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December 5, 2008

Mr. Russell G. Golden
Technical Director
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LETTER OF COMMENT NO. 14

File Reference: 1240-100

Re: Revision of Exposure Draft on proposed Statement, *Earnings per Share* — an amendment of FASB Statement No. 128

Dear Mr. Golden:

Deloitte & Touche LLP is pleased to comment on the FASB's revision of the 2005 Exposure Draft of the proposed Statement, *Earnings per Share* — an amendment of FASB Statement No. 128 (the "proposed Statement").

As we have indicated in previous comment letters, we support global convergence around high-quality accounting standards. Therefore, we continue to support the efforts of the Board to work closely with the International Accounting Standards Board (IASB) and other standard setters to develop high-quality standards that will be applied globally. In addition, we encourage the FASB and the IASB to work together to develop converged accounting standards that (1) use the same words when describing the same accounting principles or guidance and (2) organize those principles or guidance in the same or similar manner. By doing so, we believe the risk that the accounting standards will be interpreted differently will be reduced, if not eliminated.

We believe the provisions of the proposed Statement represent an improvement to existing standards, and we support the issuance of the proposed Statement as a final standard. Further, we believe that the changes proposed by the Board during the redeliberation process generally represent improvements to the previous Exposure Draft. However, as discussed in the body of this letter, we have concerns about some of the Board's proposed changes to EPS.

This letter includes two appendixes. In Appendix A, we respond to each of the questions posed by the FASB in the proposed Statement's Notice for Recipients. Appendix B contains our editorial suggestions for the proposed Statement.

Basic EPS

The proposed Statement adds paragraph 9A to Statement 128 to clarify that "in addition to common shares outstanding the computation of basic EPS shall include instruments for which the holder has (or is deemed to have) the present right as of the end of the period to share in current-period earnings with common shareholders." Paragraph 9A notes that examples of these instruments include:

- Instruments that are “currently exercisable for little or no cost to the holder.”
- Shares that are “currently issuable for little or no cost to the holder.”
- Participating securities that are “not measured at fair value with changes in fair value recognized in current-period earnings.”
- Classes of common stock with “different dividend rates from those of another class of common stock.”

We are concerned about the inclusion of instruments that are **deemed to have** the present right at the end of the period to share in current-period earnings with common shareholders. That is, we question whether instruments that are currently exercisable and shares that are currently issuable for little or no cost to the holder should be included in basic EPS. We also question whether — if these instruments and shares (1) do not share in current-period earnings with common shareholders, (2) truly have no further restrictions on their exercise or issuance, and (3) have not been exercised or received by the holder — the holder did not exercise or receive the instruments or shares because there was some benefit (e.g., a tax benefit) that it did not want to forgo (i.e., an additional cost).

Further, entities may interpret the little-or-no-cost criterion differently. That is, diversity in practice may develop regarding which costs to include in the analysis.

Lastly, we are concerned that an entity could structure an instrument depending on whether its intent is to include the instrument in basic EPS. For example, consider an entity that issues a certain number of instruments (e.g., penny warrants) that are exercisable into common shares for little or no cost to the holder of the instruments. Alternatively, the entity could issue a greater number of instruments with a higher exercise price (one that is not considered to be little or no cost to the holder) that has the same economic value at the inception of the instrument to the holder. In the latter situation, the shares that would be issued upon exercise of the instruments would be excluded from the computation of basic EPS; however, the instruments have the same economic value at inception of the instrument to the holder as in the original situation.

Therefore, to further simplify the computation of EPS and alleviate any potential implementation issues that may arise, we would suggest excluding these instruments and shares from the computation of basic EPS and include them in the computation of diluted EPS.

