October 14, 2019

Shayne Kuhaneck
Acting Technical Director
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116

RE: File Reference No. 2019-730

Dear Mr. Kuhaneck:

PricewaterhouseCoopers LLP appreciates the opportunity to comment on the FASB's proposed Accounting Standards Update, *Debt-Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40)* (the "exposure draft"). We commend the FASB for its efforts to simplify the accounting guidance for convertible debt and contracts in an entity's own equity, as well as the related earnings per share considerations. We also support the amendments to the disclosure requirements. We believe that certain of these changes will simplify and improve financial reporting and provide decision-useful information for investors. However, we believe some of the proposals eliminate fundamental aspects of the existing guidance that practice utilizes to distinguish liabilities from equity.

Convertible debt

We support the Board's effort to simplify the accounting for convertible instruments by removing several of the separation models in subtopic 470-20. We agree that the proposed amendments will reduce complexity in the accounting for convertible instruments and difficulties with the interpretation and application of the relevant guidance. In addition, we generally agree that the proposed disclosure amendments will provide decision-useful information.

Derivatives scope exception for contracts in an entity's own equity

Conceptually, the Board's proposal to add a probability threshold to both the existing indexation and settlement guidance, such that contingent events that have a remote likelihood of occurring no longer need to be evaluated, is attractive. We believe that including a threshold will reduce the number of financial instruments that are classified as assets or liabilities. However, we believe that there will still be complexity, for example, when a contract contains multiple features that individually may be remote of occurring, but in the aggregate may have a likelihood of occurring that is more than remote.

We do not agree with the proposal to remove the conditions for equity classification relating to shareholder rights (paragraph 815-40-25-10f) and collateral (paragraph 815-40-25-10g). In the absence of a comprehensive model defining equity instruments, practice has considered these concepts in analyzing instruments beyond derivatives on an entity's own equity. Specifically, practice has generally considered that having creditor rights (including the right to receive collateral) would generally preclude equity classification. In addition, while it may require the involvement of legal counsel, evaluating the rights of the counterparty and whether a contract provides for collateral have, in our experience, not been areas that have proven to be difficult or costly to apply.

In addition, we believe it would be inappropriate to only reassess the likelihood of a contingent feature that was evaluated under paragraphs 815-40-15 or 815-40-25 when it is triggered. A feature that had a remote likelihood of occurring at inception may become probable of occurring. Without reassessment, this would not result in the reclassification of the contract. In addition, we believe requiring reassessment of the likelihood of occurrence of all features in a contract upon the expiration of a feature in a model that otherwise does not require reassessment may be confusing to constituents. We propose requiring reassessment of the likelihood of occurrence of a feature or group of features at each reporting date. However, reclassification would only be required if the occurrence of features individually or in the aggregate became probable. Although this would require reassessment each period, the level of effort would be operable because reclassification would not be required unless a probable threshold was met.

We believe the principles in ASC 815 should be applied to determine whether an instrument should be accounted for at fair value with changes in fair value reported in current earnings. We do not believe that this should be dictated by whether an instrument is classified as an asset, liability, or equity. As a result, we disagree with the proposed amendments to paragraph 815-40-35-4.

We believe that a potentially superior alternative proposal would be to permit equity classification for a contract that does not provide for creditor rights (including collateral) and, at issuance, allows share settlement at the election of the issuer. If contingent events change the terms or settlement of the contract, there would be accounting recognition (such as a charge to income available to common shareholders and/or reclassification of the contract) at that time.

Earnings per share (EPS)

We do not object to the Board's proposal that would require the presumption of share settlement for purposes of computing diluted EPS when an instrument may be settled in cash or shares. However, we believe that share-based payment arrangements classified as a liability because of the requirements in paragraph 718-10-25-15 should be subject to paragraph 260-10-45-45. We do not see the conceptual difference between a stock compensation award that can be settled in shares when the company may have a stated policy or past practice of settling in cash and other financial instruments with similar settlement alternatives.

