



US Reporting Newsletter for Non-US Based Companies

Global Offerings Services

July/August 2004

Global Offerings Services (GOs) comprises a global team of practitioners assisting non-US companies and non-US practice office engagement teams in applying US and International accounting standards (i.e., US GAAP and IFRS) and in complying with the SEC's financial reporting rules. For more information please contact the GOs Center leader nearest you.

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GAAP Matters

Recent Emerging Issues Task Force (EITF) meeting

The EITF met on June 30 – July 1, 2004. The EITF reached consensus on Issue No. 02-14, *Whether an Investor Should Apply the Equity Method of Accounting to Investments Other Than Common Stock*.

The Task Force also discussed the following issues without reaching a consensus:

- Issue No. 03-9, *Determination of the Useful Life of Renewable Intangible Assets under FASB Statement No. 142, Goodwill and Other Intangible Assets*
- Issue No. 03-13, *Applying the Conditions in Paragraph 42 of FASB Statement No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, in Determining Whether to Report Discontinued Operations*
- Issue No. 04-1, *Accounting for Preexisting Relationships between the Parties to a Business Combination*
- Issue No. 04-5, *Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights*
- Issue No. 04-6, *Accounting for Post-Production Stripping Costs in the Mining Industry*
- Issue No. 04-7, *Determining Whether an Interest Is a Variable Interest in a Variable Interest Entity*
- Issue No. 04-8, *Accounting Issues Related to Certain Features of Contingently Convertible Debt and the Effect on Diluted Earnings per Share Agenda Committee Report Items*

In addition, the Task Force removed from the agenda Issue No. 03-S, *Application of FASB Statement No. 142, Goodwill and Other Intangible Assets, to Oil and Gas Companies*, and added to the agenda two segment reporting issues, *The Meaning of Similar Economic Characteristics*, and *Aggregation of Operating Segments That Do Not Meet the Quantitative Thresholds*. Both segment issues related to the determination of whether to aggregate operating segments that do not meet the quantitative thresholds listed in paragraph 18 of SFAS No. 131, *Disclosures About Segments of an Enterprise and Related Information*. Finally, issue *Accounting for Distributions Fees by Distributors of Mutual Funds That Do Not Have Front-End Sales Charges and the Distributors Transfer the Rights to Such Fees* was not added to the Agenda. [Click here](#) for the full text of the June-July EITF roundup and [click here](#) for the full text of the EITF minutes.

Consensus on EITF Issue No. 02-14, Whether an Investor Should Apply the Equity Method of Accounting to Investments Other Than Common Stock

At the June/July meeting, the Emerging Issues Task Force (Task Force) reached a consensus that an investor should only apply the equity method of accounting when it has investments in either common stock (as already required by Accounting Principles Board (APB) 18, *The Equity Method of Accounting for Investments in Common Stock*) or in-substance common stock of a corporation, provided that the investor has the ability to exercise significant influence over the operating and financial policies of the investee. The Task Force defined in-substance common stock as an investment that has risk and reward characteristics that are substantially similar to that of the common stock of the investee. As a final consensus on this Issue was reached, no further discussion is expected. The FASB ratified the consensus on July 16, 2004. [Read more](#) on this issue below.

FASB reaches preliminary conclusions on EITF Issue No. 04-8, Accounting Issues Related to Certain Features of Contingently Convertible Debt and the Effect on Diluted Earnings per Share

Contingently convertible debt instruments, commonly referred to as Co-Cos, are structured financial instruments that add a contingent feature to a convertible debt instrument. Co-Cos have found broad acceptance in the capital markets. One likely reason for their popularity is the advantageous earnings per share (EPS) treatment afforded to Co-Cos when compared to conventional convertible debt instruments. Unless the effect is anti-dilutive, a conventional debt instrument almost always is included in the computation of diluted EPS (even when the current stock price indicates that it is uneconomical to convert). In contrast, Co-Cos typically are excluded from diluted EPS until the market price trigger is met by analogy to the guidance stated in SFAS 128, Earnings per Share, on contingently issuable shares, until the market price trigger is met. The Task Force reached a tentative conclusion that Co-Cos should be included in diluted EPS in ALL periods (except when inclusion is anti-dilutive) regardless of whether the contingency is met and regardless of whether the market price contingency is substantive. This decision has a potentially far-reaching impact and has attracted considerable interest. [Read more](#) on this issue below.

Principle-Based Accounting System - FASB Responds to July 2003 SEC staff report to Congress

On July 16, 2004 the FASB responded to the SEC staff report, *Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System*, submitted to Congress in July 2003. In that study the SEC staff made a number of recommendations, such as development of objectives oriented standards and the deficiencies in the conceptual framework. The FASB responded in some detail to each of these recommendations. [Read more](#) on the summary of FASB response below.

New Guidance Anticipated On Consolidation Of Limited Partnerships

There is renewed interest in the issue of what consolidation guidance should apply to limited partnerships, and, especially, when it is appropriate for a general partner in a limited partnership not to consolidate based on guidance in (or by analogy to the guidance in)

AICPA Statement of Position ("SOP") No. 78-9, *Accounting for Investments in Real Estate Ventures*. For those limited partnerships that are determined to be variable interest entities ("VIEs"), the guidance in FASB Interpretation No. 46 (Revised December 2003), *Consolidation of Variable Interest Entities* ("FIN 46R"), applies (when effective) in determining whether a general partner should consolidate the limited partnership. However, for limited partnerships that are not within the scope of FIN 46R, there are questions about the application of other existing authoritative guidance.