If the Board decides to retain the guidance regarding instruments that are exercisable and shares that are issuable for little or no cost in the computation of basic EPS, it should consider making the following changes to the proposed Statement:

- Regarding the little-or-no-cost criterion in the amended paragraph 10 of Statement 128, we believe the Board should expand the discussion of what is considered little or no cost beyond the amount that the holder must pay. That is, we believe the little-or-no-cost analysis should include the benefits that a holder would forgo to exercise the instrument or receive the shares. For example, in the little-or-no-cost analysis of a convertible debt instrument, an entity should include the fact that the holder must forgo the repayment of principal and the payment of interest to convert the instrument and receive the underlying shares. We believe this expanded discussion would help minimize diversity in practice regarding the little-or-no-cost criterion.
- Vis-à-vis share-based payment awards, the proposed amended paragraph 10 of Statement 128 states, “In the case of share-based payment awards, the little-or-no-service criterion is met only if no further service is required to exercise the award.” We believe that an entity could interpret this statement as suggesting that the little-or-no-cost criterion of a share-based

payment award would only include an analysis of the services rendered. That is, even though the award may require the holder to pay a substantive cash amount to exercise an award (i.e., a substantive exercise price), this amount would be included in basic EPS upon the completion of the requisite service period. We suggest that the Board revise the proposed language on share-based payment awards to recommend that an entity analyze all costs associated with an award, whether in cash, other assets, or service rendered, in determining whether an award meets the little-or-no-cost criterion.

- Regarding outstanding common shares that are subject to recall, it is unclear whether the proposed amended paragraph 10 of Statement 128 is intended to include common shares that could be returned to the issuing entity because of a clawback provision. We believe that if the Board intends to include common shares subject to a clawback provision in basic EPS until the shares are clawed back, it needs to clarify that intent.

Contracts That May Be Settled in Shares or Cash

As indicated in our previous comment letters, we support the elimination of the provisions in paragraph 29 of Statement 128 that allow an entity to rebut the presumption that contracts with settlement options will be settled in shares. Further, we agree with the clarification in the proposed Statement that an entity should not be able to overcome the presumption of share settlement under any circumstances other than the permitted exception for legal bankruptcy. However, we do not agree with the Board's decision in paragraph 29 that an "otherwise cash-settled instrument that contains a provision that requires or permits share settlement upon the occurrence of a specified event or circumstance is not a contingently issuable share agreement."

This conclusion creates an inconsistency between (1) an instrument with cash settlement provisions **and** contingent share settlement provisions (which would have to be included in diluted EPS regardless of the contingency) and (2) an instrument that is only settled in shares for which settlement occurs only upon the occurrence of a contingent event. We question why an instrument that contingently provides for issuance of shares, with cash settlement required in the absence of occurrence of the contingent event, should always be included in diluted EPS (if the instruments are dilutive). We believe that such an instrument should be considered a potential share-settled instrument. However, the proposed Statement's guidance on contingently issuable shares should be applied to the instrument to determine its impact, if any, on diluted EPS. Thus, the treatment afforded such an instrument would be consistent with the treatment of an instrument that provides for share settlement only.

Other Comments

We believe that an entity should analyze a participating security's claim on current-period earnings in each reporting period. However, paragraphs 14–17 of the proposed Statement do not address situations in which a participating security's claim on current-period earnings changes from period to period. We would like to see the Board include such clarification.

For example, consider a forward purchase contract that is gross physically settled. The counterparty to this contract may not be the holder of the underlying shares that are subject to repurchase by the issuing entity. In addition, the counterparty may have agreed to reimburse the issuing entity for dividends paid to the actual holders of the underlying common shares. We believe that because the liability that is recorded pursuant to Statement 150 is viewed as a participating security, the issuing

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entity must assess, in each reporting period, whether the counterparty will be able to reimburse the entity for dividends paid to the underlying common shareholders. In periods in which the counterparty is able to reimburse the entity for dividends paid, the liability is viewed as a participating security with no claim on current-period earnings. However, in periods in which the counterparty is unable to reimburse the entity for dividends paid to the underlying common shareholder (e.g. because of deterioration in the counterparty's credit standing), liability is viewed as a participating security with a claim on current-period earnings.

Deloitte & Touche LLP appreciates the opportunity to comment on the proposed Statement. If you have any questions concerning our comments, please contact John Sarno at (203) 761-3433.

