two separate financial instruments. If the staff confirms that it was the Board's intent that such information be disclosed under FAS 129, then the requirement could be characterized as better conveying the Board's intent with respect to this matter but would need to be "Board-directed" under the guidelines for issuing FASB Staff Positions. If the staff cannot confirm that such a requirement is consistent with the Board's intent under FAS 129, then we believe it would be inappropriate to include that requirement in the final FSP, even if it were to be "Board-directed," because it would go beyond a "technical correction[s] to better convey the Board's intent with respect to a particular issue."

More importantly, even if the staff were to determine that a Board-directed FSP is appropriate in this instance, we believe that any discussion of the economic relationships between financial instruments should be considered in a much broader context. Many financial instruments may be *related to* other financial (or nonfinancial) instruments for a variety of reasons. Forward

contracts to purchase an issuer's own stock or purchased call options may be entered into to economically hedge the effects of employee stock compensation arrangements. Equity or debt instruments may be issued to provide financing for the redemption of other instruments that are due in the near term. Yet, there is no current GAAP requirement to specifically link those types of transactions for disclosure in the financial statements. Why should a contingently convertible financial instrument and a call spread, for example, be singled out for a required disclosure? In our view, this is a much broader issue that deserves to be addressed by the Board on a comprehensive basis in a specific project for that purpose. Accordingly, we recommend that the final FSP not include the incremental requirement to disclose how certain derivative transactions are *related to* the contingently convertible instrument but that the Board consider such a requirement as part of a broader project.

- **Paragraph 3(a):** This paragraph includes the following language: "The share price or other benchmark(s) that must be achieved *for conversion to occur* and..." (Emphasis added.) Conversion is at the holder's option and therefore beyond the issuer's control. The issuer's disclosures should not depend on the potential actions of the instrument's holder. We recommend that the FASB revise its wording to explicate that the share price or other benchmark causes the security to become "convertible" (i.e., triggers the holder's ability to exercise the conversion option). Our suggested rewording is as follows: "The share price or other benchmark(s) that must be achieved in order for the instrument to become convertible (i.e., for the holder to have the ability to convert) and ..."

We appreciate the opportunity to express our views. If you have any questions regarding our comments, please feel free to contact Deidre Schiela (973-236-7222) or John Althoff (973-236-7288).

Sincerely,

PricewaterhouseCoopers LLP