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May 18, 2009



LETTER OF COMMENT NO. 3

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

RE: Proposed Statement of Financial Accounting Standards, Rescission of FASB Technical Bulletin No. 01-01, Nullification of EITF Topics No. D-33 and No. D-67, Amendments, and Technical Corrections (File Reference No. 1670-100)

Dear Technical Director:

We appreciate the opportunity to comment on the proposed Statement of Financial Accounting Standards, *Rescission of FASB Technical Bulletin No. 01-01, Nullification of EITF Topics No. D-33 and No. D-67, Amendments, and Technical Corrections* (the "Exposure Draft"). Except for the items described in the appendix to this letter, we agree with the changes proposed in the Exposure Draft and believe that those changes meet the project's objectives to clarify certain previously issued standards, eliminate certain outdated guidance, and address certain inconsistencies in the accounting literature.

FASB Statement No. 157, *Fair Value Measurements*, was issued in September 2006. However, other than EITF Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities," no EITF Issues or AICPA Statements of Position have been updated for the guidance in that Statement. Because certain of that other authoritative literature may contain fair value measurement guidance that is potentially inconsistent with the guidance in Statement 157,¹ we encourage the Board to complete those updates. Those updates to reflect the guidance in Statement 157 could potentially be addressed in this technical corrections project and incorporated into the proposed Statement.

¹ For example, footnote 3 of EITF Issue No. 98-5 defines fair value in a manner that differs from the definition of fair value in Statement 157.



Technical Director
Financial Accounting Standards Board
May 18, 2009
Page 2

The Appendix to this letter provides our responses to the specific questions raised in the Exposure Draft. The appendix also describes a number of additional items that were not included in the Exposure Draft that we believe should be corrected through this proposed Statement.

If you have any questions about our comments or wish to discuss any of these matters further, please contact Mark Bielstein at (212) 909-5419.

Sincerely,

KPMG LLP



Appendix

Proposed Statement of Financial Accounting Standards, *Rescission of FASB Technical Bulletin No. 01-01, Nullification of EITF Topics No. D-33 and No. D-67, Amendments, and Technical Corrections* (File Reference No. 1670-100)

This Appendix to our attached letter provides our responses to the specific questions raised in the Exposure Draft and describes a number of additional items that were not included in the Exposure Draft that we believe should be corrected through this proposed Statement.

Question 1 – Do you agree with the changes included in this proposed Statement? Please explain your answer.

KPMG Response – Question 1

We agree with the changes included in the Exposure Draft except as stated below.

Comments on the Proposed Amendments

Proposed Amendment to Paragraph 13 of Statement 133

Paragraph 8(c)(1) of the Exposure Draft proposes a technical correction to paragraph 13(b)(2) of FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*, that is intended to clarify the appropriate application of the “double-double” test for determining whether an embedded interest rate derivative is clearly and closely related to a debt host contract. We agree with that proposed amendment and observe that it is consistent with the amendment proposed in connection with the Exposure Draft, *Accounting for Hedging Activities*, issued June 6, 2008 (the “Hedging Project ED”).

However, the Hedging Project ED also proposed the following additional clarification to paragraph 13 of Statement 133:

“For purposes of applying the provisions of paragraph 12, an embedded derivative instrument in which the only underlying is an interest rate or interest rate index that alters net interest payments that otherwise would be paid or received on an interest-bearing host contract is considered to be clearly and closely related to the host contract unless either of the following conditions exist...”

The above clarification in the Hedging Project ED that the tests in paragraph 13 of Statement 133 apply to embedded derivative instruments in which the *only* underlying is an interest rate or interest rate index is consistent with our understanding of that guidance based on prior discussions with the FASB staff. However, because the Hedging Project ED did not result in a



Technical Director
Financial Accounting Standards Board
May 18, 2009
Page 2

final standard, we believe that this change should be reflected in the proposed Statement. Additionally, please refer to the related discussion below regarding the proposed amendment to paragraph 61(d) of Statement 133.

Proposed Amendment to Paragraph 29 of Statement 133

Paragraph 8(c)(2) of the Exposure Draft proposes to amend paragraph 29(h)(4) of Statement 133 to avoid possible misunderstanding about the credit sector spreads that are included in the notion of credit risk under that Statement. We agree with the amendment and observe that a corresponding change also should be made to paragraph 21(f)(4) of Statement 133, which makes the same reference to credit sector spreads for fair value hedges.