Authoritative interpretations of current guidance seem imminent, given the latest FASB and SEC discussions about kick-out rights for VIEs and the recent addition of EITF Issue No. 04-5, *Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights*, to the EITF agenda. [Click here](#) for the Issue 04-5 summary. Companies should be aware that once the issue is resolved, non-consolidation by a general partner of limited partnerships that are outside the scope of FIN 46R might not be considered acceptable unless the limited partners have substantive kick-out rights, similar to those described in Appendix B of FIN 46R (or the Task Force may conclude in Issue 04-5 that other rights possessed by the limited partners could preclude consolidation by the general partner). [Read more](#) on this issue below.

AICPA Issues Technical Practice Aids

On July 26, 2004, the AICPA issued the following TPAs to provide guidance on the application of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of*

Others, to arrangements in which a hospital recruits a physician by providing a mortgage guarantee, or by making a loan to the physician and forgiving that loan over a set period

of time, as long as the physician remains in practice in the community:

- TPA 6400.45, *Applicability of FASB Interpretation No. 45 - Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others — Physician Loans*
- TPA 6400.46, *Applicability of FASB Interpretation No. 45 - Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others — Mortgage Guarantees*

These TPAs, like all TPAs, have not been approved, disapproved, or otherwise acted upon by any senior technical committee of the AICPA. Although they may provide useful guidance, they are non-authoritative and do not establish new U.S. GAAP. [Click here](#) to access the full text of the TPAs.

Minutes of March 9, 2004 AICPA International Practices Task Force Meeting

Final Minutes of March 9, 2004 AICPA International Practices Task Force (Task Force) Meeting are available now – click here to access the full text. The following issues were discussed at the meeting: (1) Inflationary status of certain countries – Romania, Turkey, Venezuela and Argentina; (2) Keeping foreign private issuer shelf registration statements current; (3) Reporting issues—follow up on division of responsibility; (4) Reverse acquisitions and reporting requirements in a registration statement; (5) Follow up on auditor licensing and signature requirements; (6) Application of SEC accelerated filer rules; (7) Issues related to discontinued operations; (8) Issues related to first-time application of IFRS (9) Issues related to changes in auditors; (10) Certain SEC Staff issues; (11) Application of U.S. GAAP when no

interim information is presented. Discussion was deferred to a future meeting; (12) Follow up on FIN 46; and (13) French audit opinions. The Task Force agreed to meet on July 13, 2004. Read more on the minutes below.

SEC and Other Regulatory Matters

SEC adopts Investment Company Governance rules

On June 17, 2004, the Securities and Exchange Commission (SEC) adopted amendments to rules under the Investment Company Act of 1940 (Act) to require investment companies ("funds") that rely on certain exemptive rules to adopt certain governance practices. The amendments are designed to enhance the independence and effectiveness of fund boards and to improve their ability to protect the interests of the funds and fund shareholders they serve. This final rule will become effective on September 7, 2004. After January 15, 2006: (i) persons may rely upon any of the Exemptive Rules (rules 10f-3, 12b-1, 15a-4(b)(2), 17a-7, 17a-8, 17d-1(d)(7), 17e-1, 17g-1(j), 18f-3, and 23c-3) only if they comply with all of the "fund governance standards" as defined in rule 0-1(a)(7);⁷¹ and (ii) funds must begin to comply with the recordkeeping requirements of amended rule 31a-2. [Read more](#) on the rule below.

SEC Adopts Final Rule on Disclosure Regarding Approval Of Investment Advisory Contracts By Directors Of Investment Companies

On June 23, 2004, the Securities and Exchange Commission adopted rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to improve the disclosure provided by registered management investment companies about how their boards of directors evaluate and approve, and recommend shareholder approval of, investment advisory contracts. The amendments require a registered management investment company to provide disclosure in its reports to shareholders regarding the material factors and the conclusions with respect to those factors that formed the basis for the board's approval of advisory contracts during the most recent fiscal half-year. The amendments also are designed to encourage improved disclosure in proxy statements regarding the basis for the board's recommendation that shareholders approve an advisory contract. Generally, the rule is effective from August 5, 2004. [Click here](#) for the full text of the rule.

Miscellaneous

Deloitte issues Taking Control, A Guide to Compliance with Section 404 of the Sarbanes-Oxley Act of 2002

The latest in a series of thought-leadership pieces on Sarbanes-Oxley, *Taking Control* provides plain-English guidance on implementing a strong, COSO-based system of internal control. Aimed at non-accelerated filers and foreign private issuers, the publication will allow these companies to enhance their knowledge, benchmark their progress, jumpstart their efforts, and troubleshoot their projects. *Taking Control* is the culmination of thousands of hours of field work and hundreds of hours of editorial work by the firm's top practitioners in corporate governance, risk consulting, internal control, and business ethics. The publication is part of our family of Sarbanes-Oxley and internal control-related guidance materials. Also included in the collection are:

- *A Bridge to Excellence*, Deloitte's point of view on compliance and beyond

- *A Capital Idea*, an expansion on the core message presented in "Bridge"
- *Moving Forward*, our guide to improving corporate governance through effective internal control

[Click here](#) to access the publication.

