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FINANCIAL ACCOUNTING STANDARDS BOARD

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April 6, 2009

TO: MEMBERS OF THE FASB EMERGING ISSUES TASK FORCE

Included are the final minutes of the March 19, 2009 meeting of the FASB Emerging Issues Task Force and an inventory of open issues for the next EITF meeting. Also included is a confidential version of the minutes that has been marked for changes from the April 1, 2009 Fatal Flaw draft. After your review, please discard the confidential marked version of the minutes.

June Meeting

The next EITF meeting will be held on **June 17-18, 2009**, at the FASB offices in Norwalk, Connecticut. Please plan for the meeting to begin on Wednesday, June 17, at 1:00 p.m. and conclude no later than 5:00 p.m. On Thursday, June 18, we will resume at 8:00 a.m. and conclude no later than 4:00 p.m. The meeting times are tentative and may change. Coffee will be available and lunch will be provided. On Wednesday, June 17, the FASB will host a dinner at a location to be announced later.

Minutes

We will make minutes available **after 4:00 p.m.** on the following days:

Draft minutes available June 23, 2009

Final minutes available July 6, 2009.

Please call me at 203.956.5231 if you have any questions.

Sincerely,

Shea H. Malcolm
Practice Fellow
shmalcolm@fasb.org

0309FN

**MINUTES OF THE MARCH 19, 2009 MEETING
OF THE FASB EMERGING ISSUES TASK FORCE**

Location: FASB Offices
401 Merritt 7
Norwalk, Connecticut

Thursday, March 19, 2009

Starting Time: 8:00 a.m.

Concluding Time: 3:50 p.m.

Task Force Members Present:

Russell G. Golden (Chairman)

Mark M. Bielstein

Mitchell A. Danaher

James G. Campbell

Jay D. Hanson¹

Stuart H. Harden

Jan R. Hauser

Carl Kampel

Mark LaMonte

Carlo D. Pippolo

Matthew L. Schroeder

R. Harold Schroeder

Ashwinpaul C. (Tony) Sondhi

Robert Uhl

Lawrence E. Weinstock

Task Force Members Absent:

None.

¹ Mr. Hanson also served as the AcSEC Observer.

Others at Meeting Table:

Robert H. Herz, FASB Board Member

Thomas J. Linsmeier, FASB Board Member

Leslie F. Seidman, FASB Board Member

Larry W. Smith, FASB Board Member

Marc A. Siegel, FASB Board Member

Shelly C. Luisi, SEC Senior Associate Chief Accountant²

Eric West, SEC Associate Chief Accountant

Shea H. Malcolm, FASB Practice Fellow

* Peter C. Proestakes, FASB Assistant Director

* Kevin M. Stoklosa, FASB Assistant Director

* Kristofer E. Anderson, FASB Practice Fellow

* Chad I. Bonn, FASB Practice Fellow

* David B. Elsbree, Jr., FASB Practice Fellow

* Bradley J. Homant, FASB Practice Fellow

* Ronald W. Maples, FASB Practice Fellow

* Jamie A. Mayer, FASB Practice Fellow

* Chandini C. Smith, FASB Senior Investor Liaison

* For certain issues only.

² Ms. Luisi participated by telephone.

ADMINISTRATIVE MATTERS

- The Task Force Chairman welcomed Mr. Eric West, SEC Associate Chief Accountant, to the meeting table sitting in for Mr. James L. Kroeker as the SEC Observer, and announced that Ms. Shelly C. Luisi, SEC Senior Associate Chief Accountant, was participating by telephone.
- Prior EITF meeting minutes. An FASB staff member solicited objections to the final minutes of the January 15, 2009 meeting. No objections were noted.
- The Task Force discussed the EITF Agenda Report following decisions made at meetings held on January 15, January 21, and February 12, 2009 (preliminary decisions were announced at the January 15, 2009 EITF meeting and are repeated here for convenience). The EITF Agenda Committee discussed two proposed issues ((a) and (b)) and provided its recommendations to the FASB Chairman, who, after considering input from other Board members on those two issues as well as on other potential issues ((c) and (d)), made the following decisions:

- a. *Accounting for Deferred Tax Assets and Liabilities on Available-for-Sale Debt Securities That Are Expected to Be Held-to-Recovery and/or Held-to-Maturity.* This issue was not added to the EITF agenda. However, the FASB Chairman added this issue to the FASB agenda at the February 12, 2009 FASB Administrative meeting.
- b. *Consideration of an Insurer's Accounting for Majority Owned Investments When the Ownership Is through a Separate Account.* This issue was added to the EITF agenda and will be discussed at a future meeting.

The SEC staff indicated that until the Task Force reaches a final consensus on this issue, the SEC staff would not object to accounting that is consistent with View A or View B summarized in this Agenda Report (issued on March 3, 2009).

- c. *In-Process Research and Development Acquired In an Asset Acquisition.* At the FASB's January 21, 2009 Board meeting, the FASB Chairman announced that the FASB project on this topic was being removed from the FASB agenda and added to the EITF agenda. Refer to the discussion of EITF Issue No. 09-2, "Research and Development Assets Acquired In an Asset Acquisition," elsewhere in these minutes.
 - d. *Application of the AICPA Audit and Accounting Guide, Investment Companies, by Real Estate Investment Companies.* This issue was added to the EITF agenda and will be discussed at a future meeting. The FASB staff anticipates the creation of a Working Group to assist the EITF in addressing this issue.
- An FASB staff member reported that the FASB has added a project to its agenda to reconsider the scope of FASB Statement No. 160, *Noncontrolling Interests in Consolidated*

Financial Statements, which may impact the consensuses-for-exposure reached on EITF Issue No. 08-10, "Selected Statement 160 Implementation Questions." The FASB staff will consider the need to finalize Issue 08-10 once the FASB has completed its deliberations.

- Comment letters on the following Issues were reported as received and distributed to the Task Force:
 - a. Sixteen comment letters on EITF Issue No. 08-1, "Revenue Arrangements with Multiple Deliverables." Refer to the discussion of Issue 08-1 elsewhere in these minutes for Task Force consideration of those comment letters.
 - b. One comment letter on EITF Issue No. 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock." An FASB staff member reported that the FASB staff discussed the letter with the comment letter respondent and clarified certain incorrect conclusions that the respondent had made when analyzing the impact of this Issue. The staff reported that the respondent was satisfied by the staff's response and that no action was required on the part of the Task Force.
 - c. One comment letter on EITF Issue No. 09-2, "Research and Development Assets Acquired In an Asset Acquisition." Refer to the discussion of Issue 09-2 elsewhere in these minutes for Task Force consideration of that comment letter.
- June 2009 EITF meeting. An FASB staff member asked the Task Force to anticipate a two-day EITF meeting to be held on June 17–18, 2009. Subsequent to the meeting, the FASB staff determined that there would not be an extra EITF meeting held on May 5, 2009.
- An FASB staff member announced that any consensuses-for-exposure reached at this meeting will be considered by the Board for ratification and exposure for public comment at the Board meeting on Wednesday, April 1, 2009. Any consensuses-for-exposure reached at prior meetings that are affirmed as consensuses at this meeting will also be considered by the Board for ratification at the Board meeting on Wednesday, April 1, 2009.

Issue No. 08-1

Title: Revenue Arrangements with Multiple Deliverables

Dates Discussed: March 12, 2008; June 12, 2008; September 10, 2008; November 13, 2008;
March 19, 2009

References: FASB Statement No. 13, *Accounting for Leases*
FASB Statement No. 45, *Accounting for Franchise Fee Revenue*
FSB Statement No. 48, *Revenue Recognition When Right of Return Exists*
FASB Statement No. 66, *Accounting for Sales of Real Estate*
FASB Statement No. 68, *Research and Development Arrangements*
FASB Statement No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*
FASB Statement No. 154, *Accounting Changes and Error Corrections*
FASB Statement No. 157, *Fair Value Measurements*
FASB Statement No. 162, *The Hierarchy of Generally Accepted Accounting Principles*
FASB Technical Bulletin No. 90-1, *Accounting for Separately Priced Extended Warranty and Product Maintenance Contracts*
FASB Concepts Statement No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*
AICPA Accounting Research Bulletin No. 45, *Long-Term Construction-Type Contracts*
AICPA Statement of Position 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts*
AICPA Statement of Position 97-2, *Software Revenue Recognition*
AICPA Statement of Position 98-9, *Modification of SOP 97-2, Software Recognition, With Respect to Certain Transactions*
AICPA Statement of Position 00-2, *Accounting by Producers or Distributors of Films*
SEC Staff Accounting Bulletin No. 104, Topic 13, *Revenue Recognition*
EITF Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables"

EITF Issue No. 01-9, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)"

EITF Issue No. 08-9, "Milestone Method of Revenue Recognition"

EITF Issue No. 09-3, "Applicability of AICPA Statement of Position 97-2 to Certain Arrangements That Include Software Elements"

Introduction

1. Entities often enter into revenue arrangements that provide for multiple payment streams. For example, a service provider may receive an up-front payment upon signing a service contract with a customer and then receive additional payments as services are provided to that customer. Other examples can be more complex, such as in biotechnology and pharmaceutical research and development arrangements, because they may involve multiple deliverables, up-front payments, payments for specific services, and payments upon achievement of certain clinical milestones. If delivery of a single unit of accounting spans multiple accounting periods or deliverables, an entity needs to determine how to allocate the multiple payment streams (arrangement consideration) attributable to that unit of accounting to those accounting periods.

