0609REPORT

Emerging Issues Task Force
Agenda Report
May 6, 2009 Agenda Decisions

Emerging Issues Task Force Agenda Report
Descriptions and Decisions on Potential New Issues
Discussion Dates: May 6, 2009

1. Accounting for Distributions to Shareholders with Components of Stock and Cash in the Calculations and Presentation of Earnings per Share

Background

FASB Statement No. 128, *Earnings per Share*, establishes standards for computing and presenting earnings per share (EPS) and applies to entities with publicly held common stock or potential common stock. Statement 128, paragraph 54, states that if the number of common shares outstanding increases as a result of a stock dividend, the computations of basic and diluted EPS should be adjusted retroactively for all periods presented to reflect that change in capital structure.

Statement 128, footnote 24 to paragraph 54, refers to AICPA Accounting Research Bulletin No. 43, *Restatement and Revision of Accounting Research Bulletins,* Chapter 7B, "Stock Dividends and Stock Split-ups," for the definition of a stock dividend. ARB 43 states in paragraph 10 that a stock dividend does not "give rise to any change whatsoever in either the corporation's assets or its respective shareholders' proportionate interests therein."

Real Estate Investment Trusts (REITs) are required to distribute 90 percent of their taxable income in accordance with tax regulations. Historically, some REITs have issued "special dividends," that is, dividends above the REIT's recurring quarterly dividend, in periods of large, non-recurring earnings; for example, in conjunction with the sale of a property. In many cases, REITs issued the special dividends in the form of cash and stock, subject to approval by the Internal Revenue Service (IRS) by means of a private letter ruling. Under these distributions, shareholders would have the ability to elect to receive either cash or stock, subject to a minimum amount of the dividend available to be paid in cash.

In 2008, the IRS issued Revenue Procedure 2008-68 (the "Revenue Procedure"), which allows REITs to make distributions in the form of cash and stock to satisfy their annual distribution requirements without having obtained a private-letter ruling in advance. For a REIT to qualify for taxable dividend treatment under the Revenue Procedure, the distribution must meet the following requirements:

- Shareholders must be offered the ability to elect to receive their entire dividend distribution in cash or stock of equivalent value, subject to the limitation on the amount of cash to be distributed in the aggregate to all shareholders
- The REIT's stock must be publicly traded on an established securities market in the United States
- The total amount of cash available to be distributed must not be less than 10 percent of the total distribution
- The distribution must be declared for a taxable year ending on or before December 31, 2009.

In January 2009, the IRS extended this guidance to closed-end investment funds, which are also required to distribute 90 percent of their taxable income.

The following example illustrates the issues included in this potential new issue related to EPS presentations that consider the stock portion of the distribution prospectively as a new stock issuance (consistent with View A) or consider it to be a stock dividend under Statement 128, paragraph 54 (retrospectively restate shares outstanding and EPS, which corresponds to View D).

> Assume that REIT X had $10 million of earnings and 1 million shares outstanding in 2008, 2009, and 2010. REIT X issued cash dividends for 2008 and 2010. On February 2, 2010, REIT X declares a $9 per share distribution for 2009 (aggregate distribution of $9 million). The distribution is payable in cash and shares, and the total cash component will be $1.8 million (20 percent of the total). Shareholders may elect to receive the distribution in either all cash or all shares, and must submit their election prior to March 15. Under the terms of the dividend, if shareholders representing more than 20 percent of the shares outstanding elect cash, all shareholders electing stock will receive stock, and the shareholders who elect cash will receive a ratable allocation of the 20 percent cash. Shareholders who do not make an election will receive 20 percent in cash and 80 percent in common shares. REIT X issues

a press release announcing 2009 results on February 2, 2010, files its Form 10-K on February 28, 2010, and pays the dividend on April 1, 2010. REIT X's share price on February 2, February 28, and April 1, 2010, is $65, $68, and $60, respectively. The resulting EPS calculation based on the shares issued on April 1, 2010 under View A and View D below is as follows (in thousands, except per share amounts):

	2008	2009	2010
Net income	$10,000	$10,000	$10,000
Shares outstanding – View A	1,000	1,000	1,090
Shares outstanding – View D	1,120	1,120	1,120
Basic EPS – View A	$10.00	$10.00	$9.17
Basic EPS – View D	$8.93	$8.93	$8.93

Accounting Issue and Alternatives

Issue 1: Whether the stock portion of a distribution to shareholders that contains components of cash and stock and allows shareholders to select their preferred form of the distribution should be accounted for as a stock dividend for purposes of applying the provisions of Statement 128, paragraph 54.

View A: The stock portion of the distribution should not be considered a stock dividend for purposes of applying the provisions of Statement 128, paragraph 54.

