

December 5, 2008

Technical Director
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

By e-mail: director@fasb.org

Re: Exposure Draft (Revised): Proposed Statement of Financial Accounting Standards – *Earnings per Share, an amendment of FASB Statement No. 128* (Revision of Exposure Draft Issued September 30, 2005) (File Reference No. 1240-100)

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned exposure draft. The NYSSCPA thanks the FASB for the opportunity to comment.

The NYSSCPA's Financial Accounting Standards Committee deliberated the exposure draft and drafted the attached comments. If you would like additional discussion with us, please contact Edward P. Ichart, Chair of the Financial Accounting Standards Committee, at (516) 488-1200, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



Sharon Sabba Fierstein
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**EXPOSURE DRAFT (REVISED): PROPOSED STATEMENT OF FINANCIAL
ACCOUNTING STANDARDS – *EARNINGS PER SHARE, AN AMENDMENT OF
FASB STATEMENT NO. 128 (REVISION OF EXPOSURE DRAFT ISSUED
SEPTEMBER 30, 2005)***

File Reference No. 1240-100

December 5, 2008

Principal Drafters

**Edward P. Ichart
Mark Mycio**

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New York State Society of Certified Public Accountants

Financial Accounting Standards Committee

Exposure Draft (Revised): Proposed Statement of Financial Accounting Standards – *Earnings per Share, an amendment of FASB Statement No. 128* (Revision of Exposure Draft Issued September 30, 2005)

(File Reference No. 1240-100)

We have reviewed the Exposure Draft, *Earnings per Share, an amendment of FASB Statement No. 128*, and have the following responses to the three issues listed therein. Each issue is reprinted below, followed by our response.

Instruments That Are Measured at Fair Value Each Period with Changes in Fair Value Recognized in Earnings

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?

Response: Assuming that the fair value of the instrument is driven entirely by its conversion feature on a one-to-one basis, then the application of the Treasury Stock Method incorporating the end-of-period fair value of the liability as assumed proceeds and the end-of-period stock price for the determination of assumed treasury stock repurchases results in no incremental shares. However, this will not be the case if there are other value drivers affecting the instrument.

Because the Two-Class Method does not assume proceeds from a conversion of the participating security, there does not appear to be a correlation between the change in fair value of the instrument as reflected in income and the latent participation right in undistributed earnings. Accordingly, it would seem that undistributed earnings should be allocated to these instruments in determining the earnings allocable to residual interest holders for both the basic and the fully diluted computation.

Diluted EPS under the Two-Class Method

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?

Response: We agree. This is consistent with what appears to be the decision to minimize “hypothetical” scenarios from the computation (see Appendix B-20 of the Exposure Draft) and to calibrate it toward measuring economic claims on residual interest provided through operations.

Disclosures

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?

Response: We agree that additional disclosures are not warranted.