2. The ultimate objective of attributing arrangement consideration to a single unit of accounting is to determine when the arrangement consideration should be recognized as revenue. The fundamental criteria for revenue recognition are set forth in Concepts Statement 5, paragraph 83, which states that "recognition involves consideration of two factors, (a) being realized or realizable and (b) being earned, with sometimes one and sometimes the other being the more important consideration." Generally, revenue is considered both realizable and earned when each one of the following four conditions is met:

- a. Persuasive evidence of an arrangement exists
- b. The arrangement fee is fixed or determinable
- c. Delivery or performance has occurred
- d. Collectibility is reasonably assured.

3. This Issue considers the determination of the unit of accounting for an arrangement with multiple deliverables and several other practice issues encountered relating to revenue attribution.

4. Revenue recognition for a single unit of accounting depends on the nature of the deliverable(s) composing that unit of accounting, the corresponding revenue recognition criteria, and whether those criteria have been met. Current guidance does not explicitly address many of the issues encountered by entities in practice. As a result, entities have adopted various accounting methods to attribute revenue in arrangements that have multiple payment streams that are accounted for as a single unit of accounting. Those practice issues can generally be arranged into two categories: those impacting the determination of the unit of accounting under Issue 00-21 and those related to revenue recognition attribution methods. The following issues have been

encountered in practice when entities consider the appropriate attribution model for revenue with multiple payment streams:

Unit of Accounting:

1. Whether "access or standing ready to perform" can be a deliverable
2. Whether and how contingent deliverables should impact revenue recognition
3. Whether the fair value threshold requirement of Issue 00-21 needs to be revised

Revenue Recognition Attribution Methods:

4. Whether the milestone method is an acceptable attribution method of revenue recognition
5. How the proportional performance model should be applied to a single unit of accounting composed of multiple deliverables
6. Whether recognition of revenue on a straight-line basis is acceptable when the goods or services may not be delivered ratably over the period.

Prior EITF Discussion

5. At the March 12, 2008 EITF meeting, the Task Force discussed this Issue but was not asked to reach a conclusion. The issues presented at that meeting were:

Issue 1— Whether, under certain facts and circumstances, it may be acceptable to use a multiple attribution model to account for a single unit of accounting consisting of a single deliverable

Issue 2— Whether, under certain facts and circumstances, it may be acceptable to use a multiple attribution model to account for a single unit of accounting consisting of multiple deliverables.

The Task Force requested that the FASB staff perform additional research on the transactions that give rise to the practice concern addressed by this Issue.

6. At the June 12, 2008 EITF meeting, the Task Force was informed that a Working Group had been formed to provide recommendations to the Task Force on this Issue. The Task Force discussed the initial findings of the Working Group but was not asked to reach a conclusion. The Task Force instructed the staff to continue to develop this Issue with the assistance of the Working Group for discussion at a future Task Force meeting.

7. At the September 10, 2008 EITF meeting, the Task Force discussed the results of the Working Group meetings held on July 15, 2008, and August 7, 2008; the Working Group's recommendations; and the specific practice issues that had been identified and discussed by the Working Group. The Working Group made a recommendation that the Task Force not provide specific guidance on Issues 1–4 below and made specific recommendations on Issues 5 and 6 below.

8. The issues are:

Issue 1— Whether "access or standing ready to perform" can be a deliverable

Issue 2— Whether and how contingent deliverables should impact revenue recognition

Issue 3— How the proportional performance model should be applied to a single unit of accounting composed of multiple deliverables

Issue 4— Whether recognition of revenue on a straight-line basis is acceptable when the goods or services may not be delivered ratably over the period

Issue 5— Whether to modify the objective-and-reliable-evidence-of-fair-value threshold of Issue 00-21

Issue 6— Whether to issue guidance on the application of the milestone method of revenue recognition.

9. The Task Force discussed Issues 1–4 and some members noted that in order to address those issues the Task Force may need to create a definition of a deliverable, which they believed would take longer than one year. The definition of a deliverable is currently being addressed in the Board's revenue recognition project. Task Force members also noted that a change to the objective-and-reliable-evidence-of-fair-value threshold in Issue 00-21 might reduce or resolve some of those issues without requiring additional standard setting. Therefore, the Task Force tentatively agreed not to provide guidance on Issues 1–4.

10. The Task Force discussed the Working Group recommendation on Issue 5 and considered whether the objective-and-reliable-evidence-of-fair-value threshold in Issue 00-21 should be modified to allow the use of an estimated selling price for the undelivered unit of accounting in transactions in which vendor-specific objective evidence (VSOE) or acceptable third-party evidence (TPE) of the selling price for an undelivered unit of accounting are unavailable. Task Force members noted that the absence of objective and reliable evidence of fair value of the undelivered item in an arrangement is a common reason entities are unable to separate deliverables in an arrangement under Issue 00-21 and that this often results in accounting that constituents believe does not reflect the underlying economics of a transaction.

11. The Task Force discussed a model that would amend Issue 00-21 to require an entity to estimate the selling price of the undelivered unit(s) of accounting and allocate the arrangement consideration using the residual method when the entity does not have VSOE or acceptable TPE of the selling price for the undelivered unit(s) of accounting. When estimating the selling price for the undelivered unit of accounting, the Task Force discussed whether the following principle should be applied: the vendor's estimate of selling price shall be consistent with the objective of determining VSOE for the unit of accounting; that is, the price at which the entity would transact if the undelivered item(s) were sold regularly on a standalone basis. The entity must consider market conditions as well as entity-specific factors when estimating the selling price.

12. The Task Force also discussed whether Issue 00-21 should be amended to provide a principle for determining the estimated selling price of the undelivered unit of accounting and to include examples to demonstrate the application of that principle. The Task Force requested that the FASB staff update the existing examples in Issue 00-21 for discussion at the next Task Force meeting and include additional examples illustrating how an entity might develop the estimated selling price for the undelivered unit of accounting.

13. The Task Force also discussed whether the current fair value terminology in Issue 00-21 is intended to represent a fair value measurement consistent with the requirements of Statement 157. The Task Force agreed that the objective of that measurement is not a Statement 157 fair value measurement. The FASB staff notes that Statement 157, paragraph 3(a), excludes from its scope accounting pronouncements that permit measurements that are based on, or otherwise use, VSOE of fair value. Such pronouncements include Issue 00-21 and SOP 97-2, as noted in footnote 3 of Statement 157. The Task Force tentatively concluded that if a consensus on this Issue were to revise Issue 00-21, references to "fair value" should be replaced with references to "selling price" to avoid confusion with Statement 157. The Task Force noted that amendments that refer to selling price are not intended to have an impact on the determination of VSOE and TPE of fair value.

14. The Task Force discussed the Working Group recommendation that the scope of this Issue be limited to the proposed amendments to the fair value threshold of Issue 00-21 and not expanded to include other revenue recognition guidance that contains similar concepts (for example, SOP 97-2). The Task Force tentatively agreed with the Working Group recommendation but requested that the FASB staff seek user input on whether the scope of the proposed amendments to the fair value threshold of Issue 00-21 should be expanded to other revenue recognition guidance. In addition, the Task Force requested that the staff also seek user input on what, if any, additional disclosures should be required as a result of the proposed change in the fair value threshold.

15. The Task Force agreed with the FASB staff recommendation to address Issues 5 and 6 as two separate EITF Issues for discussion at a future EITF meeting since each of those issues has a separate scope. Issue 08-1 now focuses on Issue 5, that is, whether the fair value threshold requirement of Issue 00-21 needs to be revised. Further discussion of Issue 6 is now included in Issue 08-9.

16. At the November 13, 2008 EITF meeting, the Task Force discussed the following issues related to the fair value threshold of Issue 00-21 including consideration of comments received on this Issue:

Issue 1—Whether an entity should be allowed to use its best estimate of selling price for the undelivered item(s) in an arrangement when the deliverable(s) in that arrangement is within the scope of SOP 97-2

Issue 2— Whether an entity should be allowed to use a method other than the residual method of allocating arrangement consideration when the selling price of the undelivered unit(s) of accounting is based on the vendor's best estimate

Issue 3— Whether the Task Force agrees with the FASB staff's modifications to the application guidance of Issue 00-21

Issue 4— Whether the Task Force agrees with the FASB staff's modifications to the examples included in Exhibit 00-21B of the draft abstract.