Yours truly,

Deloitte & Touche LLP

cc: Robert Uhl

APPENDIX A
Deloitte & Touche LLP
Responses to Notice for Recipients

Instruments Measured at Fair Value in Each Period, With Changes in Fair Value Recognized in Earnings

Issue 1: In this proposed Statement, an entity would not include in the denominator of diluted EPS the number of additional common shares that would arise from the assumed exercise or conversion of certain freestanding instruments (or a component of certain compound instruments that is accounted for as if it were freestanding) that are measured at fair value each period with changes in fair value recognized in earnings. Similarly, an entity would not include in the computation of basic and diluted EPS under the two-class method certain participating securities that are measured at fair value each period with changes in fair value recognized in earnings. The Board concluded that the effect of those instruments on current shareholders during the period has been reflected in the numerator of basic and diluted EPS through the changes in fair value recognized in earnings. Do you agree that the fair value changes sufficiently reflect the effect of those instruments on current shareholders and that recognizing those changes in earnings eliminates the need to include those instruments in determining the denominator of diluted EPS or in computing EPS under the two-class method? If not, why not?

We agree that additional common shares that would arise from the assumed exercise or conversion of certain freestanding instruments (or a component of certain compound instruments that is accounted for as if it were freestanding) that are measured at fair value in each period, with changes in fair value recognized in earnings, should not be included in the denominator of diluted EPS. We believe that the fair value adjustments recognized in earnings in each reporting period (i.e., the numerator in the computation of EPS) sufficiently represent the benefits received or the detriments incurred by the existing shareholders for that period.

As further support for this argument, we have observed that given the proposed changes to the treasury stock method, an option or warrant contract that is measured at fair value in each reporting period would most likely always result in antidilution. Therefore, we believe that at a minimum, instruments that are subjected to the treasury stock method and measured at fair value in each reporting period should be excluded from the denominator of diluted EPS.

Computation of Diluted EPS

Issue 2: In computing diluted EPS, dilutive potential common shares and potential participating securities are assumed to be outstanding. This proposed Statement would clarify that an entity would not reduce income from continuing operations (or net income) by the amount of additional dividends that would be assumed to be declared for potential common shares or potential participating securities that are assumed to be outstanding. The Board reasoned that an entity may make a different decision on the per-share amount of dividends declared if that per-share amount was distributed to all potential common shares or participating securities. Do you agree? If not, why not?

We agree that the computation of diluted EPS should not include an assumption of additional dividends that would be declared on potential common shares or potential participating securities. We believe that decisions to allocate dividends are based on the reporting entity's current, rather than its potential, capital structure. Further, we believe that such an assumption would only increase the complexity of the diluted EPS computation.

However, we do not believe that an entity should apply the two-class method to multiple classes of common stock with the same dividend rate. We believe that an entity that does so could arrive at different diluted EPS amounts for each class of common stock on the basis of the Board's conclusion regarding the computation of diluted EPS under the two-class method. To reduce the likelihood of different diluted EPS amounts for each class of common stock, the Board should therefore consider explicitly stating that the two-class method is not required for multiple classes of common stock with the same dividend rate.

Disclosures

Issue 3: The Board decided that the amendments in this proposed Statement would not warrant additional disclosures beyond those already required by U.S. GAAP (for example, Statement 128, FASB Statement No. 129, Disclosure of Information about Capital Structure, and EITF Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock"). Do you agree that additional disclosures are not warranted? If not, what additional disclosures should be required and why?

We encourage the Board to consider adding disclosures to the proposed Statement beyond those already required by U.S. GAAP. In particular, we encourage the Board to consider additional disclosures related to instruments that are measured at fair value in each period with changes in fair value recognized in earnings. We understand that information about the number of shares to be issued under these instruments is important to financial statement users. In addition, we understand that the lack of information regarding the number of shares to be issued under these arrangements is further exacerbated when, for example, the fair value of the instrument has not changed during the period (or comparative period) yet the entity will most likely issue shares.