Webcasts

COSO issues Enterprise Risk Management - Integrated Framework

COSO issued "Enterprise Risk Management - Integrated Framework" which expands on internal control and provides a more robust focus on the broader subject of enterprise risk management. The purpose of the Enterprise Risk Management Framework is to provide guidance on the process used by management to identify and manage risk across the enterprise. This new framework does not supersede or otherwise amend its earlier internal control framework. Internal control is encompassed within and an integral part of enterprise risk management. Enterprise risk management is broader than internal control, expanding and elaborating on internal control to form a more robust conceptualization focusing more fully on risk. Internal Control—Integrated Framework remains in place for entities and others looking at internal control by itself. The AICPA has presented a webcast, as part of AICPA's *The CFO Roundtable Webcast*, on July 15, 2004 discussing this development. [Click here](#) to purchase the CD-ROM of the webcast online.

GAAP Matters

Consensus on EITF Issue No. 02-14, Whether an Investor Should Apply the Equity Method of Accounting to Investments Other Than Common Stock

At the June/July meeting, the Task Force reached a consensus that an investor should only apply the equity method of accounting when it has investments in either common stock or in-substance common stock of a corporation, provided that the investor has the ability to exercise significant influence over the operating and financial policies of the investee. This Issue does not apply to investment accounted for under American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 78-9, *Accounting for Investments in Real Estate Ventures*, or EITF Issue No. 03-16, *Accounting for Investments in Limited Liability Companies*. Companies sometimes have the right to significantly influence the operating and financial policies of another entity and share in a substantial portion of the economic risks and rewards without owning a voting interest in that entity. When an investor has the ability to exercise significant influence over an investee through economic interests other than common stock, should the investor apply the equity method of accounting to its investment? APB Opinion No. 18 read literally, only applies to investments in voting common stock. Consequently, many accountants are concerned that instruments that do not take the legal form of common stock (e.g., a convertible preferred instrument) are devised to inappropriately avoid the equity method.

The Task Force defined in-substance common stock as an investment that has risk and reward characteristics that are substantially similar to that of the common stock of the investee. An investor should consider the following three characteristics when determining whether an investment is substantially similar to the common stock of the investee

(thus requiring application of the equity method provided that the investor has the ability to exercise significant influence):

1. Whether the instrument has subordination characteristics similar to the common stock of the investee.

If an investment has a substantive liquidation preference over the common stock of the investee, it is not substantially similar to the common stock. Accordingly, an investor should determine whether any liquidation preference is substantive. Examples of nonsubstantive liquidation preferences are as follows:

- The instrument has a stated liquidation preference that is not significant when compared to the investor's cost.
- The liquidation preference does not significantly affect the value of the instrument. This would be the case, for example, if the amount of the stated liquidation preference is meaningful but there is little or no equity subordinate to the instrument from a fair value perspective. That is, this determination must be based on fair value of the common stock at the date of determination, not its book value.

2. The instrument has risks and rewards substantially similar to ownership of the common stock of the investee. All of the specific facts and circumstances at the date of determination should be considered to analyze this characteristic. If an investment is not expected to participate in the earnings (and losses) and capital appreciation (and depreciation) in a manner that is substantially similar to the common stock of the investee, the investment is not substantially similar to the common stock. If the investee pays dividends and the investment participates currently in dividends in a manner similar to the common stock of the investee, then that is an indicator the investment is similar to the common stock. Likewise, if the investor has the ability to convert the investment into the common stock without any significant restrictions or contingencies that prohibit the investor from participating in the capital appreciation of the investee in a manner that is substantially similar to the common stock, the conversion feature is an indicator that the investment is substantially similar to the common stock.

3. Whether the instrument does not require the investee to transfer substantive value to the investor unless the common stock also has the feature. The investor should consider whether its investment requires the investee to transfer substantive value or allows the investor to require the investee (e.g., in the case of a puttable instrument) to transfer substantive value. For example, if the investment has a substantive mandatory redemption provision other than in a liquidation event, the investment most likely would not be substantially similar to the common stock of the investee.

If all of the above characteristics are met, the instrument is in-substance common stock. If the determination about whether the investment is substantially similar to the common stock cannot be reached based solely on the evaluation of the three characteristics, the investor should analyze whether the changes in the fair value of the investment are expected to be highly correlated with the changes in the fair value of the common stock of the investee. Many times, it may be clear that the fair value is not highly correlated based on the consideration of the three characteristics (e.g., the investment has a substantive liquidation preference). However, a quantitative analysis may be necessary to determine whether the fair value of the investment is highly correlated to the fair value of the common stock.

For investments entered into subsequent to the adoption of this consensus, the initial determination should be made on the date at which the investor obtains its investment, provided the investor has the ability to exercise significant influence over the operating and financial

policies of the investee. The determination of whether an instrument is substantially similar to the common stock of the investee and whether the equity method applies, should be reconsidered if one or more of the following occur:

1. The contractual terms of the investment change resulting in a change to any of the characteristics considered for the initial determination.
2. There is a significant change in the capital structure of the investee, including the investee receiving additional subordinated financing.
3. The investor obtains an additional interest in an investment in which the investor has an existing interest.
4. The investor obtains the ability to exercise significant influence over the operating and financial policies of the investee.

