



Bear, Stearns & Co. Inc.
383 Madison Avenue
New York, NY 10179
Tel (212) 272-2000
www.bearstearns.com

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

File Reference: EITF 07-2

March 8, 2007

Dear Mr. Smith:

We would like to comment and offer our views on the Agenda Summary of EITF 07-2, "Accounting for Convertible Instruments that Require or Permit Partial Cash Settlements upon Conversion". We support View A with regard to these types of convertible instruments, which we shall refer to as "Instrument C/X" (or separately as either Instrument C or Instrument X, as the discussion warrants). Our response addresses the following six key issues:

- (I) As a procedural matter, this issue should not be addressed by the EITF.**
- (II) Instrument C/X is not economically equivalent to debt plus warrants.**
- (III) Treating an Instrument C/X as debt plus warrants distorts financial statements.**
- (IV) View B is an inaccurate application of APB 14.**
- (V) Prohibiting grandfathering is inconsistent with the well-established practice of relying on DIG Issue K5 when changing the accounting for derivatives.**
- (VI) Assuming adoption of View B, the EITF needs to address the FAS 109 treatment of the bifurcated debt.**

I. As a procedural matter, this issue should not be addressed by the EITF.

The charge of the Emerging Issue Task Force (EITF) is to interpret existing GAAP where uncertainty or diversity in practice exists. This is not the situation for Instrument C/X. In 2002, The EITF clearly laid out the accounting for Instrument C in its revised guidance to EITF 90-19, and the SEC confirmed this guidance in a speech at the 2003 AICPA SEC conference. Accordingly, there is no uncertain or diverse practice to resolve through an EITF issue.

II. Instrument C/X is not economically equivalent to debt plus warrants.

An investor who owns debt plus warrants can pursue his equity stake while at the same time retain his creditor status with regard to principal. This is not the same for Instrument C/X. Upon conversion, an investor relinquishes his creditor claim and, assuming no sudden bankruptcy on the part of the issuer, receives his conversion value either wholly in cash (if conversion value is less than par value) or in part cash (equal to par value and issuer shares (equal to “Conversion Spread). Conversion does not preserve creditor claims, and it is possible upon a conversion, even one at maturity, to receive less than par value because the stock drops during the averaging period if the common “Look Forward” methodology is employed. (See table in Appendix for an illustration of this situation.)

III. Treating an Instrument C/X as Debt plus Warrants Distorts Financial Statements.

Under View B, investors would neither have an accurate view of balance sheet leverage nor of cash interest expense. These distortions could force investors to focus on non-GAAP cash metrics for value, thereby detracting from the value of GAAP financial statements.

IV. View B is not an accurate application of APB 14.

View B quotes (via added emphasis) passages from ¶¶7, 12, and 18 of APB 14 in support of its position. Each one of these emphasized quotes can be refuted as providing support for View B:

¶7: “Furthermore the two choices are mutually exclusive; they cannot both be consummated. Thus, the security will either be converted into common stock or be redeemed for cash. The holder cannot exercise the option to convert unless he forgoes the right to redemption, and vice versa.”

As noted above, receiving cash for an amount less than or equal to par value upon conversion is not a redemption event because the investor has foregone his creditor rights the moment he elects to convert. The

fact that some of the conversion consideration is paid in cash actually can increase the investor's equity exposure, because he is exposed to equity price risk during the averaging period. Mutual exclusivity of the conversion option vs. redemption of the debt host remains a hallmark of Instrument C/X, just as it is a defining feature of "conventional convertible debt" (as the term is used in ¶4 of EITF 00-19).

¶12: "In reaching this conclusion, the Board places greater weight on the inseparability of the debt and the conversion option (as described in paragraph 7) and less weight on practical difficulties."

The debt and conversion option component of Instrument C/X remains inseparable during its life and upon conversion or redemption. Consistent with ¶7, if an investor redeems an Instrument C/X early (for example, through a put right), he has irrevocably lost his conversion option, no matter how high the stock rises during the contractual life of the instrument. If the investor had debt plus warrants, he could have held on to the warrants while redeeming the debt, a situation that is not possible with Instrument C/X.

¶18: "Securities not explicitly discussed in this Opinion should be dealt with in accordance with the substance of the transaction."

The substance of Instrument C/X is that of APB 14 convertible debt, as has been affirmed by EITFs 90-19, 00-19 (in its ¶4 discussion of "nonconventional convertibles") and 03-7, as well as the market, which is indifferent as to whether some of the conversion consideration is paid in cash or in shares.

Accordingly, when the three APB 14 paragraphs are analyzed, they are found not to support a change in accounting treatment of Instrument C/X. Rather, these paragraphs are meant to address instruments that are truly economically different from convertible debt.

V. Prohibiting grandfathering is inconsistent with the well-established practice of relying on DIG Issue K5 when changing the accounting for derivatives.