We encourage the Board to reach out to financial statement users regarding the need for additional disclosures, in particular those related to instruments that are measured at fair value in each period with changes in fair value recognized in earnings.

APPENDIX B
Deloitte & Touche LLP Comments

This appendix contains our suggested editorial changes to the proposed Statement. (Added text is underlined and deleted text is ~~struck out~~.)

Reverse Treasury Stock Method

We note that the proposed Statement retains the guidance in paragraph 24 of Statement 128 on the use of the reverse treasury stock method for written put options and forward purchase contracts. We question whether that guidance should be retained.

First, most, if not all, written put options will be measured at fair value in each reporting period, with changes in fair value recognized in earnings. Forward purchase contracts either will be measured at fair value in each reporting period or will be subject to the guidance in FASB Statement No. 150, *Accounting for Certain Financial Instruments With Characteristics of Both Liabilities and Equity*. Therefore, we believe either that there is explicit EPS guidance on these contracts (paragraph 25 of Statement 150) or that entities will be able to avail themselves of paragraph 11A of the proposed Statement, which discusses instruments measured at fair value in each period with changes in fair value recognized in earnings.

Second, the proposed Statement amends paragraph 24 of Statement 128 to state that an entity must use the end-of-period market price in computing the reverse treasury stock method for written put options and forward purchase contracts. This amendment is consistent with the amendment to paragraph 17 of Statement 128 to use the end-of-period market price when computing the treasury stock method. However, the amendments to the treasury stock method would also include the end-of-period carrying amount of an option or warrant that is classified as a liability (and not measured at fair value in each reporting period) as an assumed proceed. We believe that the rationale for including the carrying amount of an option or warrant contract that is classified as a liability in the treasury stock method should also apply to the reverse treasury stock method. That is, if a written put option or forward purchase contract is in a liability position (and not measured at fair value in each reporting period), the amount of proceeds that would be needed to satisfy the contract (i.e., to buy back shares) should be reduced. We note that if this rationale is carried forward into the computation of the reverse treasury stock method, coupled with the change to use end-of-period market prices, all written put options and forward purchase contracts (not measured at fair value each reporting period) will most likely be antidilutive. That conclusion seems consistent with the notion that a contract to repurchase an entity's own outstanding shares should not result in dilution.

As a result of either (1) measuring written put options and forward purchase contracts at fair value (or applying the guidance in paragraph 25 of Statement 150) or (2) changing the reverse treasury stock method to be consistent with the amendments to the treasury stock method, we believe that the use of the reverse treasury stock method is no longer needed. Moreover, we note that the IASB, in its amendments to IAS 33, *Earnings per Share*, has proposed eliminating its guidance on written put options and forward purchase contracts. In the Basis for Conclusions of its proposed amendments to IAS 33 (paragraph BC25), the IASB noted that written put options and forward purchase contracts "would either be measured at fair value through profit or loss or meet the definition of a participating instrument or second class of ordinary shares. . . . Therefore, the Board proposes to delete paragraphs 58–61 and 63 of the Standard." Therefore, to ensure that convergence is achieved, the FASB should

consider amending Statement 128 to remove the guidance on the reverse treasury stock method (i.e. delete paragraph 24 of Statement 128).

Diluted EPS for Multiple Classes of Stock

We believe that the Board should clarify paragraph 61(d) of Statement 128 to require presentation of basic and diluted EPS for each class of common stock, even if the second class of common stock is included in the computation of diluted EPS for the primary class of common stock. For example, we believe that if the second class of common stock is convertible into the primary class of common stock, the Board's intent was to present basic and diluted EPS for both classes of common stock if it is assumed that the second class of common stock (1) was converted into the primary class of common stock and (2) was not converted into the primary class of common stock and remains an outstanding common share. We suggest the following clarifying language:

Basic and diluted EPS data shall be presented for each class of common stock regardless of whether the other classes of common stock are potential common shares of the primary class of common stock and therefore are included in the diluted EPS of the primary class of common stock.