The consensus in this Issue (now ratified by the FASB), should be applied in the first reporting period beginning after September 15, 2004. The initial determination of whether existing investments (assuming the investor has the ability to exercise significant influence over the operating and financial policies of an investee) are in-substance common stock should be made as of the date this Issue is first applied. The consensus requires a company to report the change and recognize in net income the cumulative effect of a retroactive computation as if the investment had been accounted for under the equity method from initial acquisition. If this information is not available, a cumulative effect adjustment is still required for the period in which the change is adopted; however, the cumulative effect adjusts the investment to an amount equal to the investor's ownership percentage applied to the investee's net assets determined in accordance with generally accepted accounting principles (GAAP).

The Securities and Exchange Commission (SEC) staff has long had a policy that, when appropriate, in-substance common stock should be accounted for under the equity method. The SEC observer cautioned that the staff will require restatement as a correction of an error (as opposed to the cumulative effect of adopting the consensus) for abusive situations involving in-substance common stock investments.

[Click here](#) for the full discussion of the Issue on the EITF meeting.

Preliminary conclusions on EITF Issue No. 04-8, Accounting Issues Related to Certain Features of Contingently Convertible Debt and the Effect on Diluted Earnings per Share

Co-Cos are generally convertible into common shares of the issuer after the market price of the issuer's common stock exceeds a predetermined threshold for a specified period of time (market price trigger). For example, a typical Co-Co might be issued for \$1,000 and convertible into ten shares of common stock (implying a conversion price of \$100). However, the investor does not have the right to convert unless the market price of the issuer's stock exceeds \$120 for a specified consecutive number of days. Frequently, a Co-Co includes other complex features (e.g., parity provisions and contingent call or investor put rights). Co-Cos have found broad acceptance in the capital markets. One likely reason for their popularity is the advantageous earnings per share (EPS) treatment afforded to Co-Cos when compared to conventional convertible debt instruments. Unless the effect is anti-dilutive, a conventional debt instrument almost always is included in the computation of diluted EPS (even when the current stock price indicates that it is uneconomical to convert). In contrast, Co-Cos typically are excluded from diluted EPS until the market price trigger is met by analogy to the guidance stated in SFAS 128, Earnings per Share, on contingently issuable shares. The Task Force reached a

tentative conclusion that Co-Cos should be included in diluted EPS in ALL periods (except when inclusion is anti-dilutive) regardless of whether the contingency is met and regardless of whether the market price contingency is substantive. This decision was based on the conclusion of the Task Force that a Co-Co is contingently convertible, not contingently issuable as provided in SFAS 128, and thus, is no different than a conventional convertible debt instrument. The question of whether this conclusion is a valid interpretation or a technical amendment of SFAS 128 will be explored by the FASB staff, which may impact whether the conclusion would be established in authoritative guidance through this EITF Issue or a Board-directed FASB Staff Position. The Task Force also reached the conclusion that, if a final consensus is reached, retroactive restatement of earnings per share for periods ending after December 15, 2004, would be required. Due to the potential far-reaching impact this decision may have on practice, the tentative conclusion is posted for public comment on the FASB's Web site. Comment deadline is September 3, 2004. The Task Force will consider comments at its September 29-30 meeting. [Click here](#) for the full text of the tentative conclusion.

Principle-Based Accounting System - FASB Responds to July 2003 SEC staff report to Congress

The July 2003 SEC staff report, Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System, made a number of recommendations. The FASB's response addressed each of the recommendations in detail.

The FASB stated that it attempts to address the issue of the objectives-oriented standards through (1) improving understandability of its standards (2) developing a format with attributes of an objective-oriented standard (such as description of the underlying objective or glossary of defined terms (3) providing broadly applicable implementation guidance instead of providing list of rules or bright lines (4) minimizing the number of scope exceptions and (5) continuing to apply the asset-liability view in its standard-setting projects. The Board noted, however, that increased accountability for the accuracy of financial information under the new requirements related to Sarbanes-Oxley coupled with a fear of "second guessing" by enforcement agencies and the trial bar have contributed to the unwillingness of the preparers and auditors to exercise professional judgment in areas involving accounting estimates, uncertainties, and inherent subjectivity. The move toward objectives oriented standards, therefore, will require a shift in attitude, behavior, and expertise of preparers and auditors which may take several years.

In addressing the deficiencies of the conceptual framework, the Board noted that it has currently three projects on its agenda that are addressing this issue – revenue recognition project, the liabilities and equity project, and the fair value measurement project. The Board is planning to identify and initially focus on troublesome unresolved crosscutting issues, such as (i) the term "probable", (ii) the liabilities definition, (iii) the accounting for contractual rights and obligations, or (iv) the "unit of account," which involves both aggregation (including linkage) and disaggregation. Additionally, the Board considers enhancing a disclosure framework that would be part of the overall conceptual framework.

Addressing the issue of one U.S. standard setter, the Board noted it is the only designated standard setter in the United States as a result of the following actions: (1) AcSEC will cease issuing Statements of Position and (2) EITF consensus decisions are subject to ratification by the FASB before they become effective. The FASB staff will continue to review Audit & Accounting Guides issued by AcSEC, however, will no longer clear the issuance of Audit & Accounting Guides, as the primary purpose of the staff review of the Guides will be to ensure that the

Guides are not establishing interpretive authoritative guidance that should be provided by the FASB.