The Task Force also considered a draft abstract prepared by the FASB staff marked to show proposed amendments to Issue 00-21 resulting from the Task Force's tentative conclusions reached at the September 10, 2008 EITF meeting.

17. On Issue 1, the Task Force discussed two comment letters (from entities that sell software-enabled devices accounted for under SOP 97-2) that recommended that the scope of Issue 08-1 be expanded to include transactions within the scope of SOP 97-2. The Task Force also considered the input received by the FASB staff from users of financial statements of software entities. Those users stated that they believed that contracts accounted for under SOP 97-2 should not require or allow deliverables to be accounted for as separate units of accounting based on an estimate of the selling price of undelivered elements when the company did not have VSOE. The Task Force considered whether to (a) expand the scope of Issue 08-1 to include transactions accounted for under SOP 97-2, (b) expand the scope of Issue 08-1 to specifically include revenue related to software-enabled devices, or (c) not expand the scope of Issue 08-1 but recommend a separate project to evaluate the scope of SOP 97-2 and the accounting for revenue arrangements with multiple deliverables within the scope of SOP 97-2. The Task Force reached a consensus-for-exposure that the scope of Issue 08-1 should be the same as the scope of Issue 00-21 and that the scope not be expanded to include deliverables within the scope of SOP 97-2. The Task Force also recommended to the FASB Chairman that a separate Issue be added to the EITF agenda to consider changes to the accounting for multiple element arrangements under SOP 97-2. The FASB Chairman was present at the meeting and after considering the input from Task Force and Board members, decided to add the Issue to the EITF agenda (refer to Issue 09-3). The Task Force noted that it would be preferable if any amendments arising from future Task Force deliberations on SOP 97-2 were to have an effective date that is consistent with Issue 08-1.

18. On Issue 2, the Task Force reached a consensus-for-exposure that an entity is required to use the residual method of allocating arrangement consideration when the selling price of the undelivered unit(s) of accounting is based on the vendor's best estimate. However, the amount allocated to the delivered unit(s) of accounting as a result of applying this methodology shall not exceed the selling price of the delivered unit(s) of accounting based on VSOE or TPE, if known.

19. On Issues 3 and 4, the Task Force reached a consensus-for-exposure that the draft abstract be modified to include guidance on disclosure, transition, and effective date, and to provide clarifying language to paragraph 17 of the draft abstract.

20. Amendments to Issue 00-21 as a result of the above decisions were provided in a marked format for Task Force consideration.

Current EITF Discussion

21. At the March 19, 2009 EITF meeting, the Task Force discussed 16 comment letters received on the draft abstract and the staff's analysis of those letters. The comment letters are summarized below.

Respondent Profile	
Type of Respondent	Number of Letters
Preparers	7
Industry Organizations	6
User Group	1
Others	2
Total Number of Letters	16

22. The Task Force considered the following issues raised by respondents:

Issue 1— Whether the Task Force should continue discussion of this Issue, and, if so, whether the Task Force should amend the draft abstract to provide an exception to the requirement that a vendor's best estimate of selling price be used in some circumstances in which VSOE or TPE of selling price do not exist

Issue 2— Whether the Task Force should provide additional guidance regarding the definition of standalone value in paragraph 9(a) of the draft abstract

Issue 3— Whether the Task Force should amend the draft abstract to require the use of the relative-selling-price method of allocation and allow for the use of a vendor's best estimate of selling price for the delivered unit(s) of accounting when VSOE or TPE of selling price do not exist. If not, whether the Task Force should retain the limitation of the amount of arrangement consideration that can be allocated to the delivered unit(s) of accounting when using the residual method and whether the Task Force should amend the draft abstract according to changes proposed by the staff to clarify the application of the residual method.

23. On Issue 1, the Task Force agreed to continue discussion of this Issue and not to provide an exception to the requirement to use a vendor's best estimate of selling price when VSOE or TPE of selling price do not exist. In making its decisions, the Task Force discussed the progress of the FASB and IASB joint project on revenue recognition. The Task Force observed that addressing this Issue would provide a short-term improvement for the uneconomic reporting that can sometimes result when applying the current revenue recognition model under Issue 00-21. One Task Force member expressed concern about the reliability of using management estimates in place of VSOE or TPE of selling price and whether entities may default to using an estimated selling price without applying a reasonable amount of effort to obtain VSOE or TPE. That Task Force member also questioned whether the Task Force had provided enough guidance regarding the level of effort that vendors should expend before concluding that VSOE or TPE of selling price could not be determined.

24. The Task Force acknowledged that there may be instances in which estimating the selling price of deliverables may be difficult either because of limited information available from the vendor's own transactions or because of the lack of similar transactions in the marketplace. However, the Task Force observed that separating deliverables into separate units of accounting to recognize revenue upon delivery of a product or performance of a service better reflects the economics of most transactions than not having that ability because the deliverables are required to be accounted for as one unit of accounting. The Task Force discussed an approach to mitigate concerns regarding the reliability of management estimates of selling price through disclosures.

25. On Issue 2, the Task Force observed that there is limited guidance provided on standalone value as that assessment requires judgment. Accordingly, the Task Force agreed not to provide any further clarification to the draft abstract on the issue of standalone value.

26. On Issue 3, the Task Force discussed the staff's recommendation to eliminate the residual method and require the use of the relative-selling-price method when an entity is unable to determine VSOE or TPE of selling price. Task Force members generally agreed that the relative-selling-price method may be a conceptually preferable approach to allocate arrangement consideration, and that the use of the relative-selling-price method would simplify the application of Issue 08-1. Some Task Force members expressed a concern that requiring entities that were previously using the residual method to adopt the relative-selling-price method may result in a significant change in practice for those companies that were previously able to separate deliverables under Issue 00-21.

27. Some Task Force members questioned why the use of a vendor's best estimate of selling price is a valid method for determining selling price only for undelivered products and services when applying the residual method. Those Task Force members indicated that if the use of the vendor's best estimate is a valid method for determining selling price, its use should not be restricted to the residual method.

28. After discussing Issue 3, the Task Force reached a tentative conclusion to eliminate the residual method and require vendors to allocate arrangement consideration using the relative-selling-price method. The Task Force also reiterated its commitment to address the need for enhanced disclosures of management estimates of selling price. Considering the decisions reached at this meeting, the Task Force agreed that if a new consensus-for-exposure is reached on the application of the relative-selling-price method and enhanced disclosures, a revised draft abstract on Issue 08-1 should be re-exposed to provide constituents with the opportunity to comment on the elimination of the residual method and the proposed disclosures.

Disclosure

29. The Task Force discussed several possible disclosure proposals intended to provide users with sufficient information to understand the extent to which revenue was being recognized using a vendor's best estimate of selling price and the degree to which those estimates may change over time. Accordingly, the Task Force requested that the FASB staff develop a proposal for disclosures with the assistance of both users and preparers. The staff agreed to meet with users and preparers to explore possible disclosures and to present the alternatives to the Task Force at a future meeting.

Effective Date and Transition

30. The Task Force did not discuss the consensus-for-exposure reached previously on the effective date and transition for this Issue as this Issue will be discussed further at a future meeting.

Status

31. Further discussion is expected at a future meeting.

Issue No. 08-9

Title: Milestone Method of Revenue Recognition

Dates Discussed: November 13, 2008; March 19, 2009

References: FASB Statement No. 5, *Accounting for Contingencies*
FASB Statement No. 13, *Accounting for Leases*
FASB Statement No. 154, *Accounting for Changes and Error Corrections*
FASB Concepts Statement No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*
FASB Invitation to Comment, *Accounting for Certain Service Transactions*
APB Opinion No. 22, *Disclosure of Accounting Policies*
AICPA Statement of Position 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts*
AICPA Statement of Position 97-2, *Software Revenue Recognition*
AICPA Statement of Position 00-2, *Accounting by Producers or Distributors of Films*
SEC Staff Accounting Bulletin No. 104, Topic 13, *Revenue Recognition*
EITF Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables"
EITF Issue No. 08-1, "Revenue Arrangements with Multiple Deliverables"

Introduction

1. The ultimate objective of attributing arrangement consideration is to determine when the arrangement consideration should be recognized as revenue. As set forth in Concepts Statement 5, paragraph 83, "recognition involves consideration of two factors, (a) being realized or realizable and (b) being earned, with sometimes one and sometimes the other being the more important consideration." Generally, revenue is considered both realizable and earned when each one of the following four conditions is met:

- a. Persuasive evidence of an arrangement exists
- b. The arrangement fee is fixed or determinable
- c. Delivery or performance has occurred
- d. Collectibility is reasonably assured.

2. The issue of when and if a vendor will receive additional arrangement consideration that is not considered initially fixed upon consummation of the arrangement (for example, arrangement consideration contingent upon achievement of a specified event), relates to whether the

arrangement consideration is fixed or determinable and whether collectability is reasonably assured. This Issue does not address the topic of whether collectability is reasonably assured.

