September 12, 2005

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Sent via email to director@fasp.org

Re: File Reference 1215-001 – Proposed Interpretation “Accounting for Uncertain Tax Positions”

Credit Suisse Group (“CSG”) appreciates the opportunity to comment on the Financial Accounting Standard Board’s (“FASB” or “Board”) proposed Interpretation “Accounting for Uncertain Tax Positions – an interpretation of FASB Statement No. 109” (“Exposure Draft or Interpretation”). We realize that this issue is very complicated and commend the Board for its efforts. We are responding to the proposed Interpretation as a preparer of U.S. GAAP financial statements and foreign private issuer that files periodic reports with the Securities and Exchange Commission.

We agree with a number of the Board’s proposals included in the Interpretation as explained further below in our responses to the Board’s questions on each issue. However, we have a concern with the Exposure Draft’s fundamental conclusion to use a “probable” validity standard and a dual recognition/derecognition threshold (“Dual Approach”) for recording uncertain tax positions. We agree with the concerns raised in paragraph B46 by certain board members and have elaborated on our concerns in detail below under Issue 3.

Summary

There should be a single recognition/derecognition threshold based on whether a tax position is More Likely Than Not (“MLTN”) (“Single Approach”). We believe that some of the concerns raised by the Board in paragraph B17 with respect to a Single Approach are more likely to materialize under the Dual Approach in the Exposure Draft than would occur under a Single Approach. In applying the Single Approach, we agree with the Board’s conclusion that the determination should be based on the specific facts and circumstances of the tax position using all available evidence. We also note that the subsequent measurement step should mitigate any concerns over whether companies are claiming too much benefit upfront for an uncertain tax position and, along with the Single Approach, will best achieve representationally faithful accounting for an enterprises’ tax expense and current and deferred tax assets and liabilities.
We have responded to the Board’s specific requests for feedback as follows.

Scope

**Issue 1:** This proposed Interpretation would broadly apply to all tax positions accounted for in accordance with Statement 109, including tax positions that pertain to assets and liabilities acquired in business combinations. It would apply to tax positions taken in tax returns previously filed as well as positions anticipated to be taken in future tax returns. Do you agree with the scope of the proposed Interpretation? If not, why not?

We agree with the Board’s proposal to apply the Interpretation to all tax positions accounted for in accordance with Statement 109. However we believe that more guidance is needed in terms of how an acquiring company should evaluate the tax positions of an acquiree. For example, in cases where the acquirer changes the acquiree’s assessment of a tax position from “probable” to something less than “probable” or vice-versa, would it record the adjustment to goodwill and purchase price accounting as is done currently under Statements Nos. 141 and 142, or as a change in estimate under Statement No. 154 / APB 20?

It is similarly unclear how this Interpretation interacts with the Board’s proposal in par.46 of its proposed Statement “Business Combinations - a replacement of FASB Statement No. 141”, which states: “The acquirer shall account for the potential tax effects of temporary differences and carryforwards of an acquiree that exist at the acquisition date and income tax uncertainties related to the acquisition (for example, an uncertainty related to the tax basis of an acquired asset that ultimately will be agreed to by the taxing authority or positions taken in prior tax returns of the acquiree) in accordance with the provisions of Statement 109, as amended.” Does this mean that adjustments to tax uncertainties originally acquired in a business combination are accounted for as a current income tax event or as an adjustment to goodwill? We believe that by reference to EITF 93-17, “Uncertainties Related to Income Taxes in a Purchase Business Combination,” which is partially sustained by the proposed Interpretation, any such subsequent adjustments to uncertain tax positions would be accounted for as an adjustment to goodwill. As stated in the EITF discussion, "The effect of those adjustments should be applied to increase or decrease the remaining balance of goodwill attributable to that acquisition. If goodwill is reduced to zero, the remaining amount of those adjustments should be applied initially to reduce to zero other noncurrent intangible assets related to that acquisition, and any remaining amount should be recognized in income." We recommend that the Board confirm this in the final Interpretation to avoid misapplication in practice.

*Initial Recognition*

**Issue 2:** The Board concluded that the recognition threshold should presume a taxing authority will, during an audit, evaluate a tax position taken or expected to be taken
when assessing recognition of an uncertain tax position. (Refer to paragraphs B12–
B15 in the basis for conclusions.) Do you agree? If not, why not?

We agree with the Board's proposal.