Proposed Amendment to Paragraph 30 of Statement 133

Paragraph 8(c)(3) of the Exposure Draft proposes to amend paragraph 30(b) of Statement 133. We do not agree with the proposed amendment to paragraph 30(b). That proposed amendment would indicate that, even though hedge accounting was not permitted for a specific previous assessment period, a hedging relationship may continue in a subsequent period if the entity determines that the hedging relationship will be highly effective in future periods. We believe that once a hedge is no longer considered to be highly effective, the existing hedging relationship is discontinued. Consequently, an entity would be required to establish a new hedging relationship to resume hedge accounting in a subsequent period. Our view on this issue is consistent with feedback that we have received in prior discussions with the FASB staff.

The proposed amendment to paragraph 30 of Statement 133 would represent a substantive change to Statement 133 that would require transition provisions. We believe that this change should not be characterized as a “technical correction” and that it would be more appropriate to address this issue in the Board’s joint project with the IASB on accounting for financial instruments.

Proposed Amendment to Paragraph 61(d) of Statement 133

Paragraph 8(c)(4) of the Exposure Draft proposes to delete the second sentence in paragraph 61(d) of Statement 133 to eliminate language that does not consider the clearly and closely related tests in paragraph 13 of that Statement. We do not agree with that proposed amendment to paragraph 61(d). Based on previous discussions with the FASB staff, we believe that the guidance in paragraph 61(d) (and the related guidance in DIG Issue B16, “Embedded Derivatives: Calls and Puts in Debt Instruments”) is intended to apply only to calls and puts (a) that are contingently exercisable or (b) for which the amount paid at settlement is adjusted based on changes in an index.



Technical Director
Financial Accounting Standards Board
May 18, 2009
Page 3

As discussed above in our comment on the proposed amendment to paragraph 13 of Statement 133, we understand that the guidance in paragraph 13 applies to embedded derivative instruments for which the *only* underlying is an interest rate or interest rate index. The guidance in paragraph 13 would not apply to embedded call or put options that are addressed in paragraph 61(d) or DIG Issue B16 because those embedded features contain multiple underlyings. Accordingly, we believe that the second sentence of paragraph 61(d) should be retained and the statement “provided that the call options (or put options) are also considered to be clearly and closely related to the debt host contract under paragraph 13” in the first sentence of that paragraph should be deleted.

Consistent with our understanding of the application of paragraph 61(d) of Statement 133 and DIG Issue B16, we observe that the guidance in Step 4 of DIG Issue B16 was previously amended to clarify that the requirement to consider the guidance in paragraph 13 only applies to puts and calls that are not contingently exercisable. However, Step 3 of DIG Issue B16 has not been updated for that same clarification. Rather than amending paragraph 61(d) to be consistent with Step 3 of DIG Issue B16, we believe that Step 3 of DIG Issue B16 should be amended as follows to be consistent with the existing guidance in paragraph 61(d) and Step 4 of DIG Issue B16.

“Step 3: Does the debt involve a substantial premium or discount? If yes, continue to Step 4. If no, in accordance with paragraph 61(d), further analysis of the contract under paragraph 13 is required to determine whether the call or put is clearly and closely related to the debt host contract if the instrument is not contingently exercisable.”

Proposed Amendment to Paragraph 9 of Statement 142

Paragraph 8(e)(1) of the Exposure Draft proposes to amend paragraph 9 of FASB Statement No. 142, *Goodwill and Other Intangible Assets*, to eliminate the inconsistency between the accounting for intangible assets acquired individually or with a group of assets outside a business combination and the guidance included in Appendix D of FASB Statement No. 141(Revised 2007), *Business Combinations*, for asset acquisitions. We agree that paragraph 9 of Statement 142 should be revised to require such assets be initially recognized and measured based on the guidance included in paragraphs D2-D7 of Statement 141(R). This proposed amendment to the first sentence paragraph 9 of Statement 142 accomplishes that objective and, therefore, the second sentence of the revised paragraph is no longer necessary.