* * * * *

Appendix A contains our detailed responses to the Questions for Respondents in the Exposure Draft, which includes additional observations and in some cases expands on our comments above. Appendix B contains some of our more editorial comments. If you have any questions, please contact David Schmid at (973) 997-0768 or John Horan III at (732) 861-1012.

Sincerely,

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP

Appendix A

Convertible Instruments

Question 1: *Should convertible instruments be accounted for as a single unit of account, except in circumstances in which the conversion features are required to be bifurcated by guidance in Topic 815? Please explain why or why not. Under this simplification, would any specific information about convertible instruments be missing in order to understand an entity's financial position and financial performance? If so, please explain what information would be missing and how that information is used.*

We generally agree that convertible instruments should be accounted for as a single unit of account, except in circumstances in which the conversion feature(s) are required to be bifurcated by guidance in Topic 815. We agree that the proposed amendments will significantly reduce complexity in the accounting for convertible instruments and difficulties with the interpretation and application of the relevant guidance. However, we do not agree that a convertible debt instrument issued at a premium should always be recorded as a single unit of account. In situations where embedding a derivative on an entity's own stock within a debt instrument would result in recording negative interest on the instrument, we believe that a portion of the proceeds should be allocated to paid-in capital.

We believe the Board should clarify the application of the extinguishment/induced conversion model to convertible debt that can be settled in either cash or shares in any combination at the option of the issuer.

Question 2: *Do the disclosure amendments in this proposed Update for convertible debt instruments in paragraphs 470-20-50-1A through 50-1I and for convertible preferred stock in paragraphs 505-10-50-12 through 50-18 provide decision-useful information? Should any of these disclosures be required for every annual and interim period for which a statement of financial position and a statement of financial performance are presented? Should any other disclosures for convertible instruments be required? Please explain why or why not.*

We agree that the proposed amendments to disclosures for convertible debt instruments in paragraphs 470-20-50-1A through 50-1I and for convertible preferred stock in paragraphs 505-10-50-12 through 50-18 provide decision-useful information.

Derivatives Scope Exception for Contracts in an Entity's Own Equity

Question 3: *Should remote settlement features be disregarded for purposes of determining the classification of a contract in an entity's own equity (for both indexation and settlement)? Is remote an operable threshold? Please explain why or why not.*

Conceptually, the Board's proposal to add a probability threshold to both the existing indexation and settlement guidance, such that contingent events that have a remote likelihood of occurring no longer need to be evaluated, is attractive. We believe that including a threshold will reduce the number of financial instruments that are classified as assets or liabilities. However, we believe that there will still be complexity, for example, when a contract contains multiple features that individually may be remote of occurring, but in the aggregate may have a likelihood of occurring that is more than remote.

We believe the guidance should be clarified as to whether the probability threshold applies to all potential settlement alternatives, or only certain provisions, such as paragraphs 815-40-25-10(d) or (e). For example, it is unclear whether equity classification would be precluded if the contract does not contain an explicit share limit, but the probability of the entity having to settle the contract in cash due to insufficient authorized and unissued shares is remote. We believe the guidance should clarify that all contingent events that could require cash settlement of the contract, excluding those under the control of the issuing entity or the counterparty, should be evaluated. However, it should also state that contingent events that have a remote probability of occurring, individually and in the aggregate, would not affect the classification of the contract. This would provide a clear principle in the guidance. Alternatively, if evaluating the probability of settlement features is not a broad principle, but only applicable to specific provisions of the guidance, we believe this should be explicitly stated in the guidance.

We disagree with the Board's proposal to delete paragraph 815-40-25-18. We do not believe the inclusion of uneconomic settlement alternatives should determine classification. If uneconomic settlement alternatives should be considered, we believe this should be explicitly stated in the guidance, but it would be a departure from how constituents typically apply similar guidance.

We believe that a potentially superior alternative proposal would be to permit equity classification for a contract that does not provide for creditor rights (including collateral) and, at issuance, allows share settlement at the election of the issuer. If contingent events change the terms or settlement of the contract there would be accounting recognition (such as a charge to income available to common shareholders and/or reclassification of the contract) at that time.

