CHAMBER OF COMMERCE
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August 25, 2004

Mr. Lawrence W. Smith
Chairman, Emerging Issues Task Force
and Director, Technical Application &
Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

File Reference No. EITF0408

Dear Mr. Smith:

Thank you for the opportunity to comment on the draft abstract for EITF Issue No. 04-8, *The Effect of Contingently Convertible Debt on Diluted Earnings per Share* ("EITF No. 04-8").

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and professional organizations of every size, sector, and region. As an association that is intensely devoted to the welfare of the business community and the American economy, with numerous members who are required to prepare financial statements in accordance with generally accepted accounting principles, we have a vested interest in the utility, clarity, and transparency of financial statements that provide the underpinnings of our capital markets.

Under current prevailing practice, issuers of contingently convertible debt instruments ("Co-Cos") exclude the potential common shares underlying the Co-Co from the calculation of diluted earnings per share until the market price or other contingency is met. This practice has developed through analogy to the guidance in FAS 128, *Earnings per Share*, pertaining to contingently issuable shares and pertaining to contingently issuable common shares.

Complementing this practice, FASB Staff Position (FSP) FAS 129-1, Disclosure Requirements under FASB Statement No. 129, *Disclosure of Information about Capital Structure,* Relating to Contingently Convertible Securities, requires that companies provide certain disclosures. To achieve transparency and to comply with the position, it states, among other things, that "the significant terms of the conversion features of the contingently convertible security should be disclosed to enable users of financial statements to understand the circumstances of the contingency and the potential impact of conversion." It further suggests disclosure of specific quantitative and qualitative terms of the contingently convertible security that "would be helpful in understanding both the nature of the contingency and the potential impact of conversion."

We believe that the system currently in place provides adequate information about Co-Cos to sufficiently apprise the users of financial statements of the nature and economic effect of those instruments, and that EITF 04-8 is unnecessary.

Basically, with a Co-Co, an investor is unable to exercise its conversion option until the market price of the issuer's common stock exceeds a predetermined level (the "market price trigger"). In addition, Co-Cos can include other significant terms such as parity features, issuer call options, maturity features, and investor put options. These conditions, acting alone or in concert, are significant considerations in evaluating how and when a Co-Co is likely to be converted to equity and, thus, meets the criteria in FAS 128. To merely establish an arbitrary bright-line rule for inclusion in earnings per share ("EPS") calculations, in complete disregard of likelihood and timing of potential conversion, goes too far – it is overly simplistic at the cost of accuracy and fairness and may mislead users of the financial statements.

In general, a Co-Co is significantly less likely to be dilutive in an EPS computation than conventional convertible debt instruments. In fact, an "in the money" Co-Co can't be legally or contractually converted unless and until the trigger has been satisfied. Because substantial preconditions reduce the likelihood of conversion and may, in fact, preclude it, we believe Co-Cos should not be automatically included in EPS computations, per EITF No. 04-8. Furthermore, these substantial preconditions distinguish Co-Cos from conventional convertible debt instruments to the point that the market commonly applies different interest rates and pricing to them.

Concept Statement No. 2 advocates against the introduction of intentional, conservative bias into financial reporting. Proposing that earnings per share computations include contingently convertible debt instruments that may be contractually prohibited from being converted, provides an example of such bias and, therefore, would violate the precepts of that Statement. We believe that calculations that would result from application of this EITF would systematically understate EPS, and adversely influence the public's perception of the economic health and viability of affected companies.

We also believe that continuation of the debate should be handled through proposal of a technical amendment to FAS 128, rather than through the EITF process. It is a more deliberative process and would allow a more adequate timeframe for vetting the issue.

Finally, it is proposed that EITF No. 04-8 be effective for reporting periods ending after December 15 <u>of this year</u>, and that prior period EPS presented for comparative purposes be restated to conform to the methodology therein. The scant time between introduction of the EITF and the effective date provides very little time for affected companies to assess and comment on the proposal, and to put it into practice. The EITF proposal would also cause retroactive treatment, both by application to reporting periods that have begun before the proposal, and by application to Co-Co instruments that have already been issued. We believe it unduly disruptive to adopt rules that affect transactions that could not have been planned with those rules in mind. If FASB chooses to go ahead with this proposal, it would be more equitable to modify the proposal to apply to prospective time periods and instruments that have yet to be issued, so that companies can properly weigh the effects of the rule and take appropriate actions. Instruments issued prior to the effective date of the rule should be grandfathered, to permit accounting treatment reflected by rules that were in effect at the time of issuance.

In summary, we appreciate your consideration of the above matters in deliberating EITF No. 04-8.

Sincerely,

R. Bruce Josten

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C B R L   G R O U P ,   I N C .

August 25, 2004

Mr. Lawrence W. Smith
Chairman of Emerging Issues Task Force
Financial Accounting Standards Board
401 Merritt 7
Norwalk, Connecticut 06856-5116

File Reference No. EITF04-08
Via email to director@fasb.org

Dear Mr. Smith:

Thank you for the opportunity to comment on the tentative consensus reached by the Emerging Issues Task Force ("EITF") in its deliberations of EITF Issue Abstract No. 04-08, "*The Effect of Contingently Convertible Debt on Diluted Earnings per Share*" ("EITF 04-8").