Proponents of View A believe that a distribution of stock and cash that allows shareholders to select the form of the distribution would result in a change in the shareholders' proportionate interests in the entity unless all shareholders make the same election, which is unlikely and would be very difficult to predict reliably in advance. Since ARB 43 specifies that a stock dividend would not give rise to any change in shareholders' proportionate interests in the entity, proponents of View A believe that the dividend should not be treated as a stock dividend for purposes of applying the provisions of Statement 128, paragraph 54.

Further, proponents of View A argue that this form of distribution is specifically excluded from the scope of ARB 43, Chapter 7B, and, therefore, should not be considered a stock dividend for purposes of applying the provisions of Statement 128, paragraph 54. ARB 43, Chapter 7B, paragraph 3 states that "[t]his chapter is not concerned with the accounting for a distribution or issuance to shareholders of…shares of the same class in cases where each shareholder is given an election to receive cash or shares." Opponents of View A believe that the scope exclusion described in the preceding sentence applies to circumstances in which the shareholders' choices are strictly honored and, therefore, the entity does not know the combination of cash and stock that will be paid or issued. Opponents believe that a circumstance in which the entity knows the total value of shares that will be issued in the dividend was not contemplated in ARB 43.

Proponents of View A also note that the purpose of these arrangements is to allow the REIT to conserve cash while still meeting its obligations to distribute income. ARB 43, Chapter 7B, paragraph 10, states that "a stock divided does not, in fact, give rise to any change whatsoever in either the corporation's assets or its respective shareholders' proportionate interests therein." These dividend programs change both the corporation's assets through the distribution of cash and, as discussed above, will likely change the shareholders' proportionate interests. View A proponents believe that the shareholders receiving shares have effectively purchased the shares from the entity in exchange for the forgone cash dividend and have thereby increased the entity's assets.

Proponents of View A consider the portion of the dividend to be paid in stock to be a liability under FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*, from the declaration date (February 2, 2010, in the example above) to the payment date (April 1, 2010). With respect to diluted EPS during this period, the portion of the dividend to be paid in shares would be considered contingently issuable shares until paid. The number of contingently issuable shares to be included in diluted EPS should be based on the number of shares that would be paid if the end of the reporting period were the payment date, assuming the result would be dilutive. Those contingently issuable shares would be included in the denominator of diluted EPS as of the beginning of the period, or as of the dividend declaration date, if later.

View B: The stock portion of the distribution should be considered a stock dividend for purposes of applying the provisions of Statement 128, paragraph 54, if it is probable that the distribution will result in a proportionate distribution of the stock.

Proponents of View B believe that the distribution should be evaluated when the distribution is declared. If the terms of the distribution and the entity's experience with previous distributions indicate that the option to receive all stock or all cash is nonsubstantive, and that the distribution will likely be materially equivalent to the overall stock and cash allocation (for example, 80 percent stock and 20 percent cash in the example above), then the stock portion of the distribution should be considered a stock dividend for the purposes of applying the provisions of Statement 128, paragraph 54. The option would be considered nonsubstantive if the outcome is reasonably determinable when the dividend is declared, and that the stock distributed would be materially proportionate to the relative shareholder interests. If, however, it is not reasonably determinable that the outcome of the distribution will result in a proportionate distribution of stock when the dividend is declared, then the distribution should not be considered a stock dividend.

For example, if REIT X believed that shareholders representing only 50,000 shares (5 percent of outstanding shares) would elect to receive stock, and shareholders representing 15,000 shares would not make an election, then REIT X would expect the following distribution:

	Shares	Total value of dividend	Value of stock to be issued	Number of shares at issuance	Cash
Total	1,000,000	$ 9,000,000	$ 7,200,000	120,000	$ 1,800,000
Elect all stock	50,000	450,000	450,000	7,500	-0-
No election	15,000	135,000	108,000	1,800	27,000
Elect all cash	935,000	$ 8,415,000	6,642,000	110,700	1,773,000

Based on REIT X's assumptions, the shareholders representing 5 percent of the outstanding shares electing to receive all stock would receive 6.25 percent (7,500 shares ÷ 120,000 shares) of the shares issued. Shareholders electing to receive all cash received 78.9 percent ($6,642,000 ÷

$7,515,000) of their dividend in stock and 21.1 percent ($1,773,000 ÷ $7,515,000) in cash.[1] REIT X concludes that the expected results shown above would indicate that the option to receive all shares or all cash is not substantive to the overall distribution and that the resulting lack of proportionality in the distribution of shares is not material. As a result, REIT X considers the stock portion of the distribution to be a stock dividend for the purposes of applying Statement 128, paragraph 54.