3. Typically, contingent arrangement consideration becomes fixed or determinable only after the contingency is resolved. At the time the contingency is resolved or the event is achieved, a vendor must determine how to allocate the additional consideration. For arrangements comprising a single deliverable or unit of accounting under which a vendor satisfies its performance obligations to a customer over a period of time, the determination as to whether the additional arrangement consideration relates to past performance, future performance, or both can be very difficult. The purpose of this Issue is to examine the use of the milestone method as one possible method for determining how to allocate the contingent arrangement consideration once it becomes fixed or determinable. Under the milestone method, arrangement consideration earned from the achievement of a milestone may be deemed to be related to the portion of the performance period dedicated to achieving that specific milestone.

Prior EITF Discussion

4. Prior to the November 13, 2008 EITF meeting, this Issue was discussed by the Task Force as part of Issue 08-1. Beginning with the November meeting, this Issue was separated from Issue 08-1 for further discussion. The Task Force reached the following tentative decisions at the September 10, 2008 and November 13, 2008 EITF meetings. The Task Force tentatively defined a milestone as an event for which there is substantial uncertainty at the date the arrangement is entered into that the event will be achieved, when that event can only be achieved based in whole or in part on the vendor's performance or a specific outcome resulting from the vendor's performance and, if achieved, would result in additional payments being due to the vendor.

5. The Task Force also tentatively agreed that based on the foregoing definition of a milestone, arrangement consideration earned from the achievement of a milestone may relate to past performance and the milestone method may be a valid application of the proportional performance model.

6. Furthermore, because an event must be achieved based in whole or in part on the vendor's performance or a specific outcome resulting from the vendor's performance, the Task Force tentatively agreed that a milestone does not include events for which the occurrence is contingent upon the passage of time or a customer's performance.

7. The Task Force also tentatively concluded that the guidance in this Issue is not the only acceptable revenue attribution model for arrangement consideration contingent upon achievement of a milestone (whether or not the milestone is substantive). A vendor should apply the revenue recognition model most appropriate to the facts and circumstances. A vendor's policy for recognizing arrangement consideration that is contingent upon achievement of a milestone shall be applied consistently to similar arrangements.

8. The Task Force also tentatively concluded that the arrangement consideration earned from the achievement of a milestone shall not be recognized as revenue in its entirety in the period in which the milestone is achieved if any portion of the associated milestone arrangement consideration relates to the remaining deliverables in the arrangement. Furthermore, the Task

Force tentatively concluded that if the arrangement consideration from an individual milestone is not considered to relate solely to past performance, the vendor would not be precluded from using the milestone method for other milestones in the arrangement.

9. At the November 13, 2008 EITF meeting, the Task Force tentatively agreed that this Issue may be applied to all contractual revenue arrangements (whether written, oral, or implied, and hereinafter referred to as "arrangements") under which a vendor satisfies its performance obligations to a customer over a period of time and when a portion or all of the arrangement consideration is contingent upon the achievement of a milestone(s).

10. The Task Force also discussed whether the scope of this Issue should be limited to deliverables or units of accounting for which the revenue recognition convention is not within the scope of other authoritative literature. The Task Force was not asked to reach a conclusion, but agreed to proceed with a discussion of the Issue under the presumption that this Issue could not be applied if the unit of accounting to which the milestone relates is accounted for under SOP 81-1 and SOP 97-2, and to reconsider the scope at a future meeting.

11. Certain members of the Task Force noted that this Issue does not provide recognition guidance for situations in which a milestone is not considered substantive. Some Task Force members asked whether it should; however, the Task Force did not reach a tentative conclusion on this question.

12. The Task Force affirmed its tentative conclusion that the consideration earned from the achievement of a milestone must relate solely to past performance. The Task Force also discussed but was not asked to reach a conclusion on the measurement criteria that should be applied to the milestone payment when a vendor assesses whether the achievement of a milestone relates solely to past performance.

Current EITF Discussion

13. At the March 19, 2009 EITF meeting, the Task Force considered the following Issues:

Issue 1—Whether a license has standalone value in a research and development arrangement

Issue 2—How an entity should account for arrangements with contingent consideration in an arrangement consisting of a single deliverable or unit of accounting.

14. The Task Force agreed not to address Issues 1 and 2. Task Force members expressed a concern that both Issue 1 and Issue 2 encompass broader practice concerns than were originally intended to be addressed by this Issue. Rather, the Task Force reached a consensus-for-exposure to affirm the tentative conclusions reached at the November 13, 2009 EITF meeting. In addition, the Task Force reached a consensus-for-exposure that the scope of this Issue should be based on the following:

This Issue may be applied to a single deliverable or unit of accounting arising from arrangements under which a vendor satisfies its performance obligations to a customer over a period of time, and when a portion or all of the arrangement consideration is

contingent upon uncertain future events or circumstances, except when the guidance in this Issue conflicts with other authoritative literature that provides guidance with respect to the revenue recognition convention for the single deliverable or unit of accounting.

15. The Task Force reached a consensus-for-exposure that when applying the guidance in this Issue a vendor may make an accounting policy election to recognize the arrangement consideration that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved.

16. The Task Force reached a consensus-for-exposure that, for purposes of this Issue, a milestone is defined as an event for which there is substantial uncertainty at the date the arrangement is entered into that the event will be achieved when that event can only be achieved based in whole or in part on the vendor's performance or a specific outcome resulting from the vendor's performance and, if achieved, would result in additional payments being due to the vendor.

17. The Task Force reached a consensus-for-exposure that the determination of whether a milestone is substantive is a matter of judgment. However, the following principle shall be used in making a determination as to whether a milestone is substantive:

The consideration earned from the achievement of a milestone is commensurate with either the vendor's performance to achieve the milestone or the enhancement of the value of the delivered item(s) as a result of a specific outcome resulting from the vendor's performance to achieve the milestone. The consideration earned from the achievement of a milestone relates solely to past performance and is reasonable relative to all of the deliverables and payment terms (including other potential milestone consideration) within the arrangement.

18. The Task Force reached a consensus-for-exposure that a milestone shall not be considered substantive if any portion of the associated milestone consideration relates to the remaining deliverables in the unit of accounting (that is, it does not relate solely to past performance). In order to recognize the milestone consideration in its entirety as revenue in the period in which the milestone is achieved, the milestone must be substantive in its entirety. It is not appropriate to bifurcate milestone consideration into substantive and non-substantive components. In addition, if a portion of the consideration earned from achieving a milestone may be refunded or adjusted based on future performance (for example, through a penalty or clawback), the contingent consideration is not considered to relate solely to past performance and thus the related milestone cannot be considered substantive. If the arrangement consideration from an individual milestone is not considered to relate solely to past performance, the vendor would not be precluded from using the milestone method for other milestones in the arrangement.

19. The Task Force reached a consensus-for-exposure that to be considered a milestone, an event must be achieved based in whole or in part on the vendor's performance or a specific outcome resulting from the vendor's performance, therefore, a milestone does not include events for which the occurrence is contingent solely upon the passage of time or the result of a counterparty's performance.

The Task Force reached a consensus-for-exposure that the guidance in this Issue is not the only acceptable revenue attribution model for arrangement consideration contingent upon achievement of a milestone (whether or not the milestone is substantive). A vendor's policy for recognizing arrangement consideration contingent upon achievement of a milestone shall be applied consistently to similar arrangements.

Disclosure

20. The Task Force reached a consensus-for-exposure that an entity shall disclose its accounting policy for the recognition of milestone payments as revenue in accordance with Opinion 22. For those entities electing to apply the guidance in this Issue, the following information shall be disclosed in the notes to the financial statements for each arrangement that includes a material milestone payment: (a) a description of the overall arrangement, (b) a description of the individual milestones and related contingent consideration, (c) a determination as to whether the milestones are considered substantive, (d) the factors considered by the entity in making its assessment of whether the milestones are substantive, and (e) the amount of milestone consideration recognized during the period.

Transition

21. The Task Force reached a consensus-for-exposure that the application of the milestone method of revenue recognition pursuant to the guidance in this Issue is an accounting policy election. Therefore, adoption of the milestone method by an entity that has previously made an alternate accounting policy election shall be considered a change in accounting principle and be recognized in accordance with Statement 154, including justifying a change in the method of applying an accounting principle on the basis of preferability as specified by paragraphs 12–14 of that Statement.

Board Ratification

22. At the April 1, 2009 meeting, the Board ratified the consensus-for-exposure reached by the Task Force in this Issue and approved the issuance of a draft abstract for a public comment period. The draft abstract is included as Appendix 08-9A.

Status

23. The draft abstract will be posted to the FASB website after April 6, 2009. Comments on the draft abstract are due by May 5, 2009. Further discussion is expected at a future meeting.