Question 4: *Should a requirement to settle a contract in registered shares not affect the classification of a contract in the entity's own equity? Please explain why or why not.*

As noted in our response to Question 3, we believe the Board should clarify whether the proposed probability threshold is applicable as a broad principle or only to specific provisions, including the ability to deliver registered shares. We believe the guidance should clarify that all contingent events that could require cash settlement of the contract, excluding those under the control of the issuing entity or the counterparty, should be evaluated. If the probability of such events occurring is remote, individually and in the aggregate, the guidance should state that they would not affect the classification of the contract.

If the probability threshold is a broad principle, the evaluation of whether a provision requiring delivery in registered shares would preclude equity treatment would require an understanding of (1) the circumstances that would prevent a company from delivering registered shares, (2) what would happen if a company was unable to deliver registered shares, and (3) whether it is remote the contract would require cash settlement.

Consistent with our recommendation, we support removing any "accounting presumption" of cash settlement if a contract required delivery of registered shares.

Question 5: *Should a requirement to post collateral not affect the classification of a contract in an entity's own equity? Please explain why or why not.*

We do not agree with the proposal to remove the condition for equity classification relating to collateral. In the absence of a comprehensive model defining equity instruments, practice has generally considered one of the fundamental differences between a liability and equity to be the existence of creditor rights. Specifically, practice has generally considered that having creditor rights (including the right to receive collateral) would generally preclude equity classification. We believe that the posting of collateral (other than an entity's own shares) is a characteristic of a debtor-creditor relationship. The ability to seize collateral would provide the counterparty rights that would effectively rank senior to other creditors, which does not seem consistent with an equity instrument.

In addition, in our experience, it has not been difficult or costly to determine whether a contract provides for collateral.

Question 6: *Should the hierarchy of a counterparty's rights or shareholder rights not affect the classification of a contract in an entity's own equity? Please explain why or why not.*

We do believe that the hierarchy of a counterparty's rights should affect the classification of a contract. As noted in our response to Question 5, practice has generally considered one of the fundamental differences between a liability and equity to be the existence of creditor rights. Specifically, practice has generally considered that having creditor rights generally precludes equity classification. We believe that focusing solely on the concept of settlement is taking too narrow a view on whether a contract should be classified as a liability and would be inconsistent with how instruments other than derivatives on an entity's own shares are evaluated.

In addition, while evaluating the rights of the counterparty may require the involvement of legal counsel, in our experience, this has not been an area that has proven to be difficult to apply.

Question 7: *Are the proposed amendments about reassessment of the derivatives scope exception operable? Should reassessment of the derivatives scope exception occur only upon a reassessment event (as defined in paragraph 815- 40-35-8)? If not, should the reassessment be performed more frequently even if a reassessment event has not occurred, for example, on an annual basis? If performed annually, should the likelihood threshold be remote or should a different threshold be applied? Please explain your rationale for each of the answers provided.*

We believe it would be inappropriate to only reassess the likelihood of a contingent feature that was evaluated under paragraphs 815-40-15 or 815-40-25 when it is triggered. A feature that had a remote likelihood of occurring at inception may become probable of occurring, Without reassessment, this would not result in the reclassification of the contract. In addition, we believe requiring reassessment of the likelihood of occurrence of all features in a contract upon the expiration of a feature that was deemed to have a remote likelihood of occurring at inception in a model that otherwise does not require reassessment may be confusing to constituents. We propose requiring reassessment of the likelihood of occurrence of a feature or group of features at each reporting date. However, reclassification would only be required if the occurrence of features individually or in aggregate became probable. Although this would require reassessment each period, the level of effort would be operable because reclassification would not be required unless a probable threshold was met.

Question 8: *Do the proposed disclosure amendments for contracts in an entity's own equity in paragraph 815-40-50-5(f) through (g) provide decision-useful information? Please explain why or why not. Should any other disclosures for contracts in an entity's own equity be required? Please explain which disclosures should be required and why.*

We believe that this question is best answered by preparers and users.