Some proponents of View B believe that an entity's determination of whether the option is or is not substantive is an estimate. Accordingly, the entity should adjust that estimate in the future if the results of the shareholder elections indicate that the entity's initial estimate was incorrect. For example, REIT X would conclude that the option was substantive and should not have been considered a stock dividend, if the results of the shareholder elections were such that shareholders representing 500,000 shares elected all stock, and no shareholders did not make an election. In that case, 50 percent of the outstanding shares would receive 62.5 percent of the shares issued. Shareholders electing to receive all cash would receive 60 percent of their distribution in stock (37.5 percent of the shares issued) and 40 percent in cash. As a result, REIT X would adjust its estimate by recasting its EPS data considering the stock distribution as a new issuance of shares.

Opponents of View B point out that the number of shares to be issued may not be known until after the entity has reported earnings or issued its financial statements because, as illustrated in the REIT X example above, while the value of the shares to be distributed is fixed on the declaration date, the number of shares is not fixed until shortly before the distribution. In its press release on February 2 and its Form 10-K filed on February 28, 2010, REIT X would not be able to comply with other guidance in Statement 128, paragraph 54, that requires that if changes in common stock resulting from stock dividends "occur after the close of the period but before issuance of the financial statements, the per-share computations for those and any prior-period financial statements presented shall be based on the new number of shares." The Revenue

[1] The distribution of shares would be exactly proportional only if (a) all shareholders who make an election elect to receive their distribution entirely in cash or (b) all shareholders make an election to receive shares. In the former circumstance, every shareholder, including those that do not make an election, will receive a distribution of 80 percent stock and 20 percent cash. In the latter circumstance, all shareholders would receive all shares.

Procedure requires that the number of shares "be determined, as close as practicable to the payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead." As a result, REIT X would not know the number of shares to be issued. Opponents of View B that support View A argue that the inability of the REIT to follow Statement 128, paragraph 54, provides further evidence that the stock portion of the distribution is not a stock dividend as contemplated in ARB 43, Chapter 7B.

Some proponents of View B believe that the number of shares to be issued could be estimated and adjusted after the payment date—see Issue 2 below. Proponents of View B also note that the same issue would arise if REIT X's entire divided were paid in stock with a value that is fixed on the declaration date. The shares distributed would be proportionate to the relative ownership interests, so it would meet the criteria in ARB 43, but the number of shares would not be known until the payment date.

Opponents of View B who support View A note that a change in estimate should be accounted for prospectively according to FASB Statement No. 154, *Accounting Changes and Error Corrections*, and not "by restating or retrospectively adjusting amounts reported in financial statements of prior periods." View B, View C, and View D all would require that changes in estimates (for example, whether it is probable that the distribution of stock will be proportionate to the relative shareholder interests, as well as the number of shares that ultimately will be issued) should be reflected retrospectively in the financial statements, which is inconsistent with Statement 154. Further, the frequency of such adjustments would diminish significantly the understandability, relevance, and reliability of EPS for these entities.

View C: The stock portion of the distribution should be considered a stock dividend for purposes of applying the provisions of Statement 128, paragraph 54, if the stock ultimately distributed does not change the shareholders' proportionate interests in the entity.

Proponents of View C believe that the ultimate outcome of the shareholders' elections should determine the EPS effect of the dividend. If the shares ultimately distributed are proportionate to the relative shareholder interests, then proponents of View C believe that the dividend is consistent with the definition of a stock dividend in ARB 43, Chapter 7B.

Similar to the View B opponents' view above, opponents to View C point out that the results of the shareholders' elections (and whether the shares issued are proportionate to the relative ownerships interests) may not be known until after the entity has reported earnings or issued its financial statements. In its press release on February 2 and its Form 10-K filed on February 28, 2010, REIT X would not be able to comply with other guidance in Statement 128, paragraph 54.

Proponents of View C, similar to the View B proponents, also note that the same issue would arise if REIT X's entire divided were paid in stock with a value that is fixed on the declaration date. The shares distributed would be proportionate to the relative ownership interests, so it would meet the criteria in ARB 43, but the number of shares would not be known until the payment date.

Opponents of View C observe that an entity may not consistently account for distributions with the same terms based on the shareholder elections associated with each distribution. They believe that a distribution with the same terms should be reflected consistently in EPS from period-to-period regardless of the outcome of the shareholder elections.

View D: The dividend should be considered a stock dividend for purposes of applying the provisions of Statement 128, paragraph 54.

Proponents of View D believe that the stock portion of these distributions should be considered stock dividends because the aggregate value of the distribution (in the form of stock, cash, or both) is distributed to each shareholder proportionately based on their relative ownership interests. Further, the total value of shares to be distributed is known on the dividend declaration date (except for changes in the number of shares outstanding resulting from the entity's transactions in its own shares between the declaration date and the record date).

