

KPMG LLP 280 Park Avenue New York, N.Y. 10017 8th Floor

Letter of Comment No: 13 File Reference: FSPFAS109

December 1, 2004

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

Proposed FASB Staff Position No. FAS 109-b, "Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004"

Dear Mr. Smith:

We support the FASB staff's proposal that an enterprise should be allowed time beyond the financial reporting period in which the American Jobs Creation Act of 2004 (the Act) was enacted to evaluate the effects of the Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying FASB Statement No. 109, Accounting for Income Taxes. However, we believe that the FASB staff should clarify the guidance in the proposed FSP regarding the following two issues.

First, we believe that the FASB staff should clarify whether the staff intended to provide the delay in making the determination of the impact of the Act on an enterprise's plan for reinvestment or repatriation to all enterprises, including those that have information available to make the determination but have not yet done so. The first sentence of paragraph 6 of the proposed FSP indicates that enterprises should be allowed additional time to make that determination. However, the second sentence of that paragraph indicates that additional time should be provided "if an enterprise is unable to make a determination." In addition, paragraph 8 refers to an enterprise that is "in a position to determine the impact of the repatriation provision." We believe that the delay in making the determination of the impact of the Act should be provided to enterprises that have not completed the necessary analysis to make the determination and that paragraph 8 should be clarified to require recognition of the impact of the Act on the enterprise's plan for reinvestment or repatriation when it completes the analysis necessary to make the determination.



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Secondly, the proposed FSP is unclear as to whether the staff views a post-balance sheet determination to repatriate foreign earnings similar to a Type I or Type II subsequent event as those terms are used in AICPA Professional Standards, Section AU 560, "Subsequent Events". Certain paragraphs imply that a post-balance sheet determination is similar to a Type II subsequent event (e.g., paragraph 11c). If the staff intends that some events are similar to Type I while others are similar to Type II subsequent events, the final FSP should provide clear guidance on this determination. If the enterprise has the information available to make the determination as of the end of the reporting period but does not complete its determination of the impact of the Act on its plan for reinvestment or repatriation until after the end of the period but before the issuance of the financial statements for that period, we believe that situation is similar to a Type I subsequent event and the financial statements should be adjusted for any changes in the estimate of income tax expense resulting from the use of such evidence. However, if the determination is dependent on clarifying interpretations provided by the tax authorities subsequent to the end of the reporting period or other events that occur subsequent to the end of the period, we believe that situation is similar to a Type II subsequent event and the financial statements would not be adjusted.

In addition, other specific comments on the proposed FSP are provided below:

- Paragraphs 7 and 9 These paragraphs address situations in which enterprises
 recognize a deferred tax liability for some or all of their unremitted foreign earnings
 prior to completion of their determination of the effects of the Act on their plans for
 reinvestment or repatriation. The FASB staff should clarify whether the calculation
 of the deferred tax liability in those situations should reflect the one-time dividends
 received deduction provided by the Act.
- Paragraph 11b If an enterprise has not completed its determination of the impact of the Act on its plan for reinvestment or repatriation or the enterprise believes it needs additional clarifying interpretations from the tax authorities on the application of the provisions of the Act to determine the potential tax impact, the enterprise may not be able to determine the potential range of the income tax effects of reasonably possible amounts being considered for repatriation. Accordingly, the disclosure of the potential range of income tax effects should not be required if it is not practical to determine such amounts.
- Paragraph 11c This paragraph should specify the minimum pro forma financial data to be provided.

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If you have questions about our comments or wish to discuss any of the matters addressed herein, please contact John Guinan at (212) 909-5449 or Mark Bielstein at (212) 909-5419.

Sincerely,

KPMG LLP