Question 9: *Under current guidance in Topic 825, fair value disclosures are required for financial instruments that are classified as liabilities but are not required for financial instruments that are classified as equity. Should new fair value disclosures be considered for public business entities for all equity-classified instruments, including those outside the scope of the proposed amendments (such as employee stock options)? If yes, how would you use that information? If yes, which equity-classified instruments should the disclosures be required for?*

We do not believe that new fair value disclosures are necessary for public business entities for all equity classified instruments, including those that would be outside the scope of the proposed amendments.

Other comments

We believe the principles in ASC 815 should be applied to determine whether an instrument should be accounted for at fair value with changes in fair value reported in current earnings. We do not believe that this should be dictated by whether an instrument is classified as an asset, liability, or equity. As a result, we disagree with the proposed amendments to paragraph 815-40-35-4.

We also note that there may be a lot of executory contracts, such as contracts to purchase goods, that do not meet the definition of a derivative (no net settlement) and would not be considered indexed to an entity's own stock under paragraph 815-40-15-8A. There are other contracts that similarly do not meet the definition of a derivative but may have some element of indexation to an entity's own shares. We do not believe it was the Board's intent to require such instruments to be measured at fair value with changes in fair value reported in current earnings. Therefore, we recommend, at a minimum, that the guidance in paragraphs 815-40-35-4 and 815-40-15-8A be amended to indicate that it is only applicable if the indexation to an entity's own equity is a substantive or predominant feature of the contact.

EPS

Question 10: *Should diluted EPS for all convertible instruments be calculated using the if-converted method of diluted EPS? Is the revision to the if-converted method in paragraph 260-10-45-40(b) operable? Please explain why or why not.*

We agree that diluted EPS for all convertible instruments should be calculated using the if-converted method. We agree with the guidance in paragraph 260-10-45-40(b) and believe it is consistent with current practice for instruments for which the principal amount is required to be paid in cash.

We are concerned that preparers and users could be confused by referring to what used to be known as the "net share settlement method" as the "if-converted method." We suggest the Board clarify that the EPS computation methodology for convertible instruments when the principal amount is required to be paid in cash is not being revised except for the new requirement in proposed paragraph 260-10-45-21A to use the average market price when computing the number of shares required to settle the conversion premium.

Question 11: *For a contract that may be settled in either cash or shares (except for certain share-based payment arrangements that are classified as liabilities), should an entity presume (and not be allowed to overcome the presumption) share settlement when calculating diluted EPS? Please explain why or why not.*

We do not object to the Board's proposal that would require that share settlement be presumed for purposes of computing diluted EPS when an instrument may be settled in cash or shares.

We believe that share-based payment arrangements classified as a liability because of the requirements in paragraph 718-10-25-15 should be subject to paragraph 260-10-45-45. We do not see the conceptual difference between a stock compensation award that can be settled in shares when the company may have a stated policy or past practice of settling in cash and other financial instruments with similar settlement alternatives.

We note in the proposal that paragraph 260-10-55-36 would be deleted. Paragraph 260-10-45-45 states "Share settlements shall be presumed for the dilutive EPS calculation (*if the effect is dilutive*)…" (emphasis added). We are unclear if the Board's intention is to require the presumption of share settlement in all cases, for example, when the counterparty controls the settlement method and cash settlement would be more dilutive. We recommend that this be made clearer.

Question 12: *Should the Board consider a project about the effect of antidilutive instruments on the diluted EPS calculation (for example, the effect of call options used to offset the potential dilution from convertible instruments)? Should any other EPS improvements be considered? If yes, please provide details.*

We do not believe it is necessary to undertake a project about the effect of antidilutive instruments on the diluted EPS computation. However, we believe that the current and proposed disclosure requirements could be enhanced to provide more clarity on what should be disclosed to comply with paragraph 260-10-50-1(c) related to antidilutive instruments that have been excluded from the EPS calculations.