Addressing the issue of convergence efforts, the Board pointed out that the FASB and IASB are undertaking a number of joint projects which include a project to develop a common conceptual framework, Revenue Recognition, Business Combinations (purchase method procedures), and Reporting Financial Performance projects, as well as a number of short-term convergence projects. In addition, the two Boards have committed to coordinating their agendas whenever possible.

The Board acknowledged that the long-term goal, subject to approval of the FASB Trustees, should be the creation of a single, comprehensive, searchable database containing all of authoritative guidance making the FASB's documents freely available. In the interim the Board is proposing certain steps such as making the FASB standards and concepts statements freely available at the FASB's website or expanding the Current Text to include the FASB Staff Positions, question and answer documents, references to AICPA literature. Please [click here](#) for the full text of the response.

New Guidance Anticipated On Consolidation Of Limited Partnerships

Depending on the resolution of EITF Issue No. 04-5, Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights, (see Recent EITF meeting [above](#)), non-consolidation by a general partner of limited partnerships that are outside the scope of FIN 46R might not be considered acceptable unless the limited partners have substantive kick-out rights, similar to those described in Appendix B of FIN 46R. Limited partners must have substantive kick-out rights in order for limited partnerships not to be consolidated by a general partner.

KICK-OUT RIGHTS VERSUS IMPORTANT RIGHTS

The FASB, in consultation with the SEC, has developed a definition of substantive kick-out rights for purposes of applying FIN 46R. That definition essentially requires that in order to be substantive, kick-out rights must allow the voting party to remove a decision maker (such as a general partner) without cause based on a simple majority of the voting interests held by parties other than the decision maker or its related parties, and there must not be any significant barriers to the voting party exercising their rights.

Prior to the issuance of FIN 46R, there was no common definition of substantive kick-out rights. Deloitte's view that for public companies, the right to replace the general partner in a limited partnership structure is required for non-consolidation was consistent with views expressed by the SEC staff in speeches and in direct discussions on client pre-clearance matters.

For nonpublic companies, however, the authoritative guidance was less definitive. The references to "substantive participating rights" in EITF Issue 96-16, Investor's Accounting for an Investee When the Investor has a Majority of the Voting Interests but the Minority Shareholders Have Certain Approval or Veto Rights, and "important rights" of the limited partners in paragraph 9 of SOP 78-9 implied a broader view of what types of rights preclude a general partner from consolidating a limited partnership. Because there was no authoritative guidance specifically on point for nonpublic companies, different views arose in practice about what rights provide an appropriate basis to conclude that a general partner should not consolidate a limited partnership. In our view, non-consolidation was appropriate for a nonpublic general partner based on any of the following factors:

- The limited partners have “substantive participating rights” such as those described in EITF Issue 96-16 or “important rights” such as those described in SOP 78-9.
- The limited partners have kick-out rights requiring a two-thirds or less majority vote of the limited partners and there are no significant barriers to exercising those rights.
- The limited partners have “walk away” or liquidation rights (which, if exercised by a sufficient number of limited partners, would have the same effect as the kick-out rights described in the preceding bullet).
- For nonpublic entities, it would be “inappropriate” for a general partner to consolidate a limited partnership when the general partner has limited risk and an insignificant level of ownership and beneficial interests.

Since the issuance of FIN 46R, questions have arisen in practice about whether any or all of the above bases for non-consolidation remain valid. Because of the pervasiveness of the issue and the lack of clear guidance, the EITF recently added Issue 04-5 to its agenda. The Task Force is likely to conclude, at a minimum, that the existence of substantive kick-out rights like those defined in FIN 46R is sufficient to conclude that the general partner should not consolidate. The EITF could also conclude that substantive participating rights, as described under EITF Issue 96-16, held by the limited partners preclude consolidation by the general partner. However, the Task Force might not conclude that any other type of limited partner rights would provide a basis for non-consolidation.

We cannot predict what transition guidance the EITF will provide. Therefore, companies should be informed of the possibilities that (1) current accounting may not be grandfathered for pre-existing structures, and (2) for new structures, relying on rights other than substantive kick-out rights as defined in FIN 46R (and, possibly, substantive participating rights) may not be acceptable in the future.

Minutes of March 9, 2004 AICPA International Practices Task Force Meeting

The following is a summary of certain issues discussed in the minutes of the March 9, 2004 AICPA International Practices Task Force Meeting.

1. Inflationary status of the following countries was discussed – Romania, Turkey, Venezuela and Argentina.
2. Keeping foreign private issuer shelf registration statements current.

The Task Force concluded that the financial information for a shelf or continuous registration statement of a foreign private issuer that reconciles from local GAAP to U.S. GAAP in accordance with Item 17 or 18 of Form 20-F in order for the shelf registration to remain “current”, will require updating by a filing on Form 6-K that is incorporated by reference in a registration statement for the following circumstances:

When financial information has been published and such information covers a more current period than the statements otherwise required by Item 8. This information is not required to be reconciled to U.S. GAAP, but must describe any new material differences in the accounting principles, practices and methods used in preparing that interim financial information from the principles, practices and methods accepted in the United States, and quantify such material variations, unless these have already been described and quantified in other financial statements included in or incorporated by reference in the document.