EITF ABSTRACTS (DRAFT)*

Issue No. 08-9

Title: Milestone Method of Revenue Recognition

Dates Discussed: March 12, 2008; June 12, 2008; September 10, 2008; November 13, 2008;
March 19, 2009; [June 17-18, 2009]

References: FASB Statement No. 5, *Accounting for Contingencies*
FASB Statement No. 13, *Accounting for Leases*
FASB Statement No. 154, *Accounting Changes and Error Corrections*
FASB Concepts Statement No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*
APB Opinion No. 22, *Disclosure of Accounting Policies*
AICPA Statement of Position 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts*
AICPA Statement of Position 97-2, *Software Revenue Recognition*
AICPA Statement of Position 00-2, *Accounting by Producers or Distributors of Films*
SEC Staff Accounting Bulletin No. 104, Topic 13, *Revenue Recognition*
EITF Issue No. 00-21 "Revenue Arrangements with Multiple Deliverables"
EITF Issue No. 08-1, "Revenue Arrangements with Multiple Deliverables"
FASB Invitation to Comment, *Accounting for Certain Service Transactions* (1978)

* This draft abstract is being exposed for a public comment period that will end on May 5, 2009.

Objective

1. **The objective of this Issue is to define a milestone and clarify whether a vendor may recognize arrangement consideration earned from the achievement of a milestone in its entirety in the period in which the milestone is achieved.**

All paragraphs in this Issue have equal authority.

Paragraphs in bold set out the main principles.

Background

2. The ultimate objective of attributing arrangement consideration is to determine when the arrangement consideration should be recognized as revenue. As set forth in Concepts Statement 5, paragraph 83, "recognition involves consideration of two factors, (a) being realized or realizable and (b) being earned, with sometimes one and sometimes the other being the more important consideration." Generally, revenue is considered both realizable and earned when each one of the following four conditions is met:

- a. Persuasive evidence of an arrangement exists
- b. The arrangement fee is fixed or determinable
- c. Delivery or performance has occurred
- d. Collectibility is reasonably assured.

3. The issue of when and if a vendor will receive additional arrangement consideration that is not considered initially fixed upon consummation of the arrangement (for example, arrangement consideration contingent upon achievement of a certain event), relates to whether the arrangement consideration is fixed or determinable and whether collectability is reasonably assured. This Issue does not address the topic of whether collectability is reasonably assured.

4. Typically, contingent arrangement consideration becomes fixed or determinable only after the contingency is resolved. At the time the contingency is resolved or the event is achieved, a vendor must determine how to allocate the additional consideration. For arrangements comprising a single deliverable or unit of accounting under which a vendor satisfies its performance obligations to a customer over a period of time, the determination as to whether the additional arrangement consideration relates to past performance, future performance, or both

can be very difficult. The purpose of this Issue is to examine the use of the milestone method as one possible method for determining how to allocate the contingent arrangement consideration once it becomes fixed or determinable. Under the milestone method, arrangement consideration earned from the achievement of a milestone may be deemed to be related to the portion of the performance period dedicated to achieving that specific milestone.

Scope

5. This Issue may be applied to a single deliverable or unit of accounting arising from arrangements under which a vendor satisfies its performance obligations to a customer over a period of time, and when a portion or all of the arrangement consideration is contingent upon uncertain future events or circumstances, except when the guidance in this Issue conflicts with other authoritative literature that provides revenue recognition guidance for the single deliverable or unit of accounting.

Recognition and Measurement

6. A vendor may make an accounting policy election to recognize arrangement consideration that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved.

7. For purposes of this Issue, a milestone is defined as an event for which there is substantial uncertainty at the date the arrangement is entered into that the event will be achieved when that event can only be achieved based in whole or in part on the vendor's performance or a specific outcome resulting from the vendor's performance and, if achieved, would result in additional payments being due to the vendor.

8. The determination of whether a milestone is substantive is a matter of judgment. However, the following principle shall be used in making a determination as to whether a milestone is substantive:

The consideration earned from the achievement of a milestone is commensurate with either the vendor's performance to achieve the milestone or the enhancement of the value of the delivered item(s) as a result of a specific outcome resulting from the vendor's performance to achieve the milestone. The consideration earned from the

achievement of a milestone relates solely to past performance and is reasonable relative to all of the deliverables and payment terms (including other potential milestone consideration) within the arrangement.

9. A milestone shall not be considered substantive if any portion of the associated milestone consideration relates to the remaining deliverables in the unit of accounting (that is, it does not relate solely to past performance). In order to recognize the milestone consideration in its entirety as revenue in the period in which the milestone is achieved, the milestone must be substantive in its entirety. It is not appropriate to bifurcate milestone consideration into substantive and non-substantive components. In addition, if a portion of the consideration earned from achieving a milestone may be refunded or adjusted based on future performance (for example, through a penalty or clawback), the contingent consideration is not considered to relate solely to past performance and thus the related milestone cannot be considered substantive. If the arrangement consideration from an individual milestone is not considered to relate solely to past performance, the vendor would not be precluded from using the milestone method for other milestones in the arrangement.

10. To be considered a milestone, an event must be achieved based in whole or in part on the vendor's performance or a specific outcome resulting from the vendor's performance; therefore, a milestone does not include events for which the occurrence is contingent solely upon the passage of time or the result of a counterparty's performance.

11. The guidance in this Issue is not the only acceptable revenue attribution model for arrangement consideration contingent upon achievement of a milestone (whether or not the milestone is substantive). A vendor's policy for recognizing arrangement consideration contingent upon achievement of a milestone shall be applied consistently to similar arrangements.

12. This Issue does not address whether an arrangement comprises one or more deliverables or whether multiple deliverables within an arrangement meet the separation requirements of Issue 08-1.

Disclosure

13. An entity shall disclose its accounting policy for the recognition of milestone payments as revenue in accordance with Opinion 22. For those entities electing to apply the guidance in this Issue, the following information shall be disclosed in the notes to the financial statements for each arrangement that includes a material milestone payment: (a) a description of the overall arrangement, (b) a description of the individual milestones and related contingent consideration, (c) a determination as to whether the milestones are considered substantive, (d) the factors considered by the entity in making its assessment of whether the milestones are substantive, and (e) the amount of milestone consideration recognized during the period.

Transition

14. The application of the milestone method of revenue recognition pursuant to the guidance in this Issue is an accounting policy election. Adoption of the milestone method by an entity that has previously made an alternate accounting policy election shall be considered a change in accounting principle and be recognized in accordance with Statement 154, including justifying a change in the method of applying an accounting principle on the basis of preferability as specified by paragraphs 12–14 of that Statement.

The provisions of this Issue need not be applied to immaterial items.

Issue No. 09-1

Title: Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance

Date Discussed: March 19, 2009

References: FASB Statement No. 123 (revised 2004), *Share-Based Payments*
FASB Statement No. 128, *Earnings per Share*
FASB Statement No. 129, *Disclosure of Information about Capital Structure*
FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*
FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*
FASB Statement No. 154, *Accounting Changes and Error Corrections*
FASB Interpretation No. 39, *Offsetting of Amounts Related to Certain Contracts*
FASB Staff Position APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*
APB Opinion No. 14, *Accounting for Convertible Debt and Debt Issued with Stock Purchase Warrants*
EITF Issue No. 85-1, "Classifying Notes Receivable of Capital Stock"
EITF Issue No. 96-18, "Accounting for Equity Instruments That Are Issued to Other than Employees for Acquiring, or in Conjunction with Selling, Goods or Services"
EITF Issue No. 96-19, "Debtor's Accounting for a Modification or Exchange of Debt Instruments"
EITF Issue No. 98-5, "Accounting for Convertible Securities with Beneficial Conversion Features on Contingently Adjustable Conversion Ratios"
EITF Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock"

EITF Issue No. 00-27, "Application of Issue No. 98-5 to Certain Convertible Instruments

EITF Issue No. 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock"

Introduction

1. As a result of market conditions and the need for financing, a number of entities for which the cost to an investment banking firm (investment bank) or third-party investors (investors) of borrowing their shares is prohibitive (for example, due to a lack of liquidity or extensive open short positions in the shares) may enter into share-lending arrangements that are executed separately but in connection with a convertible debt offering. Although the convertible debt instrument is ultimately sold to investors, the share-lending arrangement is an agreement between the entity (share lender) and an investment bank (share borrower) and is intended to facilitate the ability of the investors to hedge the conversion option in the entity's convertible debt.

2. The share-lending arrangement is entered into with the investment bank underwriting the offering. The terms of the share-lending arrangement require the entity to issue shares (loaned shares) to the investment bank in exchange for a nominal loan processing fee. Although the loaned shares are legally outstanding, the nominal loan processing fee is typically equal to the par value of the common stock, which is significantly less than the fair value of the loaned shares or the share-lending arrangement. Generally, upon maturity or conversion of the convertible debt, the investment bank is required to return the loaned shares to the entity for no additional consideration. That is, the share-lending arrangement requires physical settlement. Loaned shares that are issued by the entity subject to these share-lending arrangements are legally outstanding, and the holders of those shares are entitled to receive dividends and to vote on shareholder matters. However, the terms of these share-lending arrangements stipulate that over the period the shares are loaned to the investment bank (the loan period), the investment bank is required to (a) reimburse the entity for any dividends paid on the loaned shares, even if the investment bank has sold the loaned shares into the market, and (b) not vote on any matters submitted to a vote of the entity's shareholders to the extent the investment bank is the owner of record. Although most share-lending arrangements do not require the investment bank to post collateral during the loan period, a collateral provision does exist in some of the arrangements.

