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Exposure Draft *Simplifying Earnings per Share, Proposed Amendments to IAS 33*

Dear Mr. Buschhueter:

UBS appreciates the opportunity to comment on the Exposure Draft, *Simplifying Earnings per Share, proposed amendments to IAS 33* (the Proposal). Our consolidated financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) and we have subsidiaries that prepare financial statements in accordance with US GAAP. As a preparer complying with both international and US standards, we are aware of the inconsistencies and complexities that exist within the current standards and support the efforts by IASB and FASB to address those issues.

Overall, we believe that many of the proposed changes simplify the earnings per share (EPS) calculation. However, we believe that the Proposal's drafting and use of terminology could lead to inconsistent application in practice, and therefore suggest a thorough review of the changes to ensure that the guidance is sufficiently clear. We have included specific comments below and in the attached appendix (Appendix A).

Ordinary shares
We believe that the guidance for determining the denominator in the basic EPS calculation is unclear. Paragraph 10 states that "*the objective of basic earnings per share information is to provide a measure of the interests of each ordinary shares of a parent entity in the performance of the entity over the reporting period.*" Paragraph 11 indicates that the denominator for basic EPS is, "*the weighted average number of ordinary shares outstanding…during the period.*" However, paragraph 18 seems to expand the number of instruments in the denominator to include all instruments that give their holder the right to participate in profit or loss for the period and provides as an example "participating instruments". Such instruments would not meet the paragraph 6 definition of an ordinary share. We believe that this is confusing and warrants clarification.

Further, we would like to highlight that an instrument that gives its holder the right to participate in dividends (participating instrument) is not equivalent to an instrument that participates in profit or loss for the period. IFRS defines dividends as "Distributions of profits to holders of equity investments in proportion to their holdings of a particular class of capital." The issuance of dividends is not restricted to being sourced out of current earnings and includes the accumulated earnings of prior periods. Therefore, the right to participate in dividends is not reflective of an instrument's participation in the "performance of the entity over the reporting period." Theoretically, those instruments should not be included in the basic EPS denominator based solely on their participation in dividends. If the intent is to include participating instruments in the basic EPS denominator, then the definition of the denominator should be adjusted to reflect that.

Partly-paid Shares
Paragraph A29 covers the treatment of partly paid shares, shares that are issued but have not been fully paid for by the holder. The Proposal indicates that partly paid shares are included in the basic EPS calculation "as a fraction of an ordinary share to the extent that they were entitled to participate in dividends during the period relative to a fully paid ordinary share." It is unclear how partly paid, but fully participating instruments should be treated. We suggest that the Board clarify that such instruments should be fully included in the denominator for the basic EPS calculation despite the fact that the holder may not have fully paid for those shares. Further, we suggest that the Board clarify whether any adjustments are necessary to the numerator to reflect the unpaid portion of the instrument.

We have included our responses to the specific questions raised in the Discussion Paper in Appendix A of this letter. Based on our comments above and in Appendix A, we believe the Proposal requires additional consideration. Please contact us at your convenience if you would like to discuss any of our comments.

UBS AG

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Appendix A

Question 1—Mandatorily convertible instruments and instruments issuable for little or no cash or other consideration

Paragraphs 18 and 19 of the exposure draft propose that the weighted average number of ordinary shares should include only instruments that give (or are deemed to give) their holder the right to share currently in profit or loss of the period. If ordinary shares issuable for little or no cash or other consideration or mandatorily convertible instruments do not meet this condition, they will no longer affect basic EPS.

(a) Do you agree that the weighted average number of ordinary shares for basic EPS should include only instruments that give (or are deemed to give) their holder the right to share currently in profit or loss of the period? Why or why not?
(b) Does the exposure draft apply this principle correctly to mandatorily convertible instruments and ordinary shares issuable for little or no cash or other consideration? Why or why not?

UBS agrees that if the instrument does not give the holder the current right to share in profit and loss of the period, the shares should not be included in the basic EPS denominator. This is appropriate because the basic EPS calculations reflect only current period events and facts for current ordinary share holders.

An example of a conflict created by this concept of current participation is dividend dilution adjustment features. Based on how this approach is applied under US GAAP (in FSP EITF 03-6-1), which states in paragraph 6 that "Unvested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating and shall be included in the computation of EPS pursuant to the two-class method." It appears that the inclusion of a dividend adjustment feature (a dividend equivalent) would qualify an instrument for inclusion in the basic EPS denominator even in cases where the shares are not currently outstanding and, therefore should not be included in the, "the weighted average number of ordinary shares *outstanding*…during the period" (emphasis added), per paragraph 11. The issue unaddressed in the Proposal is whether a noncash dividend equivalent should be treated the same as a cash dividend and, therefore, instruments with dividend equivalents included in the basic EPS denominator.

Paragraph 17 states that "[o]rdinary shares shall be treated as outstanding from the date the holder of the shares has the right (or deemed right in the case of ordinary shares issuable for little or no cash or other consideration) to share currently in profit or loss of the period." It is unclear what is meant by "little or no cash or other consideration." Does this mean that an exercise price that is low relative to current value of the share qualifies, like an option with a $10 exercise price on a share with a spot price of $1,000, or only instruments with a low absolute exercise price, such as a penny. An example or explanatory language would be helpful.