Issue 3: The Board decided on a dual threshold approach that would require one
threshold for recognition and another threshold for derecognition. The Board
concluded that a tax position must meet a probable (as that term is used in Statement
5) threshold for a benefit to be recognized in the financial statements. (Refer to
paragraphs B16–B21 in the basis for conclusions.) Do you agree with the dual
threshold approach? Do you agree with the selection of probable as the recognition
threshold? If not, what alternative approach or threshold should the Board consider?

As stated above, the Interpretation should use a Single Approach where the amount
recognized is measured based on Concept Statement No. 7. The Dual Approach is
less desirable because of the practical implementation concerns and the
detrimental/inconsistent impact it would have on an enterprise’s financial statements.

Practical Issues

In many jurisdictions the concept of a “should level” opinion doesn’t exist.
Moreover, in those jurisdictions where it does exist, for example the U.S., there is
inconsistency regarding the level of confidence that is required to achieve “should
level”. We view a “should level” opinion as having between a 70% and 90%
confidence level. However, there is inconsistency among advisers as to what
confidence level range is required for issuance of “should level” opinions. This
confidence level inconsistency doesn’t exist within a MLTN threshold, which is a
binary ("on/off" or 50%) confidence level. Consequently, there is less possibility of a
disagreement over whether or not the required recognition threshold has been satisfied
under the Single Approach. In our experience, there is typically far less controversy
over whether a tax position is MLTN vs. whether a tax position is “should level”.

Part of the reason why U.S. tax advisers are more comfortable issuing “should level”
opinions is that there are more specific rules/guidance than exist in most other tax
jurisdictions. Thus the Dual Approach would be impracticable for a multinational
enterprise. For example, in Switzerland it is not standard practice to obtain “should
level” opinions. Therefore, if a Swiss enterprise wanted to meet the probable
threshold under the Interpretation, it would have to request a specific ruling from the
tax authorities. Given the time constraints on preparing financial statements, a
probable standard would not be practicable.

We are aware of the desires expressed by other parties to use the Interpretation to
further strengthen regulatory controls over abusive tax shelters in the U.S. We do not
believe the financial accounting standards are an appropriate venue for solving tax
regulatory issues, for the following reasons:
• The Exposure Draft covers all uncertain tax positions, which is a broader scope of subject matter than just U.S. tax shelter activity. For example, the Interpretation would cover normal business activity where the law is unclear as to how to tax the associated revenues or expenses. Consequently, basing the model solely around preventing abusive U.S. tax shelter activity unfairly impacts all other U.S. tax positions and all non-U.S. tax positions that are of particular relevance to multinational enterprises.

• The recent implementation of Sarbanes-Oxley and other U.S. tax shelter regulations and legislation have put in place new regulatory controls to deal with concerns around abusive U.S. tax shelter activities.

• Even after the recent tax shelter penalty legislation was enacted in the U.S., taxpayers could still avoid penalties in many instances by, among other things, having a reasonable belief that a tax position is MLTN. If MLTN is still the appropriate threshold to report a tax position on an enterprise’s tax return, we believe it is also an appropriate recognition threshold for this Interpretation.

• The requirement in this Interpretation to measure the amount of benefit recognized based on the best estimate of the amount that will be sustained on audit further mitigates any concerns over enterprises overstating tax benefits in their financial statements from tax shelter activity or any other uncertain tax positions.

It would be inappropriate to implement a system that would likely result in routine and potentially material overstatements of enterprises’ tax expense / liability simply because a more conservative approach could have the theoretical benefit of encouraging enterprises to avoid abusive U.S. tax shelter activity. We considered the possibility of applying the probable threshold to U.S. tax shelter activity only; however the potential confusion over trying to determine what is a tax shelter around the globe would render this alternative impractical.

