

March 27, 2007

Mr. John Sarno
Project Manager
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut, 06856-5116



LETTER OF COMMENT NO. //

Re: Proposed FASB Staff Position No. FAS 128-a, *Computational Guidance for Computing Diluted EPS under the Two-Class Method*

Dear Mr. Sarno:

Thank you for giving us the opportunity to comment on the proposed FASB Staff Position No. FAS 128-a, *Computational Guidance for Computing Diluted EPS under the Two-Class Method* (the proposed FSP). We realize that the Board has decided not to finalize the guidance in the proposed FSP and instead incorporate that guidance in the convergence project with the IASB. However, we would like to provide our comments for future consideration in the convergence project.

The examples included in the FSP regarding computing diluted EPS under the two-class method assume that all options and restricted stock awards granted to employees are expected to vest. However, in practice, some of these awards would be forfeited and we are required to estimate the amount of forfeitures in determining the fair value of these awards under FASB Statement No. 123(R), *Share-Based Payment*. Thus, the FSP should provide guidance for how forfeitures should be accounted for when computing diluted EPS. We believe that the EPS treatment should take forfeitures in account, consistent with the accounting under FAS 123(R).

Also, we would like to reemphasize the comments we made regarding Proposed FSP EITF 03-6-a, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*.

Amendment of FAS 128

In our view, the proposed FSP constitutes an amendment of FASB Statement No. 128, *Earnings per Share*, which should be subjected to the full due diligence process for amendments to FASB pronouncements. Paragraph 61 of FAS 128 states:

The if-converted method shall be used for those securities that are convertible into common stock if the effect is dilutive. For those securities that are not convertible into a class of common stock, the 'two class' method of computing earnings per share shall be used....

The proposed FSP would require the use of the two-class method even if share-based payment awards were convertible into only one class of common stock when restricted stock is distributed or stock options are exercised. Since the stock awards are not a separate class of common stock, we believe the proposed FSP is an amendment of the above FAS 128 guidance. In our experience, most share-based payment awards are convertible into the issuing entity's sole class of common stock.

We recommend that the FASB make amendments to the guidance in FAS 128 only through a formal amendment process to avoid confusion in practice. Since the FASB has an active project on its agenda to revise FAS 128 in convergence with International Accounting Standard 33, *Earnings Per Share*, we recommend that this issue (and the Board's other ongoing FSP on the two-class method, FSP EITF 03-6-a) be addressed as part of that project, in particular since the decisions in the proposed FSPs would create additional convergence issues.

Basis for Requiring the Two-Class Method for Unvested Stock-Based Compensation Awards

In situations where share-based payment awards are convertible to an entity's only class of common stock, it is not clear to us what the basis is for requiring the two-class method for the EPS computation or even whether reflecting such amounts in basic EPS at all makes sense.

Also, we feel that the EITF 03-6 requirement of using the two-class method for participating securities should not necessarily apply to share-based payment awards, as share-based payment awards have significantly different characteristics than other participating securities, such as preferred stock issued to independent third parties in a capital raising transaction.

First, the actual amount of dividends paid for awards that are not expected to vest is included in compensation expense. Thus, the dividends being paid on the estimated forfeited stock-based compensation are already being reflected in the numerator of the basic EPS calculation. In order to avoid double counting dividends paid on shares expected to be forfeited, we believe the compensation expense for such amounts should be added back to the EPS numerator.

Second, shares related to unvested share-based payment awards are *not* outstanding and are forfeitable and, as such, do not meet FAS 128's criteria for inclusion in basic EPS

either via paragraph 8 or paragraph 10. This is quite unlike instruments addressed in the scope of Issue 03-6, which, while often derivative in nature, are outstanding and are not forfeitable.

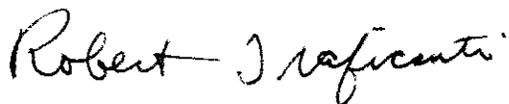
Treasury Stock Method

The proposed FSP states that the treasury stock method is only allowed if it yields a more dilutive EPS than the two-class method. We struggle with reconciling that guidance with the explicit guidance in paragraphs 20-23 of FAS 128, which requires the use of the treasury stock method for share-based payment awards in the diluted EPS calculation. We request that the Board address that inconsistency and amend FAS 128 where applicable.

We believe that using the treasury-stock method in the diluted EPS computation better reflects the economics of these awards, since it recognizes the tax benefits companies receive and most companies' actual practice of buying treasury stock as part of the management of their share-based payment awards. Note that paragraph A241(k) of FAS 123(R) requires disclosure of an entity's practice of repurchasing shares.

Your consideration of our comments would be appreciated. If you would like to discuss any of these points further, please feel free to contact me at (212) 559-7721.

Very truly yours,



Robert Traficanti
Vice President and Deputy Controller
Corporate Accounting Policy