View D proponents observe that the same outcome could be achieved by distributing a fixed ratio of cash and shares for each share of stock and subsequently facilitating exchanges of cash and shares between shareholders. View D proponents view the shareholder elections with respect to their preferred form of the distribution as the REIT facilitating those transfers of shares and cash among the shareholders, rather than the REIT changing the relative ownership interests. For example, proponents of View D believe that REIT X in the example above effectively distributes the dividend amount in the form of 80 percent stock and 20 percent cash to all shareholders, and then facilitates transactions among the shareholders to re-allocate the stock and cash based on the shareholders elections and the terms of the distribution. Proponents of View D do not believe that the EPS under View A illustrated above is representative of the economics of these distributions. Ignoring other possible changes to the denominator, they do not believe that it is appropriate for EPS, or any per-share metric, to decrease when the numerator has remained constant.

Proponents of View D note that International Accounting Standard No. 33, *Earnings per Share*, paragraph 26, has guidance similar to Statement 128, paragraph 54. IAS 33 requires that the "weighted average number of ordinary shares outstanding during the period and for all periods presented shall be adjusted for events, other than the conversion of potential ordinary shares, *that have changed the number of ordinary shares outstanding without a corresponding change in resources*" (emphasis added). Paragraph 27 includes a stock dividend as such a transaction. The notion of the stock dividend not resulting in a change in the entity's resources is consistent with the notion in ARB 43 of the stock dividend not giving "rise to any change in . . . the corporation's assets." However, IAS 33 does *not* state that stock dividends would not result in changes to shareholders' proportionate interests. View D proponents believe that, under IAS 33, any dividend paid in shares without a corresponding change in resources would be a stock dividend, regardless of whether there was a change in shareholders' proportionate interests. Proponents of View D do not think that the Task Force or the Board should introduce a difference between IFRS and U.S. GAAP for stock dividends.

Issue 2: If the Task Force reaches a tentative conclusion supporting View D, or supporting View B or View C and the stock portion of the distribution is considered a stock

dividend, whether an entity should estimate the number of shares to be issued if it issues its financial statements prior to the payment date for purposes of applying the provisions of Statement 128, paragraph 54.

As noted under View B and View C above, this issue could also arise in the event that an entity declared a dividend for a fixed dollar amount that will be paid in stock and is not necessarily limited to the REIT fact patters discussed in this potential new issue.

View A: An entity should estimate the number of shares that will be issued under the dividend if it issues its financial statements prior to the payment date.

Proponents of View A believe that an entity should estimate the number of shares that will be issued under the dividend using the stock price on the date it files its financial statements, or on a date as close as practicable thereto. Once the number of shares to be issued is known, the entity would retrospectively reflect that change in its financial statements. For example, REIT X would use its stock price on February 28, 2010 (the date it files its Form 10-K) and report EPS of $9.04 in 2007, 2008, and 2009, as follows

Net income		$10,000
Shares outstanding – pre-split	1,000	
Additional shares estimated:		
Total value of dividend	$7,200	
Stock price on February 28	$68	
Additional shares estimated	106	
Adjusted shares outstanding		1,106
EPS		$9.04

REIT X would also disclose that EPS is subject to change pending the final number of shares issued on the payment date. In filings after April 1, 2010, REIT X would retrospectively adjust its EPS, based on the number of shares that were actually issued, to $8.93.

Opponents of View A note that REIT X would likely disclose per share information in its press release of February 2, 2010. If it followed this model, it would have disclosed EPS of $9.00, based on the February 2, 2010 share price. Opponents of View A do not believe that an entity reporting multiple amounts for earnings per share over such a brief period is beneficial to users. Opponents of View A further note that View A requires that the change in estimate be recognized retrospectively, which is inconsistent with the requirements of Statement 154.

View B: An entity should not estimate the number of shares that will be issued under the dividend, but rather it should disclose the fact that EPS will change in the future based on the dividend. Entities should also be permitted to disclose a pro forma EPS determined under View A.

Proponents of View B do not believe that reporting EPS or other per-share metrics that will change based on changes in the entity's stock price over a short period of time is beneficial to users. They believe that, in the example above, REIT X should present EPS of $10.00 and disclose that EPS will change to reflect shares issued in conjunction with the stock dividend. REIT X would be permitted to disclose in the notes to the financial statements a pro forma EPS based on the number of shares that would be issued under the dividend using a recent stock price.

Agenda Decision: ***This issue was added to the EITF agenda.***

2. Seller Accounting for Contingent Consideration

Background

Under FASB Statement No. 141, *Business Combinations*, contingent consideration in a business combination typically was not recognized by a buyer at the date of acquisition but, rather, when the contingency was resolved and the additional consideration was issuable to the seller. FASB Statement No. 141 (revised 2007), *Business Combinations*, changed the accounting model applicable for contingent consideration to require that a buyer recognize the acquisition-date fair value of contingent consideration as part of the consideration transferred to the seller in exchange for the acquiree.