We note that the Board has made, and is proposing to make, meaningful changes to the EPS guidance in recent updates. For example, previously issued guidance requires that the value of the effect of the triggering of a down round provision reduce the numerator in the computation of basic EPS. We believe the Board should take this opportunity to provide guidance on the EPS treatment upon settlement of equity instruments other than preferred stock. For example, should the repurchase of an equity-classified warrant for an amount exceeding its recorded value require an adjustment to the numerator of the EPS calculation?

Other comments

ASC 260-10-25-1 applies to equity-classified convertible preferred and equity-classified freestanding financial instruments, but not convertible debt. We note that if the conversion option is not reported at fair value with changes in fair value reported in current earnings, there would be no recognition of the effect of a down round. We believe the Board should consider whether the effect of a down round on convertible debt should be given accounting recognition.

Transition and Effective Date

Question 13: *Should the proposed amendments that affect classification, recognition, and measurement be applied on a modified retrospective basis, with an option for full retrospective application? Do you agree with the Board's proposed transition expedient? Please explain why or why not.*

We agree with the Board's proposals.

Question 14: *Should the proposed amendments to EPS be applied as of the initial date of adoption for the transition from treasury stock method to if-converted method and applied retrospectively for instruments that may be settled in cash or shares? Please explain why or why not.*

We believe that EPS information should be comparable for all periods presented and therefore believe that all proposed amendments impacting the computation of EPS should be applied on a fully retrospective basis.

Question 15: *How much time would be needed to implement the proposed amendments? Should the amount of time needed to implement the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities? Should early adoption be permitted? Please explain your response.*

While we believe that this question is best answered by preparers, we note that the time required to implement the proposed amendments could be significant. All convertible debt, convertible preferred stock, and contracts potentially settled in an entity's own shares will need to be evaluated pursuant to the proposed amendments.

We believe that early adoption should be permitted.

Overall

Question 16: *The proposed amendments would affect all entities that issue convertible instruments and/or contracts in an entity's own equity. Are there any specific private company considerations, in the context of applying the Private Company Decision Making Framework that the Board should be aware of?*

We do not believe there are any private company considerations that the Board should be aware of.

Question 17: *The proposed amendments would supersede various areas of guidance (such as the guidance on certain accounting models for convertible instruments). Do you expect that superseding that guidance will result in any unintended consequences? For example, is there guidance that is currently analogized in practice to account for transactions for which there is no explicit guidance under current GAAP? Please explain what those unintended consequences are and potential solutions, if applicable.*

As noted, we do not agree with the proposal to remove the conditions for equity classification relating to shareholder rights (paragraph 815-40-25-10f) and collateral (paragraph 815-40-25-10g). Practice has considered these concepts in analyzing instruments beyond derivatives on an entity's own equity. Specifically, practice has generally considered that having creditor rights (including the right to receive collateral) generally precludes equity classification. We are concerned that removing this guidance, which has been analogized to more broadly, could have unintended consequences.

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Appendix B

Following are some of our more editorial comments:

Convertible Debt Instruments

- 470-20-05-4: We don't believe that the statement, "Thus the instrument will either be converted into common stock or be redeemed for cash" is still accurate now that convertible debt includes what was previously referred to as cash convertible debt. For example, certain instruments can result in repayment of par in cash and the delivery of shares for the conversion spread. As such, they may not be "mutually exclusive" and the last sentence may not be accurate. Consider amending the paragraph given instruments with different terms (including cash settlement of the principal) will now be covered by this guidance.
- 470-20-25-12: Consider amending the last part of paragraph to state the following: "…unless the conversion feature is required to be accounted for separately as an embedded derivative under subtopic 815-15."
- 470-20-30-1: We believe that proceeds should be allocated to liability-classified warrants at fair value with the residual amount allocated to the debt instrument. Relative fair value should be used for equity-classified warrants. Consider clarifying the guidance to separately discuss liability vs equity classified warrants.
- 470-20-40-5: The term "time of issuance" is not a defined term and as such we do not believe should be in bold type.

