



Letter of Comment No: 6  
File Reference: FSP123R-C  
Date Received:

October 8, 2005

Mr. Lawrence W. Smith  
Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Re: Proposed FSP FAS 123(R)-c

Dear Mr. Smith:

We are writing to express our comments regarding the Proposed FSP FAS 123(R)-c, *Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards*.

The Silicon Valley Tax Directors Group ("SVTDG") was formed in 1983 to promote high technology tax policy of its members consisting of corporate tax executives from small to large corporations predominantly having their headquarters in the San Francisco Bay Area of Northern California. A listing of the SVTDG members can be found at [www.svtdg.org](http://www.svtdg.org). The members of the SVTDG are affected on a daily basis in complying with the conclusions of the Financial Accounting Standards Board ("FASB" or "Board") as reflected in the proposed FSP and appreciate this opportunity to present our views.

***The SVTDG Supports the Proposed FSP's Method for Determining the Beginning Balance of the APIC Pool***

The proposed FSP provides an elective alternative transition method for determining the beginning balance of the APIC pool upon adoption of FAS 123(R). The proposed FSP is in response to feedback that a significant number of companies do not have the information readily available to determine the beginning APIC pool required by paragraph 81 of FAS 123(R) and, in some cases, may not be able to recreate that information.

The SVTDG supports the proposed FSP's elective alternative transition method for determining the beginning APIC pool as it provides a straightforward, simplified calculation of the beginning APIC pool and allows companies who may not have all the necessary information to adopt paragraph 81 of FAS 123(R) or who have unresolved interpretive issues under paragraph 81 of FAS 123(R) which may not be resolved prior to registrant filing deadlines, to have an alternative which can be implemented for computing their beginning APIC pool.

*The SVTDG notes that the language of Paragraph 7 of the Proposed FSP could be interpreted to require a subsequent charge to the APIC pool (for partially vested awards at the date of adoption of FAS 123(R)) for the tax effect of compensation cost recognized or disclosed in the financial statements pursuant to FAS 123. The SVTDG believes this interpretation a) should not be the result; b) is inconsistent with the Illustrative Example for Partially Vested Awards; and c) would result in an inappropriate double charge to the APIC Pool. The SVTDG respectfully requests clarification of Paragraph 7.*

Paragraph 5 of the proposed FSP reduces the beginning APIC pool for the tax effect of the cumulative gross compensation cost recognized (or disclosed) in the financial statements pursuant to FAS 123.

Paragraph 7 of the proposed FSP includes, for partially vested awards at the date of adoption of FAS 123(R), the tax effect of compensation cost recognized or disclosed in the financial statements pursuant to FAS 123 and FAS 123(R) in the determination of the amount of the windfall increase or shortfall decrease to the APIC pool.

Accordingly, the language of Paragraph 7 of the proposed FSP, for options that are partially vested at the date of adoption of FAS 123(R), could be interpreted to require that:

- a) The tax effect of the compensation cost recognized in the financial statements under FAS 123(R) is reflected once in the APIC pool;
- b) The tax effect of the compensation cost recognized (or disclosed) in the financial statements under FAS 123 is reflected twice in the APIC pool:
  - a. First, in the computation of the beginning balance of the APIC pool (pursuant to Paragraph 5) and;
  - b. Second, by operation of Paragraph 7.
- c) The tax benefit recognized from these awards is reflected once in the APIC pool.

It appears from the proposed FSP's Illustrative Example regarding Partially Vested Awards that this interpretation may not be the intended result. In the example, Entity A grants awards which are partially vested upon adoption of FAS 123R. Upon exercise of the award, Entity A recognizes in the APIC pool the excess of (1) the tax benefit from the aggregate tax deduction in excess of (2) the tax benefit from the cumulative compensation cost recognized or disclosed for the award under FAS 123 and FAS 123R. In the example, the excess of the cumulative tax deduction (\$700) over the cumulative compensation cost recognized or disclosed for the award under FAS 123 and FAS 123(R) (\$600) is \$100. Using a 40% tax rate, the excess tax benefit is \$40 and is added to the APIC pool

Entity A recognizes in APIC the total tax benefit of the award (\$280 = \$700 x 40%) in excess of the deferred tax asset related to compensation recorded in earnings under FAS 123R (\$80 = \$200 x 40%), or \$200.

After exercise of the award, the APIC pool is net increased (decreased) as follows:

Beginning balance (\$400 FAS 123 compensation x 40%)	(\$160)
Total tax benefit in excess of deferred tax asset	<u>200</u>
Net increase to APIC pool	<u>\$40</u>

The SVTDG believes the above interpretation of the Illustrated Example reaches an appropriate result that does not double count the tax effect of compensation costs recognized or disclosed in the financial statements under FAS 123 for partially vested options at the date of adoption of FAS 123(R). The SVTDG respectfully submits that Paragraph 7 of the FSP should be revised to clarify that the APIC pool is only subsequently charged with the tax effect of compensation costs for awards that are partially vested at date of adoption of FAS 123(R) that have not already been taken into account in the APIC pool. In other words, the APIC pool should only be further adjusted by Paragraph 7 (for partially vested awards at the date of adoption of FAS123(R)) by compensation costs recognized under FAS 123(R) for those awards. The APIC pool should not be further adjusted pursuant to Paragraph 7 for the FAS 123 compensation cost that has already been reflected in the APIC pool as a reduction to the beginning balance of the APIC pool pursuant to Paragraph 5.

The SVTDG respectfully suggests that the last sentence of Paragraph 7 could remain unchanged, while the first two sentences of Paragraph 7 could be modified to read:

The impact on the APIC pool of an award that is partially vested upon or granted after the adoption of Statement 123(R) should be determined in accordance with the guidance in Statement 123(R); provided however, that for awards that are partially vested upon adoption of Statement 123(R), the compensation deduction for tax purposes should be compared with the sum of the compensation cost recognized for that award under Statement 123(R).

### *Summary*

The SVTDG supports the Board's decision to implement alternative guidance to the requirements of Paragraph 81 of FAS 123(R). Accordingly, the SVTDG supports the proposed FSP's elective alternative transition method to calculate the beginning APIC pool and the rest of the proposed FSP (with the exception of Paragraph 7). As discussed above, the SVTDG believes Paragraph 7 of the proposed FSP should be clarified to preclude (for partially vested options at the date of adoption of FAS 123(R)) a second or subsequent charge to the APIC pool for the tax effect of compensation cost recognized or disclosed pursuant to FAS 123. An alternative transition method which requires such a second or subsequent charge to the APIC pool will likely preclude implementation of the alternative transition method for many companies. This would undermine the objective of providing a simplified alternative transition method in response to the concerns raised with implementing Paragraph 81 of FAS 123(R).

Thank you for your consideration of our comments and views.

Respectfully,

The Silicon Valley Tax Directors Group