Financial Statement Concerns

In our view, the Dual Approach is less likely to achieve more accurate and comparable financial statements as compared to the Single Approach for the following reasons:

1) There is considerable confusion over the meaning of “probable”, and many tax jurisdictions do not recognize the concept of “should level” tax opinions. Consequently, the Dual Approach would create a lack of comparability among enterprises’ financial statements;

2) Financial statements would be consistently distorted because the Dual Approach would routinely result in overaccruals of tax expense / understatement of assets followed by significant tax benefits / assets being recognized in the future. This method would prevent recognition of any tax benefit in all situations where the enterprise has concluded that a tax benefit is
MLTN to be realized, even though experience shows that it is probable that some amount of benefit will be realized;

3) The Dual Approach can result in two different enterprises recognizing different amounts for the same tax position. For example, one enterprise enters into the transaction when it is probable, but the validity level later is lowered to MLTN before the second enterprise enters into the transaction;

4) The Dual Approach can result in both recognition and nonrecognition treatment for an item by the same enterprise depending on when the transaction was entered into. For example, a tax position is claimed on a tax return for five years, and during the middle of this period management's assessment of its validity goes from "probable" to MLTN. In this situation, the Dual Approach doesn't result in consistency by a single enterprise, much less consistency among enterprises; and

5) The effective date implementation requirement under the Dual Approach creates a potential financial statement inconsistency. For example, an asset could be derecognized on implementation that would not be derecognized if the validity level moved from probable to MLTN on a tax position taken after the effective date of the Interpretation.

Technical Arguments Supporting Single Approach

The Single Approach is more consistent with Concepts Statement 6 because an enterprise will recognize only those assets that professional judgment indicates will probably be realized. Concepts Statement 6 states that assets are "probable future economic benefits obtained or controlled by a particular enterprise as a result of past transactions or events," which is not defined as the 70% threshold under Statement No. 5. Given that some amount of benefit is probably going to be realized on most MLTN tax positions, the Single Approach is supported by Concepts Statement 6. We also note that, by analogy, the MLTN standard used in FAS 109 to determine whether a valuation allowance should be taken is further support for the MLTN threshold.

In contrast, the Dual Approach would prevent an enterprise from recognizing some assets where professional judgment concludes that a future benefit will be received. The Dual Approach would violate Concepts Statement 6 by using different standards to recognize and derecognize an asset. An asset either exists or it doesn't based on the same criteria, and it would be inappropriate to implement an approach that treats the same tax position differently depending on when the position was taken on a tax return, i.e. before or after the tax position moved from probable to MLTN. We are not aware of any other accounting standard where the determination of whether an asset exists is based on a different standard for recognition vs. derecognition.

Subsequent Recognition

Issue 4: The Board concluded that a tax position that did not previously meet the probable recognition threshold should be recognized in any later period in which the
enterprise subsequently concludes that the probable recognition threshold has been met. (Refer to paragraph B22 in the basis for conclusions.) Do you agree? If not, why not?

We disagree with the probable recognition threshold, as explained above, but if the Board chooses to continue with the probable standard, we believe that the requirements of paragraph 8 should be clarified to confirm that certain situations could result in recognition of a benefit. For example, if an enterprise has completed an audit where the tax position was taken and the taxing authority never raised the issue, in certain situations this should be sufficient to recognize the benefit even though the statute of limitations hasn’t expired. For example, if professional judgment indicates that it is very unlikely that the taxing authority would reopen the tax year for examination once the audit is completed, non-recognition of the tax benefit would be illogical. Other situations that should be considered are tax positions relating to state nexus or permanent establishment issues. An enterprise may never file a tax return based on its view of the relevant law, which generally means that the statute of limitations will never expire. However, at some point, i.e. some years later, professional judgment may indicate that it is highly unlikely that the issue will ever be raised.

Derecognition

Issue 5: The Board concluded that a previously recognized tax position that no longer meets the probable recognition threshold should be derecognized by recording an income tax liability or reducing a deferred tax asset in the period in which the enterprise concludes that it is more likely than not that the position will not be sustained on audit. A valuation allowance as described in Statement 109 or a valuation account as described in FASB Concepts Statement No. 6, Elements of Financial Statements, should not be used as a substitute for derecognition of the benefit of a tax position. (Refer to paragraphs B23–B25 in the basis for conclusions.) Do you agree with the Board’s conclusions on derecognition of previously recognized tax positions? If not, why not?

We disagree with the probable recognition threshold, as explained above, but if the Board chooses to continue with the probable standard, we would agree with this conclusion.

Measurement

Issue 6: The Board concluded that once the probable recognition threshold is met, the best estimate of the amount that would be sustained on audit should be recognized. The Board concluded that any subsequent changes in that recognized amount should be made using a best estimate methodology and recognized in the period of the change. (Refer to paragraphs B9–B11 and B26–B29 in the basis for conclusions.) Do you agree with the Board’s conclusions on measurement? If not, why not?
We agree with the Board’s proposal.