Technical Director
Financial Accounting Standards Board
May 18, 2009
Page 4

Proposed Amendment to Practice Bulletin 11

Paragraph 8(l) proposes to amend AICPA Practice Bulletin No. 11, *Accounting for Preconfirmation Contingencies in Fresh Start Reporting*. However, Statement 141(R) nullified Practice Bulletin 11 (refer to paragraph F5 of Statement 141(R)) and amended the guidance under AICPA Statement of Position 90-7, *Financial Reporting by Entities in Reorganization under the Bankruptcy Code*, to be consistent with Statement 141(R). Consequently, it appears that the proposed amendment to the Practice Bulletin is not necessary.

Additional Items That Should Be Considered As Possible Technical Corrections

Possible Technical Correction to EITF 86-32

EITF Issue No. 86-32, "Early Extinguishment of a Subsidiary's Mandatorily Redeemable Preferred Stock," provides guidance on the accounting for dividends on a subsidiary's preferred stock and states that such dividends would be included in noncontrolling interest *as a charge against income*. Although noncontrolling interest reduces net income attributable to the parent, it is no longer recognized as a charge against net income under Statement 160. The following is our suggestion for the correction:

"in the consolidated financial statements, dividends on a subsidiary's mandatorily redeemable preferred stock that is classified as a liability under Statement 150, whether redeemable or not, would be included in noncontrolling interest recognized as a charge against income. Dividends on a subsidiary's preferred stock that is classified as noncontrolling interest would reduce the amounts of consolidated net income and consolidated comprehensive income that is attributable to the parent."

Possible Technical Correction to EITF 97-14

The Consensus on the accounting for "Plan D" in EITF Issue No. 97-14, "Accounting for Deferred Compensation Arrangements Where Amounts Earned Are Held in a Rabbi Trust and Invested," contains the following discussion:

"The deferred compensation obligation should be classified as a liability and adjusted, with a corresponding charge (or credit) to compensation cost, to reflect changes in **the fair value** of the amount owed to the employee. Changes in **the fair value** of the deferred compensation obligation should not be recorded in other comprehensive income, even if changes in the fair value of the assets held by the rabbi trust are recorded, pursuant to Statement 115, in other comprehensive income." [Emphasis added.]



Technical Director
Financial Accounting Standards Board
May 18, 2009
Page 5

Based on our discussions with the FASB staff, we understand that the deferred compensation obligation addressed in EITF 97-14 should be measured based on the amount owed to the employee, not based on the fair value (i.e., the exit price) of the entity's obligation to its employee. To avoid confusion in practice, we recommend that the bolded words in the above excerpt be deleted from EITF 97-14.

Question 2 – Will the proposed Statement meet the project's objective to clarify certain previously issued standards, eliminate certain outdated guidance, and address certain inconsistencies in the accounting literature? Please explain your answer.

KPMG Response – Question 2

Except for the items described above above, we believe that the proposed Statement will meet the project's stated objective.

Question 3 – Will any of the proposed technical corrections result in unintended substantive changes to existing accounting pronouncements that would require transition provisions? If yes, what method of transition do you believe would be the most appropriate? Please explain your answer.

KPMG Response – Question 3

We believe that transition should be provided for entities that conclude that they are required to change their accounting as a consequence of the proposed technical corrections. For example, if an entity concluded that a transfer of assets used in oil- and gas-producing activities (including either proved or unproved properties) in exchange for other assets used in oil- and gas-producing activities was excluded from the scope of Issues 1 – 6 of EITF Issue No. 01-2, "Interpretations of APB Opinion No. 29," based on the explicit guidance in paragraph 3d of that Issue, we believe that the entity should be provided with transition upon adoption of the proposed Statement. The status update discussion in paragraph 44 of that Issue discusses the effects of FASB Statement No. 153, *Exchanges of Nonmonetary Assets*, but makes no reference to the elimination of the scope exception for exchanges of assets used in oil- and gas-producing activities. We believe that the proposed Statement should be effective for financial statements issued for fiscal years beginning on or after December 15, 2009, and interim periods within those fiscal years. We believe that the effects of adopting the proposed Statement, if any, should be applied retrospectively, subject to the impracticability exception set forth in paragraph 11 of FASB Statement No. 154, *Accounting Changes and Error Corrections*.