Neither Statement 141 nor Statement 141(R) addresses the seller's accounting in a business combination. Before Statement 141(R), a seller typically accounted for contingent consideration only when the contingency was resolved and consideration was received consistent with the gain contingency literature in FASB Statement No. 5, *Accounting for Contingencies*, unless the contingent consideration met the definition of a derivative under FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*.[1] Some in practice also record contingent consideration if the seller would have recognized a loss on the sale of the subsidiary exclusive of the contingent consideration arrangement. If the seller would have recognized a loss on the sale of the subsidiary exclusive of contingent consideration, the seller typically offset the loss by the amount of the contingent consideration necessary to eliminate the loss. The remaining amount of contingent consideration, if any, in excess of the loss was recognized only once the contingency was resolved and consideration was received.

While Statement 141(R) does not provide guidance on the seller's accounting for a business combination, FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements*, which was issued concurrent with Statement 141(R), amends the guidance in AICPA Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, to provide the seller's accounting for the deconsolidation of a subsidiary. In the event that a parent ceases to have a controlling financial interest in a subsidiary (including the sale of a subsidiary in a business

[1] Prior to Statement 141(R), paragraph 11(c) of Statement 133 provided a scope exception to derivative accounting for contingent consideration in a business combination. However, as clarified in paragraph 286 of Statement 133, the scope exception in paragraph 11(c) only applied to buyers.

combination) and deconsolidation is required, paragraph 36 of Statement 160 requires that the gain or loss recognized upon deconsolidation be measured as the difference between the *fair value of any consideration received* and the carrying amount of the former subsidiary's assets and liabilities.[2]

Issue 1: Whether paragraph 36 of Statement 160 (and its reference to "the fair value of any consideration received") requires that a seller in a business combination recognize the acquisition-date fair value of *all* contingent consideration as part of the consideration received to sell a subsidiary.

View A: Recognize the acquisition-date fair value of contingent consideration as part of the consideration received to sell a subsidiary.

Proponents of View A believe that Statement 160 requires a seller in a business combination to recognize the acquisition-date fair value of contingent consideration as part of the consideration received to sell a subsidiary. Paragraph 36 of Statement 160 provides that the gain or loss recognized upon the deconsolidation of a subsidiary be calculated as the difference between the fair value of ***any consideration received*** and the carrying amount of the former subsidiary's assets and liabilities. Proponents of View A believe that the reference to "any consideration received" in paragraph 36 of Statement 160 includes contingent consideration. In this case, contingent consideration is a component of the negotiated purchase price between a buyer and seller in exchange for the subsidiary. As described in paragraph B348 of the Basis for Conclusions to Statement 141(R), "a contingent consideration arrangement is inherently part of the economic considerations in the negotiations between the buyer and seller." Because contingent consideration is a component of the economic consideration received to sell a subsidiary, proponents of View A believe that it should be included in the seller's gain or loss calculation upon deconsolidation. Given that contingent consideration is included in the seller's gain or loss calculation upon deconsolidation of the subsidiary, proponents of View A also

[2] To the extent that the seller retains a noncontrolling investment in the former subsidiary or the former subsidiary had a noncontrolling interest, the fair value of each at the date of deconsolidation must be included with the fair value of any consideration received in determining the gain or loss on deconsolidation.

believe that the seller must recognize the contingent consideration receivable from the buyer as an asset at its acquisition date fair value.

Additionally, while Statement 141(R) addresses only the buyer's accounting for contingent consideration, proponents of View A believe that the reasons given by the Board in Statement 141(R) for modifying its accounting model are equally applicable to sellers. For example, the Board provides in paragraph B346 of Statement 141(R) that the primary reason for requiring a buyer to recognize the fair value of contingent consideration on the date of acquisition is that delayed recognition (as provided by Statement 141) ignored the fact that the buyer is unconditionally obligated to make the contingent payment. Because it is the business combination itself that is the obligating event rather than the resolution of the contingency, the Board concluded in Statement 141(R) that the buyer should recognize the fair value of contingent consideration as a liability at the date of acquisition. Proponents of View A believe that the same logic also applies to a seller in a business combination. From the perspective of a seller, a contingent consideration arrangement (which creates an unconditional obligation on the part of the buyer) creates an unconditional right on the part of the seller to additional consideration that meets the conceptual definition of an asset in FASB Concept Statement No. 6, *Elements of Financial Statements*.[3] Consistent with the requirement that a buyer recognize a liability for its unconditional obligation to transfer additional consideration to the seller, proponents of View A believe that a seller should recognize its unconditional right to receive additional consideration as an asset at the date of acquisition.