Issues

3. The issues are:

Issue 1— How an entity should account for a share-lending arrangement that is entered into in contemplation of a convertible debt offering

Issue 2— The effect the share-lending arrangement has on the calculation of earnings per share.

Scope

4. This Issue applies to entities that enter into share-lending arrangements on their own shares in contemplation of a convertible debt offering or other financing.

Current EITF Discussion

5. At the March 19, 2009 EITF meeting, the Task Force reached a consensus-for-exposure on Issue 1 that at the date of issuance, a share-lending arrangement entered into on an entity's own shares in contemplation of a convertible debt offering or other financing is required to be measured at fair value and recognized as a debt issuance cost in the financial statements of the entity. The debt issuance cost shall be amortized using the effective interest method over the life of the financing arrangement as interest cost.

6. The share-lending arrangement should be considered in conjunction with other applicable generally accepted accounting principles (for example, Statement 150 and Issue 00-19) in determining the classification of the share-lending arrangement in the financial statements of the entity.

7. The Task Force reached a consensus-for-exposure on Issue 2 that the loaned shares are excluded from basic and diluted earnings per share unless default of the share-lending arrangement occurs, at which time the loaned shares would be included in the common and diluted earnings per share calculation. Any amounts, including contractual (accumulated) dividends and participation rights in undistributed earnings, attributable to the loaned shares shall be deducted in computing income available to common shareholders, consistent with the "two-class" method set forth in paragraph 61 of Statement 128.

Disclosure

8. The Task Force reached a consensus-for-exposure that the following disclosures, in addition to the disclosures required by Statement 129, be made in annual financial statements for any period in which a share-lending arrangement is outstanding.

An entity is required to disclose (a) a description of any outstanding share-lending arrangements on an entity's own stock and all significant terms of the share-lending arrangement including the number of shares, the term, the circumstances under which cash settlement would be required, and any requirements for the counterparty to provide collateral, (b) the entity's reason for entering into the share-lending arrangement, (c) the fair value of the outstanding loaned shares as of the balance sheet date, (d) the treatment of the share-lending arrangement for the purposes of calculating earnings per share, (e) the unamortized amount and classification of the debt issuance costs associated with the share-lending arrangement at the balance sheet date, and (f) the amount of interest cost recognized relating to the amortization of the debt issuance cost associated with the share-lending arrangement for the reporting period.

Effective Date and Transition

9. The Task Force reached a consensus-for-exposure that this Issue shall be effective for fiscal years beginning on or after December 15, 2009, and interim periods within those fiscal years. Early adoption is not permitted. This consensus requires retrospective application for all

arrangements outstanding as of the beginning of the fiscal year in which this Issue is initially applied.

10. The transition disclosures of paragraphs 17 and 18 of Statement 154 shall be provided.

Board Ratification

11. At the April 1, 2009 meeting, the Board ratified the consensus-for-exposure reached by the Task Force in this Issue and approved the issuance of a draft abstract for a public comment period. The draft abstract is included as Appendix 09-1A.

Status

12. The draft abstract will be posted to the FASB website after April 6, 2009. Comments on the draft abstract are due May 5, 2009. Further discussion is expected at a future meeting.

EITF ABSTRACTS (DRAFT)*

Issue No. 09-1

Title: Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance

Dates Discussed: March 19, 2009; [June 17–18, 2009]

References: FASB Statement No. 128, *Earnings per Share*
FASB Statement No. 129, *Disclosure of Information about Capital Structure*
FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*
FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*
FASB Statement No. 154, *Accounting Changes and Error Corrections*
EITF Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock"
EITF Issue No. 00-27, "Application of Issue No. 98-5 to Certain Convertible Instruments"
EITF Issue No. 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock"

Objective

1. **The objective of this Issue is to clarify how an entity should account for an own-share lending arrangement that is entered into in contemplation of a convertible debt offering.**

All paragraphs in this Issue have equal authority.

Paragraphs in bold set out the main principles.

* This draft abstract is being exposed for a public comment period that will end on May 5, 2009.

Background

2. An entity for which the cost to an investment banking firm (investment bank) or third-party investors (investors) of borrowing its shares is prohibitive (for example, due to a lack of liquidity or extensive open short positions in the shares) may enter into share lending arrangements that are executed separately but in connection with a convertible debt offering. Although the convertible debt instrument is ultimately sold to investors, the share lending arrangement is an agreement between the entity (share lender) and an investment bank (share borrower) and is intended to facilitate the ability of the investors to hedge the conversion option in the entity's convertible debt.

3. The terms of a share lending arrangement require the entity to issue shares (loaned shares) to the investment bank in exchange for a nominal loan processing fee. Although the loaned shares are legally outstanding, the nominal loan processing fee is typically equal to the par value of the common stock, which is significantly less than the fair value of the loaned shares or the share lending arrangement. Generally, upon maturity or conversion of the convertible debt, the investment bank is required to return the loaned shares to the entity for no additional consideration.

4. Other terms of a share lending arrangement require the investment bank to reimburse the entity for any dividends paid on the loaned shares. Typically, the arrangement precludes the investment bank from voting on any matters submitted to a vote of the entity's shareholders to the extent the investment bank is the owner of the shares.

Scope

5. This Issue applies to a share lending arrangement on an entity's own shares when executed in contemplation of a convertible debt offering or other financing.

Measurement

6. At the date of issuance, a share lending arrangement entered into on an entity's own shares in contemplation of a convertible debt offering or other financing is required to be measured at fair value and recognized as a debt issuance cost in the financial statements of the entity. The debt issuance cost is amortized under the effective interest method over the life of the financing arrangement as interest cost.

7. The share lending arrangement should be considered in conjunction with other applicable generally accepted accounting principles (for example, Statement 150 and Issue 00-19) in determining the classification of the share lending arrangement in the financial statements of the entity.

Other Presentation Matters

8. The loaned shares are excluded from basic and diluted earnings per share unless default of the share lending arrangement occurs, at which time the loaned shares would be included in the common and diluted earnings-per-share calculation. Any amounts, including contractual (accumulated) dividends and participation rights in undistributed earnings, attributable to the loaned shares shall be deducted in computing income available to common shareholders, consistent with the "two-class" method set forth in paragraph 61 of Statement 128..

Disclosure

9. The following disclosures are required by entities that enter into a share lending arrangement on their own shares in contemplation of a convertible debt offering or other financing. The disclosures must be made on an annual basis in any period in which a share lending arrangement is outstanding.

An entity is required to disclose (a) a description of any outstanding share lending arrangements on an entity's own stock and all significant terms of the share lending arrangement including the number of shares, the term, the circumstances under which cash settlement would be required, and any requirements for the counterparty to provide collateral, (b) the entity's reason for entering into the share lending arrangement, (c) the fair value of the outstanding loaned shares as of the balance sheet date, (d) the treatment of the share lending arrangement for the purposes of calculating earnings per share, (e) the unamortized amount and classification of the debt issuance costs associated with the share lending arrangement at the balance sheet date, and (f) the amount of interest cost recognized relating to the amortization of the debt issuance cost associated with the share lending arrangement for the reporting period.

10. Disclosures required by Statement 129 are applicable to entities that enter into a share lending arrangement on their own shares in contemplation of a convertible debt offering or other financing.

Transition

11. This Issue is effective for fiscal years beginning on or after December 15, 2009, and interim periods within those fiscal years. Early adoption is not permitted. This Issue requires retrospective application for all arrangements outstanding as of the beginning of the fiscal year in which this Issue is initially applied.

12. The transition disclosures in paragraphs 17 and 18 of Statement 154 shall be provided.

The provisions of this Issue need not be applied to immaterial items.

