McGladrey & Pullen

Certified Public Accountants

McGladrey & Pullen LLP Third Floor 3600 American Blvd West Bloomington, MN 55431

December 5, 2008

Mr. Russell G. Golden FASB Technical Director Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116



File Reference No. 1240-100

Dear Mr. Golden:

We are pleased to comment on the August 7, 2008 revision of the 2005 Exposure Draft of the Proposed Statement of Financial Accounting Standards, *Earnings per Share, an amendment of FASB Statement No. 128* (the "proposed Statement"). We support the FASB's efforts to clarify and simplify the earnings per share ("EPS") computation as well as improve the comparability of the denominator used in the EPS computation with that used in IAS 33, *Earnings per Share*. While we agree with many of the changes made in the proposed Statement and support the issuance of a final amendment to FASB Statement No. 128, we have several comments below for your consideration.

Comments on Specific Issues

Issue 1: In this proposed Statement, an entity would not include in the denominator of diluted EPS the number of additional common shares that would arise from the assumed exercise or conversion of certain freestanding instruments (or a component of certain compound instruments that is accounted for as if it were freestanding) that are measured at fair value each period with changes in fair value recognized in earnings. Similarly, an entity would not include in the computation of basic and diluted EPS under the two-class method certain participating securities that are measured at fair value each period with changes in fair value recognized in earnings. The Board concluded that the effect of those instruments on current shareholders during the period has been reflected in the numerator of basic and diluted EPS through the changes in fair value recognized in earnings. Do you agree that the fair value changes sufficiently reflect the effect of those instruments on current shareholders and that recognizing those changes in earnings eliminates the need to include those instruments in determining the denominator of diluted EPS or in computing EPS under the two-class method? If not, why not?

We disagree with the conclusion that the fair value changes sufficiently reflect the effect of instruments that are measured at fair value each period with changes in fair value recognized in

earnings on current shareholders and that recognizing those changes in earnings eliminates the need to include those instruments in determining the denominator of diluted EPS or in computing EPS under the two-class method. We agree with the alternative view discussed in paragraph B34 of the proposed Statement because the proposed methodology would only reflect the effect of changes in an instrument's fair value for the current period and would not allow a user to evaluate the potential future dilution that could result from that security. We also believe that use of the applicable if-converted or treasury stock method (excluding the proposed guidance to include as assumed proceeds the end-of-period carrying value of a liability that is assumed to be share settled and is not measured at fair value each period through earnings) would be a better representation of diluted EPS in all scenarios, even more so in periods in which an instrument's fair value has not changed or increased. For example, a convertible debt instrument measured at fair value would have no effect on the denominator of diluted EPS under the proposed Statement. Therefore, in periods where that convertible debt instrument's fair value has not changed, the instrument would have no effect on either the numerator or denominator of the diluted EPS computation, even though in most cases the economics of the convertible debt are such that they will often be dilutive. Furthermore in this example, even when there is a change in fair value which would be reflected in the numerator of the diluted EPS computation, analysts often remove these "non-cash charges" from their models and this results in the same effect as above, whereby the instrument has no effect on the adjusted diluted EPS computation.

We also believe there may be an unintended consequence and the potential for manipulation when a company elects the fair value option for a convertible security, which would result in its exclusion from the earnings per share computation under the proposed Statement. Once again, there could be instances where there is little change in the fair value of the convertible security and at the same time there is significant potential dilution that may result from its conversion.

We also question whether this proposed quidance is consistent with the guidance regarding instruments that may be settled in cash or shares. Paragraph B9 of the proposed Statement states, "...the Board decided that an otherwise cash settled instrument that contains a provision that requires or permits share settlement under certain circumstances is not a contingently issuable share agreement and, therefore, share settlement must be assumed (if dilutive) for purposes of computing diluted EPS, regardless of control over or probability of share settlement." This guidance results in potential additional shares being included in the denominator of diluted EPS and is consistent with the objective of computing diluted EPS stated in the amendment to paragraph 11 within paragraph A2 of the proposed Statement, which is to measure the performance of an entity over the reporting period while giving effect to all dilutive potential common shares that were outstanding during the period. However, the proposed Statement's guidance to exclude from the denominator of diluted EPS the number of additional common shares that would arise from the assumed exercise or conversion of certain freestanding instruments that are measured at fair value each period with changes in fair value recognized in earnings seems to be contrary to both the proposed guidance regarding settlement in cash or shares and the objective of computing diluted EPS. Furthermore, we don't believe it is clear in the proposed Statement which of the above rules or principles trumps the other. In other words, if there is a cash settled instrument that contains a provision that requires or permits share settlement and this instrument is also measured at fair value each period with changes in fair value recognized in earnings, we don't believe it's clear whether for purposes of computing diluted EPS this instrument should be included (because one is required to assume share settlement) or excluded (because it is measured at fair value each period with changes in fair value recognized in earnings).

