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Deloitte & Touche LLP 10 Westport Road Wilton, CT 06897 USA

Tel: 203 761 3000 Fax: 203 834 2200 www.deloitte.com

Mr. Lawrence W. Smith
Director, TA&I – FASB
Financial Accounting and Standards Board
401 Merrit 7
P.O. Box 5116
Norwalk, CT 06856-5116
USA

Letter of Comment No: 13
File Reference: 1240-001

File Reference No. 1240-001 — Exposure Draft of the Proposed Statement of Financial Accounting Standards, *Earnings per Share* — an amendment of FASB Statement No. 128

Dear Mr. Smith:

Deloitte & Touche LLP is pleased to comment on the September 30, 2005, revision of the 2003 Exposure Draft of the proposed Statement of Financial Accounting Standards, *Earnings per Share*—an amendment of FASB Statement No. 128 (the "Exposure Draft" or the "proposed Statement").

As we have indicated in previous comment letters, we support global convergence around high-quality accounting standards. Therefore, we continue to support the efforts of the Board to work closely with the International Accounting Standards Board and other national standard setters to develop high-quality standards that will be applied globally. We believe the provisions of the Exposure Draft represent an improvement to existing standards, and we support the issuance of the proposed Statement as a final standard. Further, the changes proposed by the Board during the redeliberation process, in general, represent incremental improvements to the previous Exposure Draft. As discussed below, however, we believe that the proposed guidance for instruments that permit or require settlement in shares upon the occurrence of a specified future event or circumstance creates a conceptual inconsistency in the proposed Statement. Additional suggestions intended to improve the clarity and usefulness of the proposed Statement are provided in the Appendix.

Contracts That May Be Settled in Shares or Cash

Consistent with our previous comment letter, we support the revision of paragraph 29 eliminating the provisions allowing an entity to rebut the presumption that contracts with settlement options will be settled in shares. Further, we agree with the clarification in the revised Exposure Draft that an entity should not be able to overcome the presumption of share settlement under any circumstance other than the permitted exception for legal bankruptcy. However, we do not agree with the Board's decision that such an arrangement is "not a contingently issuable share arrangement." This conclusion creates an inconsistency between (1) an instrument with cash settlement provisions and contingent share settlement provisions (which would be required to be included in diluted EPS without regard to the contingency) and (2) an instrument that is only settled in shares where settlement occurs only upon the occurrence of a contingent event. We question why an instrument that contingently provides for issuance of shares with cash settlement required in the absence of occurrence of the contingent event

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should always be included in diluted EPS (if dilutive). We believe that such an instrument should be considered to be a potential share-settled instrument (that is, share settlement is assumed). However, the contingently issuable share guidance of the proposed Statement should be applied to the instrument to determine its impact, if any, on diluted EPS. Thus, the treatment afforded such an instrument would be consistent with instruments that provide for share settlement only.

Deloitte & Touche LLP appreciates the opportunity to comment on the proposed Statement. If you have any questions concerning our comments, please contact Jim Kroeker at (203) 761-3726.

Yours truly,

Deloitte & Touche LLP

cc: James A. Johnson

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APPENDIX DELOITTE & TOUCHE LLP COMMENTS Notice to Recipients File Reference No. 1240-001

Extinguishment of a Liability Is Assumed Proceeds

Issue 1: This proposed Statement would require that in applying the treasury stock method to an instrument classified as a liability but potentially settled in shares, the carrying amount of an extinguished liability upon issuance of the shares should be included as assumed proceeds in the computation of incremental shares. Do you agree? If not, why? This provision would apply only to instruments subject to the treasury stock method and would not affect the EPS computation for instruments that are accounted for using the if-converted method under Statement 128. Do you agree? If not, why?

We agree. However, currently this requirement is included in paragraph 21, which deals only with share-based payment arrangements. To make this provision more conspicuous to the reader, we suggest that the guidance regarding inclusion of the liability balance in assumed proceeds should be incorporated in the description of the treasury stock method in paragraph 17. Thus, the last sentence of paragraph 21 should be eliminated.

Issue 2: This proposed Statement would require that the amount of the extinguished liability to be included in assumed proceeds be measured at the carrying amount as of the end of the period for which EPS is being measured. This measurement would lead to dilution when the share price used to compute the end-of-period liability is lower than the average share price used in the treasury stock method. An alternative approach would be to measure the liability used in the assumed proceeds computation at the value at which the liability would have been recorded at the end of the period had the end of the period share price been equal to the average share price during the period. Under that alternative, an instrument subject to the treasury stock method that is classified as a liability and carried at fair value would never be dilutive. Do you agree with the measurement objective in the proposed Statement? Why or why not? If not, would you favor the alternative measurement objective? Why or why not?

We believe that the measurement objective for determination of the assumed proceeds related to a liability balance should be consistent with the manner in which assumed proceeds would be determined for an option with an exercise price that varies during the period. Currently, Statement 128 does not address the determination of assumed proceeds for options with variable exercise prices (accordingly, it is unclear whether the assumed proceeds would be based on the average exercise price for the period or the exercise price determined at period end). However, we believe that the guidance in paragraph 46(a) of IAS 33, *Earnings per Share*, addresses an analogous situation. The paragraph explains that a contract to issue a certain number of ordinary shares at their average market price during the period should be ignored in the calculation of diluted earnings per share. It appears implicit in this conclusion that the determination of assumed proceeds related to the options exercise price must be calculated using an average price during the period rather than the exercise price determined as of the period end. Accordingly, we believe that (1) guidance similar to paragraph 46 of IAS 33 should be included in the final standard and (2) the measurement objective for determination of

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assumed proceeds related to liability instruments should be consistent (or reconciled conceptually) with the objective for determination of assumed proceeds for options where the strike price varies.