Issue No. 09-2

Title: Research and Development Assets Acquired In an Asset Acquisition

Date Discussed: March 19, 2009

References: FASB Statement No. 2, *Accounting for Research and Development Costs*
FASB Statement No. 71, *Accounting for the Effects of Certain Types of Regulation*
FASB Statement No. 86, *Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed*
FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*
FASB Statement No. 141, *Business Combinations*
FASB Statement No. 141 (revised 2007), *Business Combinations*
FASB Statement No. 142, *Goodwill and Other Intangible Assets*
FASB Statement No. 144, *Accounting for the Impairment and Disposal of Long-Lived Assets*
FASB Interpretation No. 4, *Applicability of FASB Statement No. 2 to Business Combinations Accounted for by the Purchase Method*
FASB Interpretation No. 6, *Applicability of FASB Statement No. 2 to Computer Software*
FASB Concepts Statement No. 6, *Elements of Financial Statements*
FASB Highlights, *Computer Software: Guidance on Applying Statement 86*, February 1986
AICPA Statement of Position 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts*
AICPA Statement of Position 93-7, *Reporting on Advertising Costs*
AICPA Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*
International Accounting Standard 36, *Impairment of Assets*
International Accounting Standard 38, *Intangible Assets*
International Financial Reporting Standard 3, *Business Combinations*

EITF Issue No. 96-6, "Accounting for the Film and Software Costs Associated with Developing Entertainment and Educational Software Products"

EITF Issue No. 96-7, "Accounting for Deferred Taxes on In-Process Research and Development Activities Acquired in a Purchase Business Combination"

EITF Issue 98-11, "Accounting for Acquired Temporary Differences in Certain Purchase Transactions That Are Not Accounted for as Business Combinations"

EITF Issue No. 99-5, "Accounting for Pre-Production Costs Related to Long-Term Supply Arrangements"

EITF Issue No. 00-2, "Accounting for Web Site Development Costs"

EITF Issue No. 07-1, "Accounting for Collaborative Arrangements"

EITF Issue No. 07-3, "Accounting for Nonrefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities"

Introduction

1. Prior to Statement 141(R), research and development assets were accounted for in the same manner irrespective of whether they were purchased as individual assets, as part of a group of assets, or in a business combination. In accordance with Statement 2, research and development assets are only recognized if the assets have a future alternative use, otherwise the assets are expensed at the acquisition date. Tangible assets that meet the future alternative-use criterion are initially capitalized at allocated cost. Intangible assets that meet the future alternative-use criterion are also initially capitalized at allocated cost and subsequently accounted for in accordance with Statement 142. In addition to Statement 2, other accounting literature addresses different aspects of accounting for research and development activities; for example, costs associated with computer software (for internal use or sale). This other accounting literature is based on the accounting requirements in Statement 2.

2. Statement 141(R) amends Statement 2 and other accounting literature related to Statement 2 for research and development assets acquired in a business combination. Statement 141(R) requires that all research and development assets acquired in a business combination be initially recognized and measured at fair value, regardless of whether those assets have an alternative future use. These amendments have created inconsistencies between the accounting for research and development assets acquired in a business combination and those acquired in an asset acquisition.

Issues

3. The issues are:

Issue 1— Whether the costs of acquired tangible and intangible research and development assets that are acquired in an asset acquisition and that do not have a future alternative use, shall be expensed immediately or capitalized

Issue 2— If the Task Force decides that all acquired research and development assets shall be initially capitalized, how acquired research and development assets shall be subsequently accounted for.

Scope

4. The scope of this Issue includes all tangible and intangible research and development assets acquired (either individually or with a group of other assets) in a transaction other than a business combination. This Issue includes:

- a. Tangible and intangible assets resulting from research and development activities—for example, patents, blueprints, formulas, and designs for new products or processes
- b. Tangible and intangible assets to be used in research and development activities—for example, materials and supplies, equipment and facilities, and specific in-process research and development projects.

5. Payments to third parties for services to perform research and development activities are not considered acquired assets and are excluded from the scope of this Issue.

Current EITF Discussion

6. At the March 19, 2009 EITF meeting, the Task Force reached a tentative conclusion on Issue 1 that all tangible and intangible research and development assets acquired in an asset acquisition shall be capitalized pursuant to Appendix D of Statement 141(R) regardless of whether those assets have a future alternative use.

7. In connection with Issue 1, the Task Force also discussed the recognition and measurement of contingent consideration in an acquisition of tangible and intangible research and development assets. The FASB staff noted that if the contingent consideration meets the definition of a derivative, Statement 133 would require that it be recognized at fair value. The Task Force observed that it may be difficult to differentiate between when the contingent consideration represents an additional payment for the acquired research and development tangible and intangible assets and when the contingent consideration represents a payment for services, when the seller maintains some form of continuing involvement. As a result, the Task Force requested that the FASB staff develop alternatives for discussion at a future meeting, including whether the Task Force could provide factors to consider when an entity is evaluating whether contingent consideration is payment for assets or services.

8. On Issue 2, the Task Force reached a tentative conclusion that tangible and intangible research and development assets acquired in an asset acquisition shall be considered indefinite-lived until the completion or abandonment of the associated research and development activities.

During the period those assets are considered indefinite-lived, they shall not be amortized but shall be tested for impairment in accordance with paragraph 17 of Statement 142. Once the research and development efforts are completed or abandoned, the entity shall determine the useful life of the assets based on the guidance in Statement 142. The Task Force observed that the tentative conclusion conforms the subsequent measurement for tangible and intangible research and development assets acquired in an asset acquisition with the subsequent measurement for similar assets acquired in a business combination. Consistent with the guidance in paragraph 28 of Statement 144, intangible assets acquired that have been temporarily idled shall not be accounted for as if abandoned. Tangible research and development assets acquired in an asset acquisition shall be subsequently accounted for in accordance with their nature.

9. The FASB staff noted that the tentative conclusion on Issue 2 will change the current application of Statement 142 for intangible research and development assets that have a future alternative use. Currently, intangible assets acquired outside of a business combination for use in research and development activities are evaluated pursuant to paragraph 11 of Statement 142 to determine whether such assets are indefinite-lived or finite-lived assets

10. The Task Force did not discuss and was not asked to reach a conclusion on the effective date and transition for this Issue.

Status

11. Further discussion is expected at a future meeting.

Issue No. 09-3

Title: Applicability of AICPA Statement of Position 97-2 to Certain Arrangements That Include Software Elements

Date Discussed: March 19, 2009

References: FASB Statement No. 13, *Accounting for Leases*
AICPA Statement of Position 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts*
AICPA Statement of Position 97-2, *Software Revenue Recognition*
SEC Staff Accounting Bulletin No. 104, Topic 13, *Revenue Recognition*
International Accounting Standard 18, *Revenue*
EITF Issue No. 00-3, "Application of AICPA Statement of Position 97-2 to Arrangements That Include the Right to Use Software Stored on Another Entity's Hardware"
EITF Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables"
EITF Issue No. 03-5, "Applicability of AICPA Statement of Position 97-2 to Non-Software Deliverables in an Arrangement Containing More-Than-Incidental Software"
EITF Issue No. 08-1, "Revenue Arrangements with Multiple Deliverables"

Introduction

1. Products or services that contain software that is "more than incidental" to the products or services as a whole are within the scope of SOP 97-2. SOP 97-2 requires the use of vendor-specific objective evidence (VSOE) of selling price to separate deliverables in a multiple-element arrangement. SOP 97-2 frequently includes within its scope certain software-enabled devices for which the vendor is seldom able to determine VSOE (since products are only sold in conjunction with other deliverables), which often results in an uneconomic pattern of revenue recognition.

2. Issue 08-1, as proposed, would, among other things, modify Issue 00-21 to require an entity to use its best estimate of selling price to separate deliverables in multiple-element arrangements when VSOE or third-party evidence (TPE) of selling price do not exist. Following the discussions in Issue 08-1, constituents have questioned whether software revenue arrangements require a model that differs from the measurement principles in Issue 08-1 or whether the scope of SOP 97-2 should be amended to exclude some transactions involving software-enabled devices that may not have been contemplated at the time of the original deliberations on SOP 97-2.

3. At the November 13, 2008 EITF meeting, the Task Force considered whether to (a) expand the scope of Issue 08-1 to include transactions accounted for under SOP 97-2, (b) expand the scope of Issue 08-1 to specifically include revenue related to software-enabled devices, or (c) not expand the scope of Issue 08-1 but recommend that a separate project be added to the EITF agenda to evaluate the scope of SOP 97-2 and the accounting for revenue arrangements with multiple deliverables within the scope of SOP 97-2. The Task Force reached a consensus-for-exposure on Issue 08-1 that the scope of Issue 08-1 should be the same as the scope of Issue 00-21 and that the scope should not be expanded to include deliverables within the scope of SOP 97-2. The Task Force also recommended to the FASB Chairman that a separate Issue be added to the EITF agenda to consider changes to the accounting for multiple element arrangements under SOP 97-2. The FASB Chairman, who was present at the meeting, considered the Task Force recommendation and input from other Board members also in attendance, and decided to add this Issue to the EITF agenda. The Task Force noted that it would be preferable if any amendments arising from future Task Force deliberations on SOP 97-2 were to have an effective date that is consistent with Issue 08-1.

Issues

4. The issues are:

Issue 1— Whether this Issue should modify the measurement criteria or the scope of SOP 97-2.

Issue 2— If the Task Force decides to change the scope of SOP 97-2, how the scope of SOP 97-2 should be modified.

Issue 3— If the Task Force chooses to address measurement in Issue 1, how the measurement criteria within SOP 97-2 should be modified.