The Board recently completed a difficult project addressing the "shortcut method" as applied to interest rate swaps. As part of its clarified accounting guidance, the Board is specifically relying on DIG Issue K5 for transitioning those entities not previously following the Board's clarified guidance. We believe that K5 should also be applied to a new requirement to bifurcate convertible instruments. While the FASB Staff indicates that grandfathering is not acceptable for comparability purposes, the Board and Staff have previously recognized that the benefit of relieving the process burden related to bifurcation can outweigh any comparability benefit. Should the EITF accept the specious reasoning that APB 14 supports the accounting

of View B; we believe the same cost-benefit analysis that went into K5 with regard to bifurcating derivatives also applies here. The Board explicitly accepted this trade-off in DIG Issue K5 related to bifurcated embedded derivatives upon adoption of FAS 133, and we are troubled by the Board not applying the same rationale to any new bifurcation requirement with regard to Instrument C/X. We believe it sets a bad precedent for the Board not to follow its own guidance with regard to new accounting for derivatives, whether embedded or freestanding and whether 00-19-compliant or FAS 133 derivatives, as comprehensively memorialized in DIG Issue K5. The Board and Staff should pause to consider whether such inconsistent application of clearly delineated policy is in the Board's best interest, as it suggests that the Board is willing to abandon its own policies if sufficiently pressured.

VI. Assuming adoption of View B, the EITF needs to address the FAS 109 treatment of the bifurcated debt.

EITF 05-8 states that bifurcating debt for a beneficial conversion feature creates a FAS 109 basis difference for which deferred taxes must be provided. We expect that the same guidance would apply to any Instrument C/X that is bifurcated pursuant to View B. We also believe that this issue is not well understood by the market or practitioners and if the EITF were to agree to View B, it behooves the Task Force to address the FAS 109 treatment of the resulting basis difference. Accordingly, the FASB Staff, who we understand is preparing and updating the Issue Summary, should immediately incorporate the FAS 109 entries into ¶¶B3-4, B6, and B9-12 of the Agenda Summary of EITF 07-2. The integration of the EITF 05-8-consistent accounting will save both the EITF and the FASB a great deal of future work, as it will eliminate the diversity in practice that will inevitably arise as some practitioners insist that EITF 05-8 should not be applied to View B accounting. If for some reason, the EITF and the Board do not believe that EITF 05-8 should be applied to EITF 07-2, then this issue needs to be fully discussed at a meeting to establish the reasons why View B results in a different FAS 109 treatment from Issue 05-8, and a new Issue Summary would need to be circulated before any decision could properly be made by the Task Force.

Summary Recommendation

We urge the Board to return to this issue to the accelerated “modified joint” Liabilities & Equity project. In this forum, with the availability of full due diligence, it can be properly vetted.



Thank you again for the opportunity to comment on this issue.

Very truly yours,

Robert Aberman
Senior Managing Director
Equity Linked Capital Markets

Paul. Rosica
Senior Managing Director
Equity Linked Capital Markets

Mark De Rocco
Managing Director
Strategic Finance



Appendix

Look Forward Methodology of Determining Conversion Value

Instrument C/X

Par	\$1,000.00
Stock Price at Issuance	20.00
Conversion Price at Exercise	25.00
Premium	25%
Conversion Rate	40.0000

Day	Daily VWAP	Daily Conversion Value	Cash Portion	Shares
1	\$26.50	\$42.40	\$40.00	0.0906
2	26.00	41.60	40.00	0.0615
3	25.50	40.80	40.00	0.0314
4	24.75	39.60	39.60	0.0000
5	24.25	38.80	38.80	0.0000
6	24.50	39.20	39.20	0.0000
7	24.00	38.40	38.40	0.0000
8	23.00	36.80	36.80	0.0000
9	22.50	36.00	36.00	0.0000
10	22.00	35.20	35.20	0.0000
11	20.50	32.80	32.80	0.0000
12	20.00	32.00	32.00	0.0000
13	20.05	32.08	32.08	0.0000
14	20.50	32.80	32.80	0.0000
15	21.00	33.60	33.60	0.0000
16	21.25	34.00	34.00	0.0000
17	21.38	34.21	34.21	0.0000
18	21.50	34.40	34.40	0.0000
19	21.26	34.02	34.02	0.0000
20	21.18	33.89	33.89	0.0000
21	21.75	34.80	34.80	0.0000
22	22.00	35.20	35.20	0.0000
23	22.50	36.00	36.00	0.0000
24	22.38	35.80	35.80	0.0000
25	23.00	36.80	36.80	0.0000

Cash	\$896.39	
Shares		0.1835
\$ Value of Shares		\$4.22

Total Value	\$900.61
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*VWAP = Volume Weighted Average Price of the underlying common stock