Proponents of View A also note that requiring a seller to recognize its right to additional consideration as an asset is consistent with the requirement in Statement 141(R) that a buyer recognize its right to the return of previously transferred consideration (that is, the buyer's recognition of reverse contingent consideration). While not as common, the Board acknowledges in paragraph B364 of Statement 141(R) that the conceptual basis for requiring recognition of a contingent consideration liability at the date of acquisition also applies to reverse contingent

[3] Paragraph 25 of Concepts Statement 6 defines an asset as a "probable future economic benefit obtained or controlled by a particular entity as a result of past transactions or events."

consideration. In this case, the buyer's right to the return of previously transferred consideration is an asset that must be recognized at fair value at the date of acquisition.[4]

Opponents of View A contend that paragraph 36 of Statement 160 does not specifically require that contingent consideration be included in the gain or loss calculation upon deconsolidation of a subsidiary. Because recognizing contingent consideration upon deconsolidation represents a fundamental change to current practice, opponents of View A believe that the Board would have discussed such a change in the standard or the Basis for Conclusions to Statement 160 if it was intended. Because there is no mention of contingent consideration in Statement 160 and because Statement 141(R) only applies to the buyer's accounting in a business combination, opponents of View A do not believe Statement 160 requires immediate recognition by a seller of a contingent consideration arrangement.

View B: Recognize contingent consideration in accordance with the Statement 5.

While paragraph 36 of Statement 160 requires that the fair value of ***any consideration received*** for the sale of a subsidiary be included in the gain or loss calculation upon deconsolidation, proponents of View B do not believe it was the Board's intent that the calculation include contingent consideration. This is supported by the fact that the Board does not elaborate on the reference in paragraph 36 to "any consideration received" in the Basis for Conclusions to Statement 160. View B proponents believe that if the Board intended for contingent consideration to be included as part of the consideration received in the sale of a subsidiary, such a conclusion would warrant discussion Statement 160 or its Basis for Conclusions given the magnitude such a change would have on current practice. Because neither Statement 160 nor its Basis for Conclusions discusses contingent consideration, proponents of View B believe that it is unlikely that the Board intended to change current practice.

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[4] Specifically, paragraph B346 of Statement 141(R) states the following:

> The same is true for a right to the return of previously transferred consideration if specified conditions are met. Failure to recognize that… right at the acquisition date would not faithfully represent the economic consideration exchanged at that date. Thus, both Boards concluded that… rights associated with contingent consideration arrangements should be measured and recognized at their acquisition-date fair values.

Further, proponents of View B believe that the Board would have provided subsequent measurement guidance if it intended for the gain or loss calculation in paragraph 36 of Statement 160 to include contingent consideration. Because no subsequent measurement guidance is provided in Statement 160 for consideration received to sell a subsidiary, proponents of View B believe that this further supports the view that the Board did not intend for Statement 160 to change how a seller accounts for contingent consideration.

Finally, proponents of View B note that Statement 141(R) only addresses the buyer's accounting for a business combination, including the accounting for contingent consideration. As was the case prior to the issuance of Statement 141(R), View B proponents believe that there continues to be no specific literature in U.S. GAAP that provides ***explicit*** guidance on the accounting by a seller for contingent consideration unless the contingent consideration meets the definition of a derivative instrument in Statement 133. As a result, proponents of View B believe that the gain contingency model in Statement 5 should continue to be followed consistent with the accounting for any contingency that may result in a gain for which no explicit guidance exists.

Opponents of View B believe that Statement 160 does provide explicit guidance on the seller's accounting for contingent consideration. Further, that guidance is consistent with the buyers accounting in Statement 141(R). Because a liability (asset) to the buyer is an asset (liability) to the seller, opponents of View B believe that the seller's accounting for contingent consideration should be symmetrical with that of the buyer.

Issue 2: If the response to Issue 1 is View A, whether the seller should subsequently re-measure contingent consideration at fair value through current period earnings.

View A: Subsequently re-measure contingent consideration to fair value through current period earnings.

Consistent with the buyer's accounting in Statement 141(R), View A proponents believe that a seller in a business combination should subsequently measure contingent consideration at fair value through current period earnings. In this case, proponents of View A believe that the rationale provided by the Board in Statement 141(R) for requiring a buyer to continually re-measure contingent consideration equally applies to sellers (similar to the argument made in View A to Issue 1 above). In paragraph B349 of Statement 141(R), the Board acknowledges that most contingent consideration arrangements are financial instruments and that many meet the definition of a derivative instrument.[5] Because "in concept, all liabilities for contingent consideration should be accounted for similarly," the Board concluded in paragraph B355 of Statement 141(R) that all "liabilities for contingent payments not accounted for as derivative instruments should also be remeasured at fair value after the acquisition date." Proponents of View A believe that this argument also applies to the subsequent accounting for a seller's rights to additional consideration in a business combination. Because all contingent consideration arrangements should be accounted for alike and because most are financial instruments, proponents of View A believe that it follows that an asset recognized for the right to future consideration in a business combination should also be remeasured to fair value subsequent to the date of acquisition.