Issue 4— If the Task Force chooses in Issue 3 to align the measurement criteria in SOP 97-2 with Issue 08-1, whether the residual allocation method should be retained within SOP 97-2 if the Task Force decides to eliminate the residual allocation method for arrangements subject to Issue 08-1.

Issue 5— If the Task Force chooses in Issue 3 to align the measurement criteria in SOP 97-2 with Issue 08-1, whether the subscription accounting guidance in paragraphs 48 and 49 of SOP 97-2 should be retained.

Issue 6— Paragraph 37 of SOP 97-2 requires that the amount allocated to a specified upgrade right be reduced based on an estimate of customers not expected to exercise the right ("breakage"). If the Task Force chooses in Issue 3 to align the measurement criteria in SOP 97-2 with Issue 08-1, whether the guidance in paragraph 37 of SOP 97-2 relating to breakage should be retained.

Issue 7— Paragraphs 43-47 of SOP 97-2 provide guidance on accounting for fixed fee license or reseller arrangements that provide customers with the right to reproduce or obtain copies at a specified price per copy for two or more software products. If the Task Force chooses in Issue 3 to align the measurement criteria in SOP 97-2 with Issue 08-1, whether this guidance should be retained or revised.

Scope

5. This Issue applies to multiple-element arrangements that contain both software and hardware elements.

Current EITF Discussion

6. At the March 19, 2009 EITF meeting, the Task Force discussed Issue 1, including user input, and reached a tentative conclusion that this Issue should focus on amending the scope of SOP 97-2. Some Task Force members observed that they believe that addressing the scope of SOP 97-2 would result in an incremental improvement in financial reporting. As it relates to measurement, some Task Force members noted that conceptually they did not believe that measurement criteria for revenue transactions should vary by industry. Other Task Force members observed that they believe that modification of the measurement criteria for software transactions should be addressed by the FASB and IASB in their joint project on revenue recognition rather than by the Task Force because it would require a wholesale reconsideration of SOP 97-2, would likely result in a significant change in practice and possibly require a significant length of time to reach a consensus-for-exposure. Task Force members also discussed user input received regarding a broad change to measurement of software revenue recognition. The staff noted that in its discussion with users of financial statements of "pure" software companies, there was no support for allowing the use of management estimates for allocating arrangement consideration to software deliverables. The staff also noted that in discussions with users of financial statements of entities in industries in which there was not uniform application of SOP 97-2, such as the gaming, networking, and medical device industries, those users were more supportive of a change to the scope of SOP 97-2, particularly if it would achieve more comparability between entities.

7. On Issue 2, the Task Force reached a tentative conclusion that SOP 97-2 and Issue 03-5 should be modified such that the following products would be considered non-software deliverables and therefore would be excluded from the scope of SOP 97-2:

Tangible products containing software components and non-software components that function together to deliver the product's essential functionality.

8. The Task Force discussed the application of the scope modification in various arrangements, such as when the software could be sold separately from the hardware and when alternative software was available that would provide similar functionality. They also discussed whether and how to require that software be separated into those components that were essential to the product's functionality and those that were not. The Task Force requested that the FASB staff prepare illustrative examples of how the proposed scope amendment would be applied to transactions currently accounted for in accordance with SOP 97-2 for discussion at a future meeting.

9. Since the Task Force reached a tentative conclusion to focus on amending the scope of SOP 97-2, the Task Force was not asked to discuss Issues 3–7.

10. The Task Force did not discuss and was not asked to reach a conclusion on the effective date and transition for this Issue.

Status

11. Further discussion is expected at a future meeting.

Status of Open Issues and Agenda Committee Items

The following represents the FASB staff's assessment of the status and immediate plans with respect to the open Issues on the Task Force's agenda. The Issues on the proposed agenda for the June 17–18, 2009 meeting are considered either high priority issues or issues on which meaningful progress can be made within the staff's given complement of resources. The staff's prioritization of issues is based primarily on the FASB staff's understanding of the level of diversity in practice created by each respective Issue, the financial reporting implications of that diversity, the current interaction, if any, of the Issues with active Board projects, and current resource availability among the staff (with respect to both time and relevant technical expertise).

Issue No.	Description	Date Added	Date(s) Discussed	Next Meeting	EITF Liaison	FASB Staff	Immediate Plans	Due Date - Next Deliverable
08-1	Revenue Arrangements with Multiple Deliverables	1/08	3/08, 6/08, 9/08, 11/08, 3/09	6/09	Uhl	Maples/ Elsbree	The FASB staff will prepare an Issue Supplement for a future meeting	June 17-18, 2009 EITF meeting
08-9	Milestone Method of Revenue Recognition ¹	10/08	11/08, 3/09	6/09	Uhl	Maples/ Elsbree	The FASB staff will prepare an Issue Supplement for a future meeting	Draft abstract comment period closes May 5, 2009 June 17-18, 2009 EITF meeting

¹ This Issue was previously discussed in conjunction with Issue No. 08-1, "Revenue Arrangements with Multiple Deliverables."

Issue No.	Description	Date Added	Date(s) Discussed	Next Meeting	EITF Liaison	FASB Staff	Immediate Plans	Due Date - Next Deliverable
09-1	Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance	10/08	3/09	6/09	Uhl	Homant/ Malcolm	The FASB staff will prepare an Issue Supplement for a future meeting	Draft abstract comment period closes May 5, 2009 June 17-18, 2009 EITF meeting
09-2	Research and Development Assets Acquired In an Asset Acquisition	1/09	3/09	6/09	Hauser	Mayer/ Anderson	The FASB staff will prepare an Issue Supplement for a future meeting	June 17-18, 2009 EITF meeting
09-3	Application of AICPA Statement of Position 97-2 to Certain Arrangements That Include Software Elements	11/08	3/09	6/09	Pippolo	Bonn/ Maples	The FASB staff will prepare an Issue Supplement for a future meeting	June 17-18, 2009 EITF meeting
09-B	Consideration of an Insurer's Accounting for Majority-Owned Investments When the Ownership Is through a Separate Account	1/09		6/09	TBD	Malcolm/ TBD	The FASB staff will prepare an Issue Summary for a future meeting	June 17-18, 2009 EITF meeting

Issue No.	Description	Date Added	Date(s) Discussed	Next Meeting	EITF Liaison	FASB Staff	Immediate Plans	Due Date - Next Deliverable
09-D	Application of the AICPA Audit and Accounting Guide, <i>Investment Companies</i> , by Real Estate Investment Companies	2/09		6/09	TBD	TBD	The FASB staff will prepare an Issue Summary for a future meeting	June 17-18, 2009 EITF meeting

Other EITF Issues including Inactive Issues Pending Developments in Board Projects								
Issue No.	Description	Date Added	Date(s) Discussed	Next Meeting	FASB Staff	Immediate Plans	Due Date - Next Deliverable	
03-15	Interpretation of Constraining Conditions of a Transferee in a Collateralized Bond Obligation Structure	11/02	N/A	Not scheduled	TBD	The Board's project on QSPE's is not expected to address this Issue and, therefore, the FASB staff will bring this Issue to the Agenda Committee at a future meeting to determine whether to begin discussions on this Issue or to request that the Issue be removed from the agenda.	Future Agenda Committee or EITF Meeting	
06-12	Accounting for Physical Commodity Inventories for Entities within the Scope of the AICPA Audit and Accounting Guide, Brokers and Dealers in Securities	8/06	11/06	Not scheduled	TBD	Pending the outcome of the Board's project to amend ARB No. 43, <i>Restatement and Revision of Accounting Research Bulletins</i> .	Future EITF Meeting	

Other EITF Issues including Inactive Issues Pending Developments in Board Projects							
Issue No.	Description	Date Added	Date(s) Discussed	Next Meeting	FASB Staff	Immediate Plans	Due Date - Next Deliverable
08-10	Selected Statement 160 Implementation	10/08	11/08, 1/09	Not scheduled	Bonn/ Nickell	Pending the outcome on the Board's project to reconsider the scope of FASB Statement No. 160, <i>Noncontrolling Interests in Consolidated Financial Statements</i> .	Future EITF Meeting

Issues Pending Further Consideration by the Agenda Committee							
Issue No.	Description	Date Added	Date(s) Discussed	Next Meeting	FASB Staff	Immediate Plans	Due Date - Next Deliverable
N/A	Application of EITF Issue No. 99-20, "Recognition of Interest Income and Impairment on Purchased and Retained Beneficial Interests in Securitized Financial Assets," When a Special-Purpose Entity Holds Equity Securities and Whether an Investment That Is Redeemable at the Option of the Investor Should Be Considered an Equity Security or Debt Security	9/00	N/A	Not scheduled	TBD	Statement 155 did not address this Issue. Therefore, the FASB staff will bring this Issue to the Agenda Committee at a future meeting to determine whether to begin discussions on this Issue.	Future Agenda Committee meeting