Question 2—Gross physically settled contracts to repurchase an entity's own shares and mandatorily redeemable ordinary shares

Paragraphs A31 and A32 of this exposure draft propose clarifying that an entity treats ordinary shares that are subject to a gross physically settled contract to repurchase its own shares as if the entity had already repurchased the shares. Therefore, the entity excludes those shares from the denominator of the EPS calculation. To calculate EPS, an entity allocates dividends to the financial liability relating to the present value of the redemption amount of the contract. Therefore, the liability is a participating instrument and the guidance in paragraphs A23–A28 applies to this instrument. However, such contracts sometimes require the holder to remit back to the entity any dividends paid on the shares to be repurchased. If that is the case, the liability is not a participating instrument.

The Board proposes that the principles for contracts to repurchase an entity's own shares for cash or other financial assets should also apply to mandatorily redeemable ordinary shares.

Do you agree with the proposed treatment of gross physically settled contracts to repurchase an entity's own shares and mandatorily redeemable shares? Why or why not?

We believe the proposed treatment of gross physically settled contracts is appropriate, but suggest that stakeholders would benefit from some additional language explaining the application of the concept and an example.

Question 3—Instruments that are measured at fair value through profit or loss

For an instrument (or the derivative component of a compound instrument) that is measured at fair value through profit or loss, paragraphs 26 and A28 propose that an entity should not:

(a) adjust the diluted EPS calculation for the assumed exercise or conversion of that instrument; or
(b) apply the guidance for participating instruments and two-class ordinary shares in paragraphs A23–A28.

Do you agree that the fair value changes sufficiently reflect the effect on ordinary equity holders of instruments measured at fair value through profit or loss and that recognising those changes in profit or loss eliminates the need for further adjustments to the calculation of EPS? Why or why not?

We agree with the proposal. We believe that, in the case of instruments at fair value, any impact on equity holders is encapsulated in the fair value pricing of the instruments and should not require additional adjustment to the EPS calculations. Any additional adjustments distort the impact on equity holders. This method significantly simplifies the EPS calculation.

Question 4—Options, warrants and their equivalents

For the calculation of diluted EPS, an entity assumes the exercise of dilutive options, warrants and their equivalents that are not measured at fair value through profit or loss. Similarly, paragraph 6 of this exposure draft proposes clarifying that to calculate diluted EPS an entity assumes the settlement of forward contracts to sell its own shares, unless the contract is measured at fair value through profit or loss. In addition, the boards propose that the ordinary shares arising from the assumed exercise or settlement of those potential ordinary shares should be regarded as issued at the end-of-period market price, rather than at their average market price during the period.

(a) Do you agree that to calculate diluted EPS an entity should assume the settlement of forward sale contracts on its own shares in the same way as options, warrants and their equivalents? Why or why not?
(b) Do you agree that ordinary shares arising from the assumed exercise or settlement of options, warrants and their equivalents should be regarded as issued at the end-of-period market price? Why or why not?

We agree that the end-of-period price is appropriate for calculating the impact of options, warrants and their equivalents. If those contracts are outstanding at the end of the period, it is appropriate to apply the end-of-period market price to calculate the potential impact of their inclusion on the equity holders. Any other approach would ignore the fact that the instrument remained outstanding at period end. This would also avoid distortion caused by applying an average market price, such as when the price has fallen during the period (the average price is in-the-money) and the instruments are unlikely to be exercised due to being out-of-the-money at period end or when the price has risen (average price is out-of-the-money) and the end of period price is in-the-money.

We did, however, identify a language change in the Proposal that does not appear to agree with one of the provided examples and requires some clarification. The Proposal adds and deletes some language from paragraph 49(a) that changes how the paragraph reads. Paragraph 49 provides guidance on how to calculate the diluted EPS effect of potential ordinary shares. Previously, the paragraph read that the proceeds from the potential ordinary shares included "the fair value of any goods or services to be supplied to the entity in the future." The Proposal reads "the fair value at the grant date of any goods or services to be supplied to the entity ~~in the future~~ under the share option of other share-based payment arrangement." This change would appear to change the calculation of the impact of the potential ordinary shares by eliminating the effect of goods and services that have already been supplied to the entity at the reporting date. Example B.2 in the Proposal does not reflect the language changes, leaving it unclear whether the language change was intended to be substantive. We suggest that the Proposal be clarified as it relates to this issue. We believe that only the unrecognized portion of grant date fair value should be included in the determination of assumed proceeds.

Question 5—Participating instruments and two-class ordinary shares

Paragraph A23 proposes to extend the scope of the application guidance for participating instruments to include participating instruments that are classified as liabilities. In addition, the Board proposes to amend the application guidance for participating instruments and two-class ordinary shares. The proposed application guidance would introduce a test to determine whether a convertible financial instrument would have a more dilutive effect if the application guidance in paragraph A26 and A27 for participating instruments and two-class ordinary shares is applied or if conversion is assumed. The entity would assume the more dilutive treatment for diluted EPS. Also, the amended application guidance would require that, if the test causes an entity to assume conversion of dilutive convertible instruments, diluted EPS should reflect actual dividends for the period. In contrast, diluted EPS would not include dividends that might have been payable had conversion occurred at the beginning of the period.

Do you agree with the proposed amendments to the application guidance for participating instruments and two-class ordinary shares? Why or why not?

We believe the approach is theoretically sound, but we do not believe it simplifies the EPS calculation. Further, similar to that found in the SFAS 128 proposal, we suggest that the Board explicitly address the treatment of unvested share-based payment awards that provide holders with the right to participate in dividends.

Question 6—Disclosure requirements

The Board does not propose additional disclosures beyond those disclosures already required in IAS 33.

Are additional disclosures needed? If so, what additional disclosures should be provided and why?

We do not believe that additional prescriptive disclosures are necessary and any helpful supplemental disclosures can be voluntarily provided by preparers.