Finally, proponents of View A do not believe that practicability of a fair value measurement is a sufficient basis for determining whether an asset or liability should be subsequently measured to fair value. In fact, proponents of View A point to the fact that the Board rejected that argument when determining whether contingent consideration should be initially measured at fair value on the date of acquisition. In paragraph B347 of Statement 141(R), the Board acknowledged the difficulty in measuring the fair value of contingent consideration arrangements. However, the Board concluded that "to delay recognition of, or otherwise ignore, assets or liabilities that are difficult to measure would cause financial reporting to be incomplete and thus diminish its usefulness in making economic decisions." While speaking from the perspective of the buyer, proponents of View B believe that the same argument applies to subsequent measurement of contingent consideration from the perspective of the seller.

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[5] Statement 141(R) deleted the scope exception in paragraph 11(c) of Statement 133 related to a buyers accounting for contingent consideration. In paragraph B354 of Statement 141(R), the Board states that

> …many obligations for contingent consideration that qualify for classification as liabilities meet the definition of derivative instruments in Statement 133 or IAS 39. To improve transparency in reporting particular instruments, the Boards concluded that all contracts that otherwise would be in the scope of those standards (if not issued in a business combination) should be subject to their requirements if issued in a business combination. Therefore, the Boards decided to eliminate their respective provisions (paragraph 11(c) of Statement 133 and paragraph 3(f) of IAS 39) that excluded contingent consideration in a business combination from the scope of those standards.

Opponents of View A contend that the Board's decision in Statement 141(R) to require a buyer to subsequently measure contingent consideration arrangements to fair value through current period earnings was an exception made specific to buyers. Because of the inherent difficulty in subsequently measuring the fair value of contingent consideration, opponents of View A believe that a seller should follow other accounting pronouncements, specifically Statement 5.

View B: Do not subsequently re-measure contingent consideration to fair value through current period earnings, an appropriate subsequent measurement model would have to be developed.

While paragraph 36 of Statement 160 requires contingent consideration to be initially recognized by the seller at fair value, proponents of View B believe that no specific guidance exists requiring a seller to subsequently measure contingent consideration at fair value through current period earnings (unless the contingent consideration arrangement meets the definition of a derivative pursuant to Statement 133). Further, proponents of View B contend that it is not practical for a seller to continually measure contingent consideration at fair value unless required by other applicable U.S. GAAP. In many cases, it will be difficult for a seller to determine the fair value of contingent consideration subsequent to the date of acquisition, especially in situations in which the contingent consideration is based on earnings or other performance targets of the former subsidiary. This is because a seller typically does not have access to the appropriate information that is necessary to measure the fair value of contingent consideration on a continual basis. Because of the difficulty in obtaining this information and because of the subjectivity in the fair value measurement, proponents of View B believe that contingent consideration should not be subsequently measured to fair value through current period earnings. Rather, proponents of View B believe that a seller could subsequently account for contingent consideration based on a model similar to Statement 5. An appropriate model could be the approach originally contained in paragraphs 62 and 63 of Statement 141 (R) that was subsequently amended by FASB Staff Position FAS 141(R)-1, *Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise from Contingencies*. That model would subsequently measure contingent consideration from the sale of a business that is a liability at the higher of its disposition-date fair value or a Statement 5 measurement. For assets, the amount would be the lower of its disposition-date fair value or the future settlement amount.

Other subsequent measurement models may also be appropriate.

Agenda Decision: ***An issue was added to the EITF agenda to consider subsequent measurement of contingent consideration received by the seller in a business combination. The issue will not address initial measurement of contingent consideration received as the Board believes that the answer is clear under GAAP.***

Appendix A

ILLUSTRATIVE EXAMPLE

On March 1, 20X9, Company A sold 55 percent of its equity interest in a wholly-owned subsidiary (Sub X) to Company B for $440 million in cash consideration. As part of the sale, Company B agreed to pay Company A an additional $110 million in cash consideration if Sub X achieves certain earnings targets in the one-year period following the sale. Company A believes that the fair value of the contingent consideration arrangement at the date of disposition is $55 million. Subsequent to the sale, Company A accounts for its 45 percent retained interest in Sub X as an equity method investment pursuant to APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*.

Scenario 1:

On December 31, 20X9, Company A concluded that the fair value of the contingent consideration arrangement is $75 million. On March 1, 20X0, the earnings targets underlying the contingent consideration arrangement are met and Company B must pay Company A $110 million in additional consideration.

Scenario 2:

On December 31, 20X9, Company A concluded that the fair value of the contingent consideration arrangement is $10 million. On March 1, 20X0, the performance targets underlying the contingent consideration arrangement are not met. Company B is not obligated to pay Company A the additional $110 million in consideration.