Disclosures

- 470-10-55-11: It is unclear whether paragraph 470-10-55-11 is referring to mandatorily redeemable under US GAAP (the definition in ASC 480-10-20) or under SEC guidance (ASC 480-10-S99). We also think the first sentence is confusing, as the example refers to the first two instruments as borrowings when all the instruments mentioned are borrowings.
- 470-20-50-1A(c): Consider adding "and equity issuances" after "entity's future cash flows."
- Consider clarifying whether the information required in 470-20-50-1E and 1F must be provided by instrument or can be presented in the aggregate. For example, 470-20-50-1B and 1D state "for each," but other paragraphs are not explicit.
- Consider clarifying if the requirements in paragraph 470-20-50-1I are meant to capture derivative transactions that are designated as hedges pursuant to ASC 815, such as hedges of interest rate risk.
- Consider clarifying if the guidance required in paragraph 505-10-50-14 regarding contingent events is only applicable to the conversion option, or if it relates to other contingent options (such as contingently exercisable calls and puts).
- Consider adding the following language to paragraph 505-10-50-15: "An entity shall disclose the amount of dividends declared <u>and recorded as a result of accretion (for example, for convertible preferred stock recorded as temporary equity)</u> for each period for which a statement of financial performance is presented, in addition to the disclosures required by paragraph 505-10-50-5."
- Consider clarifying if the guidance in paragraph 815-10-50-8B requiring disclosures on convertible debt instruments in section 470-20-50 and convertible preferred stock in section 505-10-50 should be considered <u>after</u> considering the disclosure guidance in Topic 815 for a conversion option accounted for as a derivative instrument or <u>"in addition to."</u>

- 470-20-55-1B: The guidance states, *"Examples of events or changes in circumstances that occur during the reporting period that significantly affect the conversion conditions under paragraph 470-20-50-1E(b) include those that indicate that, in the following reporting period, the conversion contingencies may be met or the conversion terms may be changed and, therefore, significantly affect the assessment of financial statement users on the cash flow prospects of a reporting entity."* We are unclear whether this guidance addresses situations when a contingent event occurred within the reporting period and may affect future conversions or when the contingent event occurred as a subsequent event.
- We note the disclosures referenced in ASC 470-20-50-2A through 50-2C for Own-Share Lending Arrangements Issued in Contemplation of Convertible Debt Issuance are only required for convertible debt and not convertible preferred stock. We believe the Board should consider requiring these disclosures if issued in contemplation of convertible preferred stock.
- We note that ASC 470-20-50-1D requires disclosure of the unamortized premium, discount, or issuance costs as of each date that the balance sheet is presented, as well as the amortization of those items as of the date of the latest income statement presented. We note the same is not required for convertible preferred stock in paragraphs 505-10-50-12 through 50-18. We recommend the disclosures be consistent.
- We note that pursuant to paragraph 815-40-50-2, equity-classified freestanding instruments that are potentially indexed to, and potentially settled in, an entity's own equity are not required to provide the disclosures required by section 505-10-50, other than those described in paragraph 815-40-50-5. We recommend requiring disclosures related to contingencies (similar to those required in paragraphs 505-10-50-14 (a) through (c)), or changes to conversion or exercise prices that occur during the reporting period (as required in paragraph 505-10-50-16).