Average Market Price

Under the computational guidance in paragraph A4 of the proposed Statement, paragraphs 47 and 48 of Statement 128 have been eliminated; however, the heading of "Average Market Price" remains. We suggest deleting this heading.

Securities of Subsidiaries

Paragraph 63 of Statement 128 discusses the use of the if-converted method in determining the EPS impact of securities issued by the parent company that are convertible into common stock of a subsidiary company or investee company accounted for under the equity method. We believe that paragraph 63 should be revised to also discuss the effect on the computation of EPS of securities issued by the parent company that are exercisable into common stock of a subsidiary or investee company that would use the treasury stock method. We suggest the following clarifying language:

The if-converted method shall be used in determining the EPS impact of securities issued by a parent company that are convertible into common stock of a subsidiary company or an investee company accounted for under the equity method. That is, the securities shall be assumed to be converted and the numerator (income available to common stockholders) adjusted as necessary in accordance with the provisions in paragraph 26(a) and (b). In addition to those adjustments, the numerator shall be adjusted appropriately for any change in the income recorded by the parent (such as dividend income or equity method income) due to the increase in the number of common shares of the subsidiary or equity method investee outstanding as a result of the assumed conversion. The treasury stock method shall be used in determining the EPS impact of securities issued by a parent company that are exercisable into common stock of a subsidiary company or an investee company accounted for under the equity method. The denominator of the diluted EPS computation would not be affected because the number of shares of parent company common stock outstanding would not change upon assumed conversion.

Partially Paid Shares and Partially Paid Stock Subscriptions

Paragraph 64 of Statement 128 has been amended to state that partially paid shares should be included in basic EPS under the two-class method. We believe that paragraph 64 should be amended to state that common shares issued in a partially paid form that have been paid for should be included in the denominator of basic EPS to the extent that they were entitled to participate in dividends with common shareholders. We believe that if the common shares issued in partially paid form participate in dividends with common shareholders in a rate different from that of common shareholders, the two-class method should be used. We suggest the following clarifying language:

If an entity has common shares issued in a partially paid form²⁷ and those shares are entitled to dividends in proportion to the amount paid, the common-share equivalent of those partially paid shares shall be included in the denominator of the computation of basic EPS, using the two-class method, to the extent that they were entitled to participate in dividends with common shareholders (see paragraphs 61–61C). To the extent that the partially paid shares participate in dividends with common shareholders in a different dividend rate, they shall be included in the computation of basic EPS using the two-class method (see paragraph 61–61C). Partially paid stock subscriptions that do not share in dividends until fully paid are considered the equivalent of warrants and shall be included in diluted EPS by use of the treasury stock method. That is, the unpaid balance shall be assumed to be proceeds used to purchase stock under the treasury stock method. The number of shares included in diluted EPS shall be the difference between the number of shares subscribed and the number of shares assumed to be purchased.

Share-Settled Liabilities

We agree with the Board's conclusion in paragraph B10 of the proposed Statement, which indicates that because of the Board's decision to include, as an assumed proceed, the end-of-period carrying amount of a liability (one that is not measured at fair value each reporting period) in the calculation of the treasury stock method, there would be no effect on diluted EPS for an arrangement settled with equity instruments whose value is equal to the end-of-period carrying value of the liability (e.g., a fixed monetary obligation that may be settled in a variable number of shares). However, we believe that the Board should include such guidance in the amendments to Statement 128 as well as in the Basis for Conclusions. We believe that this is particularly important because the Basis for Conclusions will not be included in the Accounting Standards Codification.

The Board also may wish to highlight that certain of these arrangements are settled in a variable number of equity instruments on the basis of an average market price of the entity's shares over a specified period (e.g., 20 or 30 days). If an average market price of the entity's shares over a specified period is used to determine the number of shares that will be issued under the arrangement, dilution may result, even under the revised treasury stock method. That is, the product of the number of shares determined under the arrangement and the market price of the entity's shares at the end of the reporting period (or the date of settlement) may not exactly equal the end-of-period carrying value of a liability.