National Association of Manufacturers

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Mr. Robert H. Herz Chairman Financial Accounting Standards Board 401 Merritt 7, P.O. Box 5116 Norwalk, CT 96856-5116 Letter of Comment No: 5
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FAS 123(R) - Determination of Grant Date for Employee Stock Options

Dear Mr. Chairman:

I am writing on behalf of the National Association of Manufacturers ("NAM") to provide comments for your consideration on the determination of the grant date for employee stock options under Statements of Financial Accounting Standards No. 123 (revised December 2004), Share-Based Payment, an agenda item scheduled for discussion at the Financial Accounting Standards Board ("FASB") meeting of Wednesday, September 14, 2005.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. A significant number of our 13,000 members are public companies that issue stock options to employees and would be negatively impacted by the proposed changes.

Based on informal reports, the staff of the FASB staff recently advised a major accounting firm that the grant date for employee stock options occurs when certain specific conditions are met, including when the employer and employee have a mutual understanding of the key terms and conditions of the award, and that such understanding does not occur until the terms and conditions of the award have been communicated to the recipient.

This staff guidance deviates from current standard practices and, if followed, could create significant administrative problems for many companies. This is especially true for companies with a large number of stock option recipients, some of whom may be located outside the United States. In some cases, supervisors may be based in different countries than the option recipients.

In contrast, we believe that current practices described below do not detract from our mutual goals of sound governance practices, accurate financial reporting and appropriate transparency. In fact, current practices seem to offer stronger controls against potential option price manipulation than the advised approach.

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By way of relevant background, our member companies describe the following generic steps in making option grants:

- The first implementation step is usually approval by a company's independent compensation committee and/or board of directors. Such approval includes specification of the key terms such as the grant date, which is usually either the date of board-level approval or often times a prespecified future date. The establishment of the grant date usually then determines the option strike price (fair market value on the grant date unless the option is granted at a discount or premium), the vesting dates (specified lapse of times from the grant date) and option expiration date (specified lapse of time from the grant date).
- Program administrators prepare grant documents that are distributed to supervisors and include the terms and conditions of the option grant. Because option grants are long-term incentives and are an important portion of an employee's compensation, they are generally awarded in person by the supervisor so appropriate discussion on performance can take place at the same time. Having multiple grant dates and strike prices would greatly complicate the process since the documents and records would need to reflect different terms for each employee.
- Supervisors communicate to each of the option recipients within a reasonable time. Generally, the recipient needs to take no action to accept the grant, but because most options are given during one-on-one meetings with supervisors and because individual meetings maybe difficult to schedule, it is reasonable to assume that under the recent FASB staff guidance that multiple grant dates could easily result within a single option program.
- Option grants also require communication with the company's option administrators and tax
 reporting group, most of whom have various data bases to populate, including individualized
 access to equity compensation records. Having multiple grant dates and thus multiple strike
 prices greatly complicates these processes and may add considerable expense.
- SEC Form 4 reports are filed within two days of grant for those option recipients subject to the
 reporting requirements of Section 16 of the Securities Exchange Act of 1934. Differences in
 terms resulting from application of the new guidance could increase administrative burdens as
 well as create confusion among annalists of these reports.
- When granting options it is important that there be an appropriate valuation and accounting of the
 grants. The FASB staff guidance may result in multiple strike prices that could add complexity
 for administrators and make accounting for option grants and valuations of those grants much
 more difficult.

Unless granted as part of an individual employment contract, options are rarely negotiated between an employer and employee as the FASB staff guidance suggests. Thus under current practices, after approval of the program at the board-level, the terms are not subject to change. Requiring the effective date of the grant to be contingent upon individual communications with many recipients could create a major and burdensome recordkeeping responsibility to track and record completion of each communication and varying option terms.

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Further and importantly, this approach could result in weaker controls. For example the staff guidance could lead to the potential manipulation of the strike price by supervisors who individually and independently may determine when the communication with the recipient takes place. It also inadvertently could create inequities among recipients whose grants under the same program have different strike prices and thus different values, even for the same number of options, if the market price went up or down during the communication period. Management would not know the ultimate value of the grant until learning when the discussion between supervisor and employee actually took place. Under current common processes, the board is the sole determinator of the date the program-wide strike price is to be established.

Alternatively, a company could send blanket emails or web-based communications to recipients in order to create a uniform grant date and strike price, but this would detract significantly from the important ability to effectively communicate the linkage of personal performance to compensation as well as other related human resource messages.

Finally, dependent upon company plan structure, such communications could often take place only after the stock market had closed for that date, if the plan defines the grant or strike price as a function of the average of the high and low, or opening and closing prices. For some companies, the proposed approach could require an amendment to the stock plan and perhaps shareholder approval of the amendment.

In summary, the changes from current practices may result in high costs that do not appear to be offset by accompanying benefits. For these reasons, we respectfully request that the Financial Accounting Standards Board reconsider the position taken by the staff and authorize companies to continue current practices as described.

Thank you in advance for consideration of these comments and the views of our members as you evaluate FAS 123(R). Please feel free to contact me at (989) 636-2663 or TVanDam@nam.org with any questions that you may have.

Respectfully submitted,

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