If the date of the most recent annual balance sheet is more than nine months old at the time of a takedown or at any time during an exchange offer, the issuer must include or incorporate by reference interim financial statements, which may be unaudited, covering at least the first six months of the financial year. These financial statements also must be reconciled to U.S. GAAP, prepared in compliance with Article 10 of Regulation S-X, and include all required U.S. GAAP interim financial statement footnote disclosures (e.g., Statements 131, 141, 142, and 148).

If the date of the most recent annual balance sheet is more than fifteen months old at the time of a takedown or at any time during an exchange offer, the issuer must include or incorporate by reference the most recent annual audited financial statements reconciled to U.S. GAAP in accordance with Item 18 of Form 20-F. The Task Force also noted that Item 17 reconciliation is permitted for investment grade securities.

As noted in Item 8.A.5, foreign private issuers are encouraged, but not required, to have any interim financial statements in the document reviewed by an independent auditor. The Task Force noted that if such a review had been performed in accordance with SAS 100, “Interim Financial Information”, and is referred to in the document, a copy of the auditor’s SAS 100 review report must be provided in the document. In these circumstances, the Task Force noted that when an independent accountants’ SAS 100 review report has been included or incorporated by reference in a registration statement, Item 601(b)(15) of Regulation S-K requires the accountants to acknowledge their awareness of this fact in writing, an “awareness letter”, and such acknowledgment must be filed as an exhibit to the registration statement.

The SEC Staff indicated that, in keeping a shelf registration active, it is necessary to update other “financial” information (e.g., MD&A, Quantitative and Qualitative Disclosures of Market Risk, Rule 3-10 disclosures, Selected Financial Data) when the financial statements are updated in order to comply with the age of financial statement requirements. This information typically also would be included in the Form 6-K that includes the interim financial information and which is incorporated by reference into the shelf.

3. Reporting issues—follow up on division of responsibility among the auditors of a foreign private issuer with respect to the “conversion” of the financial statements from the foreign GAAP into the GAAP used in the primary financial statements.

The SEC Staff has indicated recently that it also expects the division of responsibility among the auditors with respect to the U.S. GAAP reconciliations included in an issuer’s financial statements pursuant to Item 17 [or 18] of Form 20-F to be explicit in audit reports.

The Task Force agreed to further develop these concepts and then develop suggested language to be included in audit reports clarifying the division of responsibility.

4. Reverse acquisitions and reporting requirements in a registration statement

Background

Assume the following: A is the legal acquirer of B. B will be the accounting acquirer of A.

A is a domestic registrant. B is a foreign business. A has a year end of June 30. Its last audited year-end is June 30, 2003. B has a year end of December 31. Its last audited year end is December 31, 2003. A proposes to change its year-end from June 30 to December 31 to coincide with the current yearend of the legal acquiree. A will need to file an S-4/Proxy Statement. A files its S-4 on June 1, 2004. Assume A

is a timely filer and at that time its most recently filed 10-Q is for the period to March 31, 2004.

The Task Force concluded that A should use the following periods in presenting the pro forma information reflecting the effects of the acquisition:

- Pro forma income statement for the year ended December 31, 2003 and any subsequent interim period in respect of which A has filed information (i.e. March 31, 2004).
- Pro forma balance sheet as at March 31, 2004.

The alternative would be to present a pro forma income statement for the year ended June 30, 2003 and for the nine months ended March 31, 2004.

The Task Force noted that it should be clear in the S-4 that the year end of A is intended to change. Likewise, in cases where A was the accounting acquirer, but also intended to change its year end to that of B upon completion of the transaction, the Task Force agreed that it would be more meaningful to present the pro forma information on the same basis as above.

The Task Force also agreed that the financial statements and MD&A/OFR of B should be current to A's most recent date (i.e., March 31) when presented in the S-4. The SEC Staff indicated that it would consider requests for relief in unusual circumstances.

5. Follow up on auditor licensing and signature requirements

The Task Force noted that non-U.S. accounting firms were presently in the process of registering with the PCAOB, and concluded that once registered in their legal name should sign reports filed with the Commission using that name.

The SEC Staff noted that it has not historically objected to use of the "international name" in circumstances where the affiliated SECPS member firm was readily determinable from the international name. The SEC Staff also noted that transparent disclosure of a firm's identity and registration status would benefit investors. The staff encourages firms to make both of these clear on the face of the audit report. If the firm's legal name does not include the international name, it also should indicate the international affiliation.

6. Application of SEC accelerated filer rules

On Issue 1, the Task Force noted that the filing of Form 20-F (and related Form 6-K) would satisfy the SEC's requirement for accelerated filers having been subject to the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act for a period of 12 months. Therefore, a company would be subject to the accelerated filer rules once it loses its status as a foreign private issuer.

The Task Force noted that if a company loses its foreign private issuer status in the first quarter (e.g., March 15 for a calendar year company), it would need to file Form 10-Qs beginning with the quarter ended March 31 of that year. Additionally, the SEC Staff noted that an accelerated filer's Form 10-K for the year ended December 31, 2004 would be required to comply with the Section 404 internal control reporting requirements in Release 33-8238.

7. Issues related to discontinued operations

The Task Force concluded that the following disclosures should be provided if there is a difference in the accounting for discontinued operations in the primary financial statements and U.S. GAAP, assuming the difference is considered material:

The reconciliation should be in sufficient detail to allow a user to understand the differences between the amounts reflected in the

primary financial statements and amounts reflected in the U.S. GAAP reconciliation. A columnar reconciliation that addresses the business that is treated as discontinued operations under one GAAP but not the other GAAP with a separate column for "other reconciling items" may be necessary. With respect to the balance sheet, issuers should provide the disclosures in paragraph 46 of Statement 144. This disclosure should be provided even if filing under Item 17.

