



Richard D. Levy
Senior Vice President & Controller

MAC A0163-039
343 Sansome Street, 3rd Floor
San Francisco, CA 94104
415 222-3119
415 975-6871 Fax
richard.d.levy@wellsfargo.com

September 8, 2004

Via email

Mr. Robert Herz
Chairman, Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference EITF 04-08, *The Effect of Contingently Convertible Debt on Diluted Earnings per Share* and File Reference No. 1200-200 Proposed Statement of Financial Accounting Standards, *Earnings per Share, an amendment of FASB Statement No. 128*.

Dear Bob:

Wells Fargo & Company (Wells Fargo) is a diversified financial services company with over \$420 billion in assets providing banking, insurance, investments, mortgage and consumer finance services. We appreciate the opportunity to express our views on the Proposed Statement of Financial Accounting Standards, *Earnings per Share, an amendment of FASB Statement No. 128* (Proposed FAS 128 Amendment) and on EITF 04-8, *The Effect of Contingently Convertible Debt on Diluted Earnings per Share*.

The current transition guidance, articulated in the EITF 04-08 Draft Consensus would be effective for reporting periods ending after December 15, 2004. Prior period earnings per share amounts presented for comparative purposes would be restated to conform to the methodology presented in the EITF. The amendment to FAS 128 would also be effective for reporting periods ending after December 15, 2004. However, retroactive application, which is required for all other changes to FAS 128, would not be permitted for contracts for which the option to settle in cash or shares no longer exists at the date of adoption because the contract has been either settled in cash or amended to remove the share settlement option prior to the date of adoption.

We believe that these proposals should be applied prospectively to time periods and to bond agreements that have yet to be issued, rather than retroactively to debentures that have already been issued. Paragraph 10 of Accounting Research Bulletin No. 43, *Restatement and Revision of Accounting Research Bulletins*, states that, "No opinion issued by the committee is intended to have a retroactive effect unless it contains a statement of such intention. Thus an opinion will ordinarily have no application to a transaction arising prior to its publication, nor to transactions in process of completion at the time of publication. But while the committee considers it inequitable to make its statements retroactive, it does not wish to discourage the revision of past accounts in an individual case if it appears to

be desirable in the circumstances.” We believe that pre-existing contingent convertible debt should be grandfathered. It would be arbitrary and capricious to apply the proposed guidance to these existing bond agreements. These debentures can not be effectively or economically restructured because of the need to obtain investor consent to any change in bondholder rights and because of the need to offer monetary incentives to bond holders to obtain such consent. Retroactive application of this guidance is similar to enacting a tax in the current year applicable to prior years. The facts are “old and cold” and the ability to properly structure the issuance has never been afforded to the issuers. However, the original debentures were structured to comply with the accounting principles in effect at the time of their issuance.

There is a history of prospective adoption in the accounting literature. For example, FAS 148, *Accounting for Stock-Based Compensation-Transition and Guidance*, amended FAS 123, *Accounting for Stock-Based Compensation*, to provide three alternative transition methods to companies making a voluntary change to the fair value method of accounting for stock-based compensation arrangements. The three methods allowed by FAS 123 (as amended by FAS 148) are the prospective method, the modified prospective method and the retroactive restatement method. In the transition guidance for FAS 65, *Accounting for Certain Mortgage Banking Activities*, the Board concluded that prospective application of the transaction-related provisions of this Statement would be appropriate and did not require retroactive application for any provisions of the statement. The Board concluded that FAS 34, *Capitalization of Interest Cost*, should be applied prospectively. More recently, the FASB staff, in its deliberations on the American Institute of Certified Public Accountant’s Statement of Position, *Clarification of the Scope of the Audit and Accounting Guide Audits of Investment Companies and Accounting by Parent Companies and Equity Method Investors for Investments in Investment Companies*, has recommend prospective adoption. In the three standards cited above, the Board concluded that the shortcomings associated with retroactive application exceeded any benefit to be derived from comparability and therefore permitted or required prospective application.

In those instances where the FASB has required retroactive restatement, it has been to achieve the goal of comparability. If the FASB is concerned that the accounting for contingently convertible debt instruments, as described in EITF 90-19, would be different for those instruments issued prior to the effective date of EITF 04-8 and those issued after the effective date, that concern is unfounded. The Board’s adoption of EITF 04-8 will cause entities to structure their future convertible debt agreements so as to avoid earnings-per-share dilution. As a result, if the FASB fails to grandfather previously issued convertible debt, it will not accomplish its goal of comparability. Convertible debt issued prior to EITF 04-8 would reflect the dilutive affect of potential share issuance caused by its retroactive application while substantially the same debt issued after the effective date of EITF 04-8 would be structured to have no dilutive effect. We do not believe that this is an equitable solution or in keeping with the need for comparability as required by paragraphs 111 through 119 of FASB Statement of Concepts No. 2, *Qualitative Characteristics of Accounting Information*.

We believe prospective application of this guidance is in keeping with the principles based approach espoused by the Board, with the conceptual framework established by the Board, and

will permit companies to structure transactions that are in the best interest of stockholders without having the “rules of the game” changed in the middle of a tournament.

* * *

We appreciate the opportunity to comment on the issues contained in the Board’s invitation. If you have any questions, please contact me at (415) 222-3119.

Sincerely,

/s/ Richard D. Levy

Richard D. Levy
Senior Vice President & Controller

CC: Ms. Suzanne Bielstein, Director of Major Projects and Technical Activities
Mr. Lawrence Smith, Director—Technical Application and Implementation Activities
and EITF Chair, Financial Accounting Standards Board
Mr. Gerald O’ Callaghan, Fellow, Financial Accounting Standards Board
Mr. Paul Laurenzano, Fellow, Financial Accounting Standards Board