In addition, we are concerned about the consistency of the Board's rationale for the differing treatments proposed for securities measured at fair value as compared to those measured at other than fair value. In paragraph B15 of the proposed Statement, the Board's rationale for excluding the number of additional common shares that would arise from the assumed exercise or conversion of these instruments measured at fair value seems to be that, coupled with the changes to the treasury stock and reverse treasury stock methods, this exclusion would generally result in no difference in the diluted EPS computation as compared to that resulting from determining diluted EPS under the treasury stock or reverse treasury stock method including these instruments. This observation is based on the theory that the exercise of an instrument classified as a liability (and the extinguishment of that liability as a result) is consistent with receiving cash proceeds and the carrying value of the liability should be included within assumed proceeds for purposes of computing diluted earnings per share. We disagree with that theory and believe there should be no different earnings per share treatment for an instrument that is classified as a liability as compared to an instrument classified as equity, since a company will receive the same proceeds from a liability-classified instrument as from an equity-classified instrument.

The Board provided additional rationale in paragraph B20 of the proposed Statement that "... excluding those instruments from the denominator of diluted EPS represents a more realistic picture of the effect of those instruments on current shareholders because it does not assume one or more hypothetical transactions (for example, the treasury stock method assumes the exercise of all in-the money options and the subsequent repurchase of shares from the proceeds of those exercises)." This rationale seems to question the validity of the use of hypothetical transactions as described in computing diluted EPS. We believe this logic calls into question why the use of hypothetical transactions from the diluted EPS computations is ever appropriate, which is not consistent with the guidance in the proposed Statement because the treasury and reverse treasury stock methods, for example, are still utilized for certain instruments in computing diluted EPS.

Issue 2: In computing diluted EPS, dilutive potential common shares and potential participating securities are assumed to be outstanding. This proposed Statement would clarify that an entity would not reduce income from continuing operations (or net income) by the amount of additional dividends that would be assumed to be declared for potential common shares or potential participating securities that are assumed to be outstanding. The Board reasoned that an entity may make a different decision on the per-share amount of dividends declared if that per-share amount was distributed to all potential common shares or participating securities. Do you agree? If not, why not?

We agree that excluding the additional dividends that would be assumed to be declared for potential common shares or potential participating securities that are assumed to be outstanding from the determination of net income in computing diluted EPS is appropriate. The amount of dividends declared is within an entity's control and it is not appropriate to assume that an entity would simply distribute its current per share dividend to the assumed additional shareholders. We believe this is particularly true in those circumstances where there are significant amounts of potential common shares or potential participating securities in relation to the outstanding common shares.

Issue 3: The Board decided that the amendments in this proposed Statement would not warrant additional disclosures beyond those already required by U.S. GAAP (for example, Statement 128, FASB Statement No. 129, Disclosure of Information about Capital Structure, and EITF Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock"). Do you agree that additional disclosures are not warranted? If not, what additional disclosures should be required and why?

We believe that additional disclosures are warranted. In particular, we believe for a financial statement user to truly understand all of the potential dilution, disclosures of both the amount and value of those dilutive instruments measured at fair value and excluded from the denominator of diluted EPS should be required. Furthermore, we believe disclosure of the incremental shares that would have been included in the denominator of the diluted EPS computation if these securities were included in the diluted EPS computation should also be required.

Other Comments

Simplification

One of the stated objectives of the proposed Statement is to simplify the computation of EPS. We believe that there are certain scenarios whereby the proposed Statement will significantly complicate the EPS computation, for example, when non vested share purchase warrants have been issued to nonemployees for services. These warrants should be accounted for at issuance based on Statement 123R, Share-Based Payment (as noted in SEC Staff Accounting Bulletin No. 107, Share-Based Payment) and EITF 96-18 Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services. The warrants would be remeasured at fair value each period until performance is complete or a commitment for performance is reached. Once the performance or performance commitment is attained, the warrants would become subject to other GAAP and may need to be evaluated under EITF 00-19, Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock. Under EITF 00-19, the warrants could be classified as equity. Furthermore, the warrants may also vest in separate tranches. As a result of the proposed Statement, a company would need to bifurcate the portion of the warrants that have not yet vested (and are remeasured at fair value) from those that have vested (and are no longer remeasured at fair value) to determine those that may impact the computation of the denominator (post-vesting) and those that do not impact the denominator (pre-vesting) in the computation of diluted EPS. We believe there are other conditions where the reclassifications to and from fair value accounting will complicate the accounting for earnings per share as well.