Classification
Issue 7: The Board concluded that the liability arising from the difference between the tax position and the amount recognized and measured pursuant to this proposed Interpretation should be classified as a current liability for amounts that are anticipated to be paid within one year or the operating cycle, if longer. Unless that liability arises from a taxable temporary difference as defined in Statement 109, it should not be classified as a deferred tax liability. (Refer to paragraphs B30-B35 in the basis for conclusions.) Do you agree with the Board’s conclusions on classification? If not, why not?

We agree with the Board’s proposal.

Change in Judgment
Issue 8: The Board concluded that, consistent with the guidance in paragraph 194 of Statement 109, a change in the recognition, derecognition, or measurement of a tax position should be recognized entirely in the interim period in which the change in judgment occurs. (Refer to paragraph B36 in the basis for conclusions.) Do you agree with the Board’s conclusions about a change in judgment? If not, why not?

We agree with the Board’s proposal.

Interest and Penalties
Issue 9: The Board concluded that if the relevant tax law requires payment of interest on underpayment of income taxes, accrual of interest should be based on the difference between the tax benefit recognized in the financial statements and the tax position in the period the interest is deemed to have been incurred. Similarly, if a statutory penalty would apply to a particular tax position, a liability for that penalty should be recognized in the period the penalty is deemed to have been incurred. Because classification of interest and penalties in the income statement was not considered when Statement 109 was issued, the Board concluded it would not consider that issue in this proposed Interpretation. (Refer to paragraphs B37-B39 in the basis for conclusions.) Do you agree with the Board’s conclusions about recognition, measurement, and classification of interest and penalties? If not, why not?

We agree with the Board’s proposal. However, it would be helpful if the Board could clarify which rules apply when an interest or penalty charge (resulting from either a certain or an uncertain tax position) is itself subject to uncertainty. It is unclear whether the recognition and measurement criteria of the proposed Interpretation should apply, as for uncertain tax positions, or whether Statement No. 5 would continue to be applicable.
Disclosures

Issue 10: The Board concluded that loss contingencies relating to previously recognized tax positions should be disclosed in accordance with the provisions of paragraphs 9-11 of Statement 5. The Board also concluded that liabilities recognized in the financial statements pursuant to this proposed Interpretation for tax positions that do not meet the probable recognition threshold are similar to contingent gains. Therefore, those liabilities should be disclosed in accordance with the provisions of paragraph 17 of Statement 5. (Refer to paragraph B40 in the basis for conclusions.)

Do you agree with the disclosure requirements? If not, why not?

We agree with the Board’s proposal.

Effective Date and Transition

Issue 11: The Board concluded that this proposed Interpretation should be effective as of the end of the first fiscal year ending after December 15, 2005. Only tax positions that meet the probable recognition threshold at that date may be recognized. The cumulative effect of initially applying this proposed Interpretation would be recognized as a change in accounting principle as of the end of the period in which this proposed Interpretation is adopted. Restatement of previously issued interim or annual financial statements and pro forma disclosures for prior periods is not permitted. Earlier application is encouraged. (Refer to paragraphs B41-B43 in the basis for conclusions.)

Do you agree with the Board’s conclusions on effective date? If not, how much time would you anticipate will be necessary to apply the provisions of this proposed Interpretation? Do you agree with the Board’s conclusions on transition? If not, why not?

We suggest that the Board re-expose the proposed Interpretation based on adoption of a Single Approach model. However, if the Board chooses to continue with the Dual Approach model, we disagree with the timing of the effective date and how the Interpretation is being implemented. Multinational enterprises would have to undertake a reassessment of all existing tax uncertainties, considering what alternative evidence would meet the requirements of the Interpretation in all tax jurisdictions where "should level" opinions are not market practice. Therefore, we suggest that the effective date should be for fiscal years starting January 1, 2007.

We strongly disagree with the implementation approach of applying the probable standard for recognition of all existing tax positions. Instead, the below MLTN derecognition threshold should be used to determine whether an existing asset must be derecognized. Otherwise, there will be an inconsistent approach for when a tax position is derecognized based on when the validity changes from probable to MLTN.
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We thank the Board for their attention to our views. We are available to further discuss these points at the Board’s convenience. Please do not hesitate to contact Thomas Prevost at thomas.prevost@csfb.com on (212) 325-7486 or David Bruno at david.bruno@credit-suisse.com on +41 44 334-2616 with any questions or comments.

Sincerely,

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