Additional Facts:

The book value of Sub X's net assets recognized by Company A prior to deconsolidation was $500 million. Company A determined that the fair value of its retained interest in Sub X on the date of deconsolidation is $410 million.

[See appendix B for spreadsheet.]

Appendix B

Scenario 1

Issue 1 - Initial Measurement	View A - Fair Value		View B - FAS 5	
March 1, 20X9	*Debit*	*Credit*	*Debit*	*Credit*
Cash	$ 440		$ 440	
Equity Method Investment in Sub X	$ 410		$ 410	
Contingent Consideration	$ 55		$ -	
Net Assets of Sub X		$ 500		$ 500
Gain on Sale		$ 405		$ 350
December 31, 20X9				
Contingent Consideration	*See Issue 2 Below*		*No entry*	
Gain on Contingent Consideration				
March 1, 20X0 - Contingency Met				
Cash	*See Issue 2 Below*		110	
Gain on Sale				110

Issue 2 - Subsequent Measurement

	View A - Fair Value		View B - FAS 5	
December 31, 20X9	*Debit*	*Credit*	*Debit*	*Credit*
Contingent Consideration	$ 20		*No entry*	
Gain on Contingent Consideration		$ 20		
March 1, 20X0 - Contingency Met				
Contingent Consideration	$ 35		*No entry*	
Gain on Contingent Consideration		$ 35		
Cash	110		110	
Contingent Consideration		110		
Gain on Contingent Consideration				110

Scenario 2

Issue 1 - Initial Measurement	View A - Fair Value		View B - FAS 5	
March 1, 20X9	*Debit*	*Credit*	*Debit*	*Credit*
Cash	$ 440		$ 440	
Equity Method Investment in Sub X	$ 410		$ 410	
Contingent Consideration	$ 55		$ -	
Net Assets of Sub X		$ 500		$ 500
Gain on Sale		$ 405		$ 350
December 31, 20X9				
Cash	*See Issue 2 Below*		*No entry*	
Gain on Sale				
March 1, 20X0 - Contingency Not Met				
Cash	*See Issue 2 Below*		*No Entry*	
Gain on Sale				

Issue 2 - Subsequent Measurement	View A - Fair Value		View B - FAS 5	
December 31, 20X9	*Debit*	*Credit*	*Debit*	*Credit*
Loss on Contingent Consideration	$ 45		*No entry*	
Contingent Consideration		$ 45		
March 1, 20X0 - Contingency Not Met				
Loss on Contingent Consideration	$ 10		*No entry*	
Contingent Consideration		$ 10		

FASB EMERGING ISSUES TASK FORCE
Proposed June 18, 2009 Meeting Agenda

Issue Number	Issue	Proposed Time	Staff Assigned
	Administrative Matters - New Issues - Other Matters	8:30-8:45	Malcolm
09-F	Seller Accounting for Contingent Consideration	8:45-10:00	Homant/ Inzano
09-1	Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance	10:00-10:45	Homant/ Malcolm
	* * * BREAK * * *	10:45-11:00	
08-1	Revenue Arrangements with Multiple Deliverables	11:00-12:00	Maples/ Elsbree
	* * * LUNCH * * *	12:00-1:00	
09-3	Application of AICPA Statement of Position 97-2 to Certain Arrangements That Include Software Elements	1:00-2:00	Bonn/ Maples
08-9	Milestone Method of Revenue Recognition	2:00-2:45	Maples/ Elsbree
	* * * BREAK * * *	2:45-3:00	
09-2	Research and Development Assets Acquired In an Asset Acquisition	3:00-4:30	Mayer/ Anderson

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 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 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 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 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 18, 2009 EITF meeting
09-3	Application of AICPA Statement of Position 97-2, *Software Revenue Recognition*, 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 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		9/09	TBD	TBD	The FASB staff will prepare an Issue Summary for a future meeting	September 9-10, 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, *Investment Companies*, by Real Estate Investment Companies	2/09		9/09	TBD	TBD	The FASB staff will prepare an Issue Summary for a future meeting	September 9-10, 2009 EITF meeting
09-E	Accounting for Distributions to Shareholders with Components of Stock and Cash in the Calculations and Presentation of Earnings per Share	5/09		9/09	TBD	TBD	The FASB staff will prepare an Issue Summary for a future meeting	September 9-10, 2009 EITF meeting
09-F	Seller Accounting for Contingent Consideration	5/09		6/09	TBD	Homant/ Inzano	The FASB staff will prepare an Issue Summary for a future meeting	June 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, *Restatement and Revision of Accounting Research Bulletins*.	Future EITF Meeting
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, *Noncontrolling Interests in Consolidated Financial Statements*.	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