



LETTER OF COMMENT NO. 5

November 21, 2008

Russ Golden  
Technical Director—File Reference No. 1240-100  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

Re: Proposed Statement of Financial Accounting Standards, “Earnings Per Share, an amendment of FASB Statement No. 128”

Dear Mr. Golden,

We would like to take this opportunity to comment on the Proposed Statement of Financial Accounting Standards, “Earnings Per Share, an amendment of FASB Statements No. 128.” We appreciate the Board’s efforts to clarify the computation of earnings per share; however, we see opportunity to reduce complexity and “keep it simple” by incorporating the following concepts:

- The most common form of share-based payment awards to employees, which are settled in shares of common stock of the company one-for-one and pay dividends during the vesting period at the same rate as common stock, should not be accounted for under the two-class method.
- Under the treasury stock method, the average market price for the period should be used to determine the incremental shares, not the end-of-period market price, consistent with the original conclusion in FAS 128. Recent market conditions clearly demonstrate that using the end of period stock price will introduce volatility in earnings per share that will distort the reported performance of the business. EPS is an earnings measurement over a reporting period, not a point in time balance sheet measurement.
- The EPS calculation should be retained where dilutive shares are determined for a quarter, do not change after the quarter, and are averaged into the year-to-date calculation.

In general, we believe changes to FAS 128 should not be made until a true convergence with international standards can be achieved. However, if the proposed statement is issued, we do agree that share-based awards accounted for as liabilities and measured at fair value should not be included in the diluted EPS calculation.

**Richard J. Schlueter**  
Vice President &  
Chief Accounting Officer

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We believe the three issues noted in the proposed statement do not address some of the underlying problems with FAS 128. Therefore we would like to focus our comments on recommendations to improve the proposed statement and our concerns regarding the proposed changes not mentioned in the three issues.

### **Share-Based Payment**

We believe that share-based payment awards issued to employees which are subject to vesting, performance or market conditions, settle in shares of common stock of the company one-for-one, and receive dividends at the same rate as common stock are not a “second class” of common stock, and therefore should not be subject to the two-class method. In addition, we believe the two-class method should not be applied to these awards for the following reasons:

First, we do not believe the two-class method was ever intended to be used for share-based awards. Paragraph 20 of FAS 128 states that the treasury stock method should be used for share-based awards granted to employees in computing diluted EPS.

Second, paragraph 61 of FAS 128 states that the if-converted method shall be used for those participating securities that are convertible into common stock. If share-based awards issued to employees are participating securities and the treasury stock method is not appropriate for these awards, then the if-converted method is appropriate, and not the two-class method, since unvested/unearned share-based awards are convertible into common stock. The entire basis for using the two-class method is only when the participating securities cannot become shares of common stock.

Third, we believe the amounts disclosed will be of little or no value when the share-based awards are settled in shares of common stock of the company one-for-one and pay dividends during the vesting period at the same rate as common stock. If the two-class method is applied appropriately, the basic EPS for these awards under the two-class method should be essentially the same as the basic EPS for the outstanding shares of common stock. However, the two-class method is complex due to the separate calculations and disclosures of distributed and undistributed earnings and it will be difficult for users of financial statements to understand and complicated for preparers to communicate and calculate. Further, the impact of using the two-class method will be immaterial for a vast majority of companies, but will still require reporting.

Alternatively, these awards could be included in outstanding shares for the basic and diluted EPS calculations, thereby alleviating the need to perform the two-class method.

### **Average Stock Price**

We believe the market price used to determine the incremental number of shares in EPS computations should remain the average for the period, not end-of-period. Consistent with the basis for conclusions in paragraph 107 of FAS 128, “the average stock price is consistent with the objective of diluted EPS to measure earnings per share for the period based on period information and that use of end-of-period data or estimates of the future is inconsistent with that objective.” Further, while the proposed standard notes that the use of end-of-period is easier than the average for the period, the insignificant time savings does not outweigh the “concern that end-of-period fluctuations in stock prices could have an undue effect” on the calculation.

### **Year-to-Date EPS Based on Interim Periods**

Year-to-date dilutive shares should continue to be based on the current method of averaging the quarterly computations. We question the theoretical support and usefulness of reflecting subsequent events in EPS by effectively re-computing previous quarters' EPS in the year-to-date computation. This does not simplify the EPS computation as indicated in the proposed statement. Further, in connection with the proposed change to an end-of-period market price under the treasury stock method, the year-to-date EPS calculation will be unduly effected by the stock price on a single day. Recent turmoil in the markets demonstrates the severe volatility that would *affect EPS, distorting reported performance. Given the complexities that already exist* surrounding the applications of FAS 128 and the communication problems incurred with the investment community when it was adopted, we do not see why the EPS computation should again be changed. Although possible under the current standard, the proposed standard will lead to more frequent situations when earnings per share for the quarters will not add to the year. This is difficult to communicate and confusing to non-technical users. In fact, if any changes are to be considered, we support a notion that earnings per share for a year-to-date period should merely equal the sum of the periods (monthly, quarterly, six months, or annual) regularly reported by a company.

### **Conversion with IAS**

Efforts have been made to converge U.S. GAAP with International Accounting Standards and the SEC has recently proposed a roadmap for convergence in 2014 for large accelerated filers. Now that a timeline has been established for convergence, it seems counterintuitive to continually issue and adopt new standards that do not perfectly mirror IFRS. While efforts have been made to make the EPS calculation under FAS 128 similar to the EPS calculation under IAS 33, there still are exceptions and the amounts still are not comparable. We believe the proposed changes are not significant enough to warrant issuance and a revised FAS 128 should not be issued until true convergence with international standards can be achieved. Otherwise, companies will be forced to recalculate and retroactively restate EPS for the adoption of this proposed statement and then again in the near future for the adoption of IFRS. This leads to wasted time and effort for prepares and causes confusion for investors as EPS, one of the most important financial measures, would continually change.

### **Conclusion**

We believe the two-class method should not be used for share-based awards to employees that are convertible into common stock on a one-to-one basis and pay a dividend at the same rate as common stock. Also, the average stock price, rather than the end-of-period price, should be used to determine incremental shares and year-to-date EPS calculations should be based on the quarterly EPS calculations. In addition, the proposed statement should not be issued until there are further deliberations that would achieve a true convergence with international standards.

We appreciate the opportunity to respond to the working draft and trust that our comments will be seriously considered in future Board deliberations on this issue.

Sincerely,

A handwritten signature in black ink that reads "Richard J. Schlueter". The signature is written in a cursive style with a horizontal line at the end.

Richard J. Schlueter  
Vice President  
& Chief Accounting Officer

cc: Walter J. Galvin  
Senior Executive Vice President  
& Chief Financial Officer