ASR 146

AICPA

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John C. Burton, CPA
Securities & Exchange Commission
Washington, D. C. 20549

Dear Mr. Burton:

The Accounting Standards Executive Committee, which is the AICPA's official spokesman on accounting and reporting positions, has asked me to write you expressing its concern regarding the issuance of Accounting Series Release No. 146, "Effect of Treasury Stock Transactions on Accounting for Business Transactions." That release states the Commission's interpretation of certain aspects of paragraphs 47(c) and 47(d) of APB Opinion No. 16, Business Combinations. It also refers to Accounting Interpretation No. 20 of that Opinion which was issued by the Institute staff in September 1971 to provide guidance in dealing with the treasury stock problem. ASR No. 146 also deals, in a manner that goes beyond APB Opinion No. 16, with the effect of certain reacquisitions of shares that occur closely following a business combination.

The Executive Committee's concern relates primarily to (1) the issuance of the release on a subject that should be dealt with by the FASB, (2) the issuance of the release on a very important matter without first exposing it in draft form to the accounting profession and to the business community in general for their comments, and (3) the inequities inherent in the retroactive application of some of the provisions of the release.

The Executive Committee believes that responsibility for reducing accounting alternatives should be discharged by the Financial Accounting Standards Board, which was created for the purpose of establishing accounting standards and for which the Commission and its staff have indicated their support on many occasions. It is assumed that the Commission issued ASR No. 146 because it believed the needs of investors for that action outweighed the risks of anticipating action by the FASB and of prejudging the issues. Nevertheless, considering that the subject is of general interest and will have serious impact in numerous cases, the different interpretation responsible readers have made of the relevant paragraphs, and the fact that FASB had publicly invited suggestions as to problem areas in APB Opinion No. 16 with which it should deal, the Executive Committee believes the release should have been exposed for comment. The fact that the release deals with a point that is not explicitly discussed in the Opinion (that is, the subject of reacquisitions of shares shortly after a business combination) is a further reason for exposure before issuing the release.

Some of the members of the Executive Committee participated in the discussions of the Accounting Principles Board at the time it issued APB Opinion No. 16. They do not consider the Commission's interpretation regarding the reacquisition of treasury stock to be consistent with the intentions of the Board when it issued the Opinion. Other members of the accounting profession have also expressed views interpreting paragraphs 47(c) and 47(d) differently than does the release.

As to the retroactive aspects of the release, the Executive Committee believes that registrants have frequently taken advantage of current market conditions to reacquire their shares for purposes other than business combinations. In many of these cases the registrants reacquired their stock in good faith on the basis of professional accounting advice that their actions were in conformity with APB Opinion No. 16 and the related Accounting Interpretation No. 20 and would not impair their ability to account for a combination subsequently as a pooling. Although it apparently is intended that the release should be prospective in its effect on accounting for business combinations, it could have the effect of creating a "taint" on treasury shares that were acquired during the past two years. As the release notes, the "taint" can be cured by selling the shares before the consummation of the combination. That, however, appears to be a drastic and inequitable way of treating registrants who had good reason to believe that they were acting in accordance with the rules.

The Executive Committee urges the Commission, in the interests of fairness to all concerned, to reconsider the retroactive features of ASR No. 146 and to take appropriate action to exclude from its application treasury stock transactions that were entered into prior to August 24, 1973 in good faith on the basis of professional accounting advice, even though that action would not be consistent with the judgments set forth for future application in the release. AICPA technical committees have long had a policy of making changes in technical standards applicable on a prospective basis and the Executive Committee suggests that it is a precedent the Commission would find useful in this instance.

Sincerely yours,

Richard C. Lytle

RICHARD C. LYTLE
Director-Accounting Standards

CC: Marshall Armstrong, Chairman, FASB
Accounting Standards Executive Committee
Committee on Relations with the SEC