Derivatives Scope Exception for Contracts in an Entity's Own Equity

- 815-40-15-7D: Consider adding the following wording: "However, if the likelihood of an adjustment occurring is **remote** <u>either individually or collectively</u>, that adjustment shall be disregarded in this evaluation."
- 815-40-15-8: Consider adding the following wording "Such adjustments <u>either individually or collectively</u> that have a remote likelihood of occurring should not be considered in the evaluation of Step 2 (as described in paragraphs 815-40-15-7C through 15-7D)."
- 815-40-15-8: Consider deleting the word "specific" from the phrase "specific judgments."
- We suggest removing the following sentence from paragraph 815-15-55-221 and adding it to paragraph 815-15-55-220: *"However, if the terms of conversion do not allow for a cash settlement and if the common stock delivered upon conversion is privately held (that is, is not readily convertible to cash), the embedded derivative would not be separated from the host contract because it would not meet the criteria for net settlement as discussed beginning in paragraph 815-10-15-99."*

EPS

- 260-10-45-45:
  - Clarify that share settlement should be presumed even if it is remote. We believe highlighting that the EPS guidance is different from the revised guidance in Subtopic 815-40 will be helpful.
  - Move the sentence, *"If the payment of cash is required only upon the final liquidation of the entity, then that potential outcome need not be considered when applying the guidance in this subtopic"* to the end of the paragraph.

- There is a reference to paragraph 260-10-55-8 when describing a contingency affecting the form of settlement. However, this paragraph deals with situations when there are several conversion alternatives, and says to use the one that is most advantageous to the holder. It is unclear why this paragraph is being referenced for a contingent share settlement situation. Consider if this reference should instead be either paragraph 260-10-45-44 or paragraph 260-10-45-55.
- It is unclear why this paragraph refers to paragraph 260-10-45-46 (which after the proposed amendments only discusses making a numerator adjustment), when paragraph 260-10-55-33 says not to make a numerator adjustment for share-based payment arrangements.
- It is unclear if paragraph 260-10-45-45 would apply if liability classification of a share-based payment arrangement was required by guidance other than paragraph 718-10-25-15. We are unsure why it would be limited only to this paragraph in ASC 718.

- 260-10-45-45A (note these comments assume our proposal that share-based payment arrangements classified as a liability should be subject to paragraph 260-10-45-45 is not adopted):
  - We are unclear if this paragraph is only applicable if the share-based payment arrangement is classified as a liability under paragraph 718-10-25-15 (as referenced in paragraph 260-10-45-45) or if it is applicable to all share-based payment arrangements classified as a liability.
  - We believe the Board should clarify the meaning of "shall be made on the basis of the facts available each period." For example, if it is classified as a liability (when the company has settlement choices but their practice/intent is to settle in cash), it is anticipated that the company will settle it in cash. Are there additional facts that should be evaluated? If facts change and the company no longer expects to settle in cash, the accounting for the instrument under ASC 718 would change.
  - "The presumption that the contract will be settled in common stock may be overcome if past experience or a stated policy provides a reasonable basis to conclude that the contract will be paid partially or wholly in cash." In situations when settlement is within the holder's control, the holder can still force shares to be issued. It is unclear if the Board's intent was to permit these shares to be excluded from diluted EPS. In addition, paragraph 260-10-45-30 (which, under the proposal, is not amended) says that if stock-based compensation arrangements are payable in cash or stock at the election of either the entity or the employee, the guidance in paragraph 260-10-45-45 would apply. It seems this guidance would no longer be required based on the proposed changes in paragraphs 260-10-45-45 and 260-10-45-45A.
- 260-10-55-33: This paragraph states "paragraph 260-10-55-36A illustrates these requirements." However, that paragraph only addresses making a numerator adjustment based on the assumed form of settlement and accounting treatment of the instrument. It does not appear to illustrate the requirements of paragraph 260-10-55-33 related to not making a numerator adjustment for share-based payment arrangements. We believe this reference to paragraph 260-10-55-36A should be moved to the end of 260-10-55-32.
- 260-10-55-36A: In the third row of the table in paragraph 260-10-55-36A, it is unclear under which circumstances cash settlement would be "assumed" for EPS. It seems this would only be applicable to contracts that require cash settlement under the proposed guidance.
- 260-10-45-21A: Consider amending as follows, "For example, when the principal of a convertible debt instrument is required to be settled in cash, but the <u>conversion</u> premium is required to <u>(or may)</u> be settled in shares, the number of shares to be included in the diluted EPS denominator is affected by the entity's share price."