In addition, we believe that the proposed Statement may result in a lack of simplification from a user perspective. We believe many users would now begin to try to compute their own adjusted denominator for diluted EPS, to include those instruments measured at fair value each period that are no longer included in the denominator in order to determine the full potential for future dilution.

Inclusion of an Instrument that is Currently Exercisable for Little or No Cost to the Holder within Basic EPS

While we agree with the treatment in the added paragraph 9A within paragraph A2 of proposed Statement to include instruments currently exercisable for little or no cost to the holder within basic EPS, we are concerned with the lack of clarity of the term "little or no cost". While we are not suggesting the Board incorporate a "bright-line" in the Statement, we think it would be helpful to note if there are any other factors to consider when evaluating the term "little or no cost". For example, should one evaluate each particular instrument by itself when considering the amount required to be paid compared to the end-of-period market price or should all instruments be considered in the aggregate. Furthermore, we believe the current example included in the amendment to paragraph 10 within paragraph A2 of the proposed Statement is not helpful, given that the exercise price is .01% of the end-of-period market price. Perhaps an example that is a bit more realistic might be helpful, especially given that the result of this evaluation could mean the difference between including an instrument in basic EPS (if exercisable for "little or no cost") and excluding an instrument from any EPS computations based on the proposed Statement (if determined not to be exercisable for "little or no cost" and measured at fair value each period with changes in fair value recognized in earnings).

Instruments for which the Holder has (or is Deemed to Have) the Present Right as of the End of the Period to Share in Current-Period Earnings with Common Shareholders

In the amendment to paragraph 10 within paragraph A2 of the proposed Statement, we believe certain changes should be made to clarify the guidance as follows:

- In the third and fourth sentences on the application of the little-or-no-cost criterion, we recommend that the phrase "...amount required to be **paid** (emphasis added) by the holder..." be changed to "...amount of consideration required from the holder...", since cost can be in a form other than cash, such as services rendered, which is not something that would be "paid".
- In the last two sentences, it is stated that outstanding shares that are subject to recall and meet the definition of a participating security shall be included in the basic EPS computation using the two-class method described in paragraph 61 within paragraph A4 of the proposed Statement. Based on this, one may come to a conclusion that a participating security that is measured at fair value each period with changes in fair value recognized in current period earnings would be required to be included in the basic EPS computation using the two-class method. However, in the newly added paragraph 9A within paragraph A2 and paragraph 60A within paragraph A4 of the proposed Statement, it is clear that only a participating security that is not measured at fair value each period with changes in fair value recognized in current-period earnings should be included in the basic EPS computation. Based on the above, we would suggest that the following phrase be added after "If so..." in the last sentence... "and the participating security is not measured at fair value each period with changes in fair value recognized in current period earnings".

Options and Warrants and Their Equivalents

In the amendment to paragraph 50 within paragraph A4 of the proposed Statement, the second sentence states, "Conversion or exercise of the potential common shares discussed in those paragraphs shall not be reflected in diluted EPS unless (a) the effect is dilutive **or** (emphasis added) (b) those instruments are freestanding (or a component of a compound instrument that is accounted for as if it were freestanding) and are not measured at fair value each period with changes in fair value recognized in earnings." Application of this sentence as written would result in including in diluted EPS those freestanding

instruments not measured at fair value each period with changes in fair value recognized in earnings even if they are antidilutive, as only (a) or (b) are required to be met to include these securities in diluted EPS. As we do not believe it was the Board's intention to include any antidilutive securities in the computation of diluted EPS, we believe that the "or" in this sentence should be changed to an "and". Alternatively for further clarity, we propose replacing the above sentence with the following, "Conversion or exercise of the potential common shares discussed in those paragraphs shall be reflected in diluted EPS if the effect is dilutive, unless those instruments are freestanding (or a component of a compound instrument that is accounted for as if it were freestanding) and measured at fair value each period with changes in fair value recognized in earnings."

Amendments to Other Authoritative Literature

McGladrey of Pullen, LLP

In the amendment to paragraph C7 of the proposed Statement, EITF 03-6, *Participating Securities and the Two-Class Method under FASB Statement No. 128*, will continue in existence with certain amendments such as the recently issued FSP EITF 03-6-1. We suggest that all relevant consensuses and other related amendments be codified into this proposed Statement for ease of use by a reader.

We would be pleased to respond to any questions the Board or its staff may have about any of the preceding comments. Please direct any questions to either Jay D. Hanson (952-921-7785) or Brian H. Marshall (203-905-5035).

Sincerely,

McGladrey & Pullen, LLP