A condensed income statement for the applicable years in a level of detail to comply with Article 10 of Regulation S-X may be necessary.

If there are fundamental differences in the notes to the financial statements, the U.S. GAAP reconciliation footnote may be expanded to present information on a U.S. GAAP basis. The extent of this disclosure will depend on the level of significance of the entity that is considered to be discontinued operations under one GAAP but not the other.

Additional discussion in the OFR/MD&A on a U.S. GAAP basis may be appropriate.

The Task Force also concluded that if a registrant disposed of a component of an entity to be shown as a discontinued operation, restatement of prior financial statements in a registration or proxy statement prior to effectiveness or mailing would be required in accordance with paragraphs 43 to 46 of Statement 144. This would be applicable even where the filing incorporates by reference annual audited financial statements issued prior to the measurement date. Additionally, the auditor's consent to inclusion of its report with respect to those financial statements in a registration statement or proxy is deemed a reissuance that requires consideration of the effects of subsequent events. The Task Force agreed that this conclusion is equally applicable to the classification of discontinued operations under primary GAAP or in the U.S. GAAP reconciliation footnote.

8. Issues related to first-time application of IFRS

Subsequent to the Task Force meeting, the SEC approved Release No. 33-8397, First-Time Application of International Financial Reporting Standards. The Release can be found at

<http://sec.gov/rules/proposed/33-8397.htm>.

9. Issues related to changes in auditors

The Task Force encourages the Commission to propose and adopt rules to require foreign private issuers to provide the information required by Item 304 of Regulation S-K in both registration statements and annual reports on Form 20-F.

10. SEC Staff issues

(a) Subsidiary audit report issues

The SEC Staff noted again that they have encountered numerous deficiencies in filings with respect to the reports of other auditors on subsidiaries and investees required under Rule 2-05 of Regulation S-X when the principal auditor relies upon and makes reference to other auditors. The Staff will require amendment of filings that contain audit report deficiencies. Deficiencies noted include:

- Reference is made to a subsidiary's auditor in the report of the principal auditor, but the report of the subsidiary auditor is not included in the filing.
- Report of the subsidiary auditor fails to refer to U.S. GAAS.
- Subsidiary auditor is not recognized by the Commission as being eligible to practice before it

(b) Filing reviewer procedures The SEC Staff noted that deficiencies have been encountered in various annual reports on Form 20-F of a nature that indicates the filings may not have been fully subjected to the filing reviewer procedures specified in Appendix K. The Staff emphasized the importance of these procedures on annual reports as well as registration statements.

11. Application of U.S. GAAP when no interim information is presented - was deferred to a future meeting.

12. Follow up on FIN 46

In issuing FIN 46-R, the FASB Staff has advised representatives of the Task Force that the intent was not to accelerate the application of either FIN 46 or FIN 46-R, but rather to provide for a deferral of the effective date of FIN 46 and FIN 46-R in order to provide enterprises sufficient time to understand and implement the guidance.

13. French audit opinions

The Task Force noted that some of what is required by the new requirements in France in the French Financial Security Law, would be presented in a Form 20-F as part of the MD&A/OFR rather than in the auditor's report. The Task Force briefly discussed the impact of the changes in the law and acceptability of such reports in the U.S. It was noted that the required explanatory paragraphs appear, in many instances, to be inconsistent with Article 2 of Regulation S-X, as well as U.S. GAAS and, depending on how this issue develops, it may be appropriate for the Task Force to revisit the issue.

The Task Force agreed to meet on July 13, 2004.

[Click here](#) for the full text of the March 9 minutes.

SEC and Other Regulatory Matters

SEC adopts Investment Company Governance rules

The SEC adopts the amendments to rules under the Investment Company Act of 1940 to adopt certain new corporate governance practices. The SEC is adopting this rule in the wake of a troubling series of enforcement actions involving late trading of mutual fund shares, inappropriate market timing activities, and misuse of nonpublic information about fund portfolios.

In 2001, the SEC amended ten commonly used exemptive rules under the Investment Company Act ("Exemptive Rules") to require the funds relying on those rules to follow improved governance standards. These rules rely on the independent judgment and scrutiny of directors, including independent directors, in overseeing activities that are beneficial to funds and fund shareholders but that involve inherent conflicts of interest between the funds and their managers.

With this final rule the SEC is further amending the ten Exemptive Rules under the Act to require that any fund that relies upon any of those rules satisfy the fund governance standards set forth in rule 0-1(a)(7):

at least 75 percent of the directors of the fund must be independent directors or, if the fund board has only three directors, all but one of the directors must be independent directors;

the chairman of the board must be an independent director;

the board must perform a self-assessment at least once annually;

the independent directors must meet separately at least once a quarter; and

the independent directors must be affirmatively authorized to hire their own staff.