CBRL Group, Inc. ("our" or "we") is a publicly traded (NASDAQ: CBRL) holding company that is engaged in the operation and development of the Cracker Barrel Old Country Store® and Logan's Roadhouse® restaurant and retail concepts with annual revenues in 2003 of approximately $2.2 billion. In April 2002, we issued $422 million (face value at maturity) of 3.0% zero-coupon contingently convertible notes ("Co-Cos"). Our Co-Cos contain a number of contingent features that restrict the conditions under which investors have the ability to convert into common stock. One of the conditions, among other contingencies, is that the closing price of our common stock must exceed a trigger of 120% of the accreted conversion price, declining to 110% over the 30-year term, for holders to convert. We believe that the tentative consensus does not recognize the real economic differences between convertible debt and contingently convertible debt to both the issuer and the investor. As such, the tentative consensus violates the principle in Financial Accounting Standards Board Statement of Financial Accounting Concepts No. 2 "… that in seeking comparability accountants must not disguise real differences nor create false differences." Clearly, there is a significant and real difference between notes with this contingent conversion feature, and notes that have no such limitations. In our case, for example, after more than 28 months since issuance, the contingent conversion feature has yet to be triggered, and, while we are hopeful that one day our stock performance will trigger the contingency, there can be no assurance that will happen. To use a stock option analogy, Co-Cos that are out-of-the-money with respect to conversion, like an out-of-the-money option, should not be included in the diluted share count. We follow the guidance in paragraphs 30-32 of Statement of Financial Accounting Standards ("SFAS") No. 128, "*Earnings Per Share*," and accordingly have not yet included contingently issuable shares in our calculations of diluted earnings per share. We believe that the current guidance in SFAS No. 128 best reflects the economic consequences to issuers and investors of contingently convertible debt. As such, we see no basis within SFAS No. 128 to include all of the shares underlying the conversion feature in diluted earnings per share calculations.

Our second concern is that we believe the tentative consensus reached by the EITF, if adopted, should be applied prospectively. Historically speaking, most pronouncements have not been applied retroactively. An example is SFAS No. 123,*"Accounting for Stock-Based Compensation,"* which applied to forward grants of options as opposed to outstanding option grants. Additionally, the proposed amendment to SFAS No. 123 will apply only to unvested options upon adoption and prohibits retroactive restatement for comparability purposes. To make the accounting changes concluded in EITF 04-8 applied by retroactively restating previously reported diluted earnings per share ("EPS") would be punitive in nature to all issuers who have reasonably interpreted and relied upon existing pronouncements and authoritative interpretations to date. Therefore, we feel that it is preferable to "grandfather-in" existing securities and permit issuers to continue using existing accounting treatment under SFAS No. 128 as they reasonably expected when they made the financing decision to issue Co-Cos. The tentative consensus could also cause some issuers to incur considerable costs to exchange or redeem the instruments in an effort to avoid dilution upon adoption of EITF 04-8 or otherwise prevent their EPS to be materially diluted. While there is merit in applying such a pronouncement to restatement of historical EPS for comparability if adopted, such changes are inherently confusing and disruptive to the capital markets. EPS is a very important measure used by investors and analysts and restatements of that measure could cause confusion and have a significant impact on capital markets. Eliminating this confusion and uncertainty is a key reason why we believe the pronouncement, if adopted at all, should only apply to prospective issues.

Finally, we recommend that the Financial Accounting Standards Board ("the board") handle this issue directly since the tentative consensus would essentially amend SFAS No. 128. Given the magnitude of the proposed change, we believe the issue should go through the board's extensive "due-process" that is open to public observation and participation, rather than relinquish its authority and circumvent "due-process" through the streamlined EITF issue procedure.

We appreciate your consideration of our views as you deliberate EITF 04-8. Please feel free to contact me at 615-444-5533 if you would like to discuss our comments.

Sincerely,

Lawrence E. White
Senior Vice President, Finance and Chief Financial Officer
CBRL Group, Inc.

Cc: Michael A. Woodhouse, President and Chief Executive Officer
James F. Blackstock, Senior Vice President, General Counsel and Secretary
Patrick A. Scruggs, Vice President, Accounting and Tax, Chief Accounting Officer
Terry Hardesty, Partner, Deloitte & Touche
Gary Brown, Partner, Baker, Donelson, Bearman, Caldwell & Berkowitz

GENERAL MILLS, INC.

August 27, 2004

Mr. Lawrence W. Smith
Chairman, Emerging Issues Task Force
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856

File Reference: EITF0408

Dear Mr. Smith:

We appreciate the opportunity to comment on EITF Issue No. 04-8 "The Effect of Contingently Convertible Debt on Diluted Earnings per Share". We have noted that the Task Force has received comment letters which raise concerns about the tentative consensus reached at its July 2004 meeting, including the effect of FASB Exposure Draft, "Earnings per Share – an amendment of FASB Statement No. 128". We have elected not to provide the Task Force with redundant observations, but we echo those concerns and urge the Task Force give them close consideration.

We would also urge the Task Force to modify its tentative consensus to address those situations where an issuer of contingently convertible debt has also purchased call options that effectively offset the contingent issuance of common stock. It seems particularly incongruous to require the dilutive effect of the contingent shares "regardless of whether the market price trigger (or other contingent feature) has been met", as proposed by the tentative consensus, when no provisions exist in GAAP that would recognize the offsetting effect of the call option. Such accounting would represent a drastic and misleading departure from the economics of the transactions.

We appreciate your consideration of our views as you deliberate this Issue at the September 29 – 30 meeting. Please feel free to contact me at 763-764-7163 with any questions or observations that you may have.

Sincerely,

Kenneth L. Thome
Senior Vice President, Financial Operations
General Mills, Inc.