

Raymond Weisner
136 East 36 Street
New York, NY 10016

Letter of Comment No: 4811
File Reference: 1102-100

June 28, 2004

ATTN.: Ms. Suzanne Bielstein, Director of Major Projects

RE: File Reference No. 1102-100, Share-Based Payment

Dear Ms. Bielstein,

Thank you for the opportunity to comment on the proposed Statement and amendment to SFAS 123.

I am in support of the Board's conclusions that stock-based compensation be included as compensation cost. However, I (and many others as seen in the comments already submitted) cannot agree that the proposal allows for accurate valuation of employee stock options.

There are two major weaknesses in the proposal that will quickly be converted into major flaws by the marketplace:

1. Lack-of-Marketability

The denial to allow a discount for the lack-of-marketability (L-O-M) of employee options is contrary to accepted valuation practice, contrary to discounts as accepted by the IRS and upheld in tax court, and contrary to everyday marketplaces for nearly all financial instruments.

It is accepted practice for valuation professionals to apply a discount for financial instruments that are not readily marketable. These discounts are based on real-life, observable market prices. The IRS in turn accepts these discounts on a daily basis, (i.e. limited partnerships holdings; in addition to and separate from minority-interest discounts). Indeed, the IRS suggests their own calculated allowable discounts when contesting those proffered by others in tax court. One only has to search tax filings to find these examples.

A FASB board member, Ed Trott, has mentioned in public forum that one reason a discount is not allowed for is because the proposed standard "captures some of this" in the allowance for reducing the life of the employee stock option below the actual term of the option. While recognizing the merit to the need, this horse-trading does not make for good valuation practice, and begets other faults.

But the real reason to allow for L-O-M discounts is that the marketplace is not static – nor dumb. Already, CFOs and executives are realizing that since there is no discount allowed for L-O-M, then there is no cost for making these marketable.

Closely-held and insider-controlled corporations will quickly make these option grants transferable and/or marketable.

It is clear the only way to make the value of options truly representative of fair value is to allow real-world discounts for L-O-M. (With a "cost" if marketable.)

There is much appraisal literature and empirical studies on what these discounts might be. (Indeed, the IRS – not a long distance from the SEC – has its own data.) I am not suggesting a specified discount, but a means to allow for established valuation practice to be applied – and for a price or cost to then effectively be applied for making options marketable.

2. Shortened Option "Life"

This second leg of the stool – which Ed Trott mentions as part of a "trade-off" – is not a good, or supportable, trade-off to make.

The current suggestion to allow for valuation estimates to apply a shorter-than-actual-life to the options seems to be a political effort to reduce the estimated values of the options. And with good reason – the political pressure is real and very significant. But not a good enough reason. And certainly not one without serious complications.

Again, the marketplace is not static, nor ignorant of the ability to make more money at no "cost". CFOs and executives are realizing that their now 10-year options are going to be calculated as 5 or 5.5 or 6 year options. They will quickly learn to issue 15-year and 20-year and 30-year options.

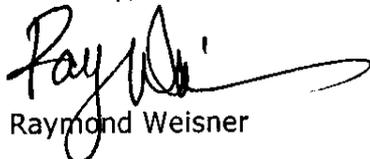
And why not? The proposed standard allows for such a shortening of the life. And any current or future exercise pattern will *never* fully capture this longer – but more valuable – option life. Executives will learn these new sandbox rules.

Current valuation standards know how to value a 5-year option, and how to value a 10-year option, etc. The **fair value of a 10-year option** may be more than the **achieved value** of that option if it is exercised long before the end of the 10-year term, but the FASB's goal is **fair value**, not expected achieved value.

UNPLEASANT (and real) FUTURE SCENARIO UNDER PROPOSAL: Fully marketable / transferable 30-year options at the same "value" as non-marketable 10-year options. (Get my broker on the line.)

In sum, the Board should allow for real-world discounts for lack-of-marketability, under accepted valuation practice, and not allow for the horse-trading of shortening option lives in an effort to reach a value conclusion closer to political perception than to fair value.

Sincerely,



Raymond Weisner