Co-Cos have found broad acceptance in the capital markets. One likely reason for their popularity is the advantageous earnings per share (EPS) treatment afforded to Co-Cos when compared to conventional convertible debt instruments. Unless the effect is anti-dilutive, a conventional debt instrument almost always is included in the computation of diluted EPS (even when the current stock price indicates that it is uneconomical to convert). In contrast, Co-Cos typically are excluded from diluted EPS until the market price trigger is met by analogy to the guidance stated in SFAS 128, Earnings per Share, on contingently issuable shares. The SEC is also amending rule 31a-2 as proposed, to require that a fund retain copies of written materials that the board considers when approving the fund's advisory contract. [Click here](#) for the full text of the final rule.

Recent Deloitte Publications

Below is list of Deloitte publications about the most recent rule proposals and legislative actions.

- [Heads Up: Vol. 11, Issue 5. Consistency — A Fair-ly Good Idea! FASB Proposes to Make Fair Value Measurement Guidance Consistent](#)
- [Heads Up: Vol. 11, Issue 4. Who Said Retirement Is Easy? FASB Proposes to Interpret Asset Retirement Accounting](#)
- [Accounting Roundup: Second Quarter in Review - 2004](#)
- [EITF Roundup: June/July 2004](#)
- [Continuing Education for Boards and Audit Committees. New Challenges, New Opportunities](#)

International survey finds global financial institutions facing greater security challenges – 2004 Global Security Survey

Report based on input of leading global financial firms for companies who are interested in assessing and benchmarking the state of their firm's information security - helps financial institutions assess the relative state of their information security systems.

- [Accounting Roundup: June 28, 2004](#)
- [Key Differences Between IFRSs and U.S. GAAP – June 2004, Special Edition](#)

This booklet, published On June 22, 2004, highlights significant differences between international standards and U.S. GAAP. The booklet also provides information regarding what is being done about each of these differences.

- [Accounting Roundup: June 7, 2004](#)
- [IT Control Objectives for Sarbanes-Oxley: The Importance of IT in the Design, Implementation and Sustainability of Internal Control over Disclosure and Financial Reporting](#)
- [Fraud and the Role of the Audit Committee](#)
- [Audit Committee Performance Evaluation](#)
- [The Growing Company's Guide to COSO](#)

- [A Capital Idea. Why it just might make sense to do more than Sarbanes-Oxley mandates](#)
- [Meeting the Challenge: How Financial Institutions Are Responding to Sarbanes-Oxley](#)
- [Heads Up - Share and Share Alike! Participating Instruments Reduce Basic Earnings per Share](#)
- [Sarbanes-Oxley: A Bridge to Excellence Our Point of View](#)
- [Establishing an Internal Audit Function. Meeting the NYSE Listing Requirements for Improved Enterprise Value](#)
- [Audit Committee Brief \(April 2004\)](#)
- [Industry Brief: Securities \(April 2004\)](#)
- [Top Ten Asset Management Issues for 2004 \(April 2004\)](#)
- [Top Ten Global Insurance Issues for 2004 \(April 2004\)](#)

Doing business—or moving—abroad? Don't leave home without your Country Snapshot

Deloitte Touche Tohmatsu's at-a-glance summaries of 60 leading trading nations answer all your questions about doing business—and living—abroad.

- [2004 TMT Trends Annual Report. Igniting Innovation.](#)
Industry leaders and analysts, as well as Technology, Media and Telecommunications (TMT) professionals from Deloitte member firms provide insight and practical advice on business issues and current developments in our "2004 TMT Trends Annual Report."
- [Accounting Roundup – April 26, 2004](#)
- [A Roadmap to Applying the New Consolidation Guidance – FIN 46R](#)
- [Highlights of the PCAOB Auditing Standard No. 2: An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of Financial Statements](#)
- New Corporate Governance Listing Standards: Audit Committee Handbook
<https://www.auditcommittee.com/USEng/topics/contentItem.asp?topic=1&subject=10> This handbook is available on Audit Committee Online or through your Deloitte & Touche partner. If you are not a registered user of Audit Committee Online and would like to gain access, please contact your Deloitte & Touche partner or send an email to corpgovernance@deloitte.com.)
- [Business Ethics and Compliance in the Sarbanes-Oxley Era](#)
- [Corporate Culture and the Control Environment: The Foundation of Internal Control](#)
- [How to Choose the Right Partner to Guide You Through the Sarbanes-Oxley Maze](#)
- [Audit Committee Financial Expert Designation and Disclosure Practices Survey](#)
- [Audit Committee Resource Guide](#)
- [Is There Life After Options? Deloitte Technology Stock Compensation Survey Summary Results](#)
- [Conditions For Use of Non-GAAP Financial Measures](#)

IASPlus Website -

The International Accounting Standards Board recently revised several pronouncements, such as IAS 1, 2, 3, 8, 10, 16, 17, 24, 28, 32, 33, 39 and 40. Deloitte's IASPlus website discusses these revisions as well as other current and future developments in the International Financial Reporting Standards (IFRS) environment. <http://www.iasplus.com>

E-learning training materials for International Financial Reporting Standards

Deloitte is pleased to make available e-learning training materials for IFRS. Click here to Access Deloitte's IFRS e-Learning Material. Content on the following standards is now available: IAS 1, IAS 2, IAS 7, IAS 8, IAS 10, IAS 11, IAS 14, IAS 16, IAS 17, IAS 18, IAS 21, IAS 27, IAS 28, IAS 31, IAS 34, IAS 37, IAS 40, IAS 41, and the Framework for the Preparation and Presentation of Financial Statements. Modules on the remaining standards are currently being developed and will be released in phases throughout 2004.

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