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July 29, 2005

Mr. Lawrence W. Smith
Director, TA&I – FSP
Financial Accounting Standards Board
401 Merritt 7
P. O. Box 5116
Norwalk, CT 06856-5116

Letter of Comment No: 4
File Reference: FSP123R-A
Date Received:

File Reference No. FAS 123(R)-a
Re: Proposed FASB Staff Position No. FAS 123(R)-a

Dear Mr. Smith:

We are pleased to comment on the proposed FASB Staff Position No. FAS 123(R)-a, “Classification and Measurement of Freestanding Financial Instruments Originally Issued as Employee Compensation.” (“FSP FAS 123(R)-a” or “proposed FSP”).

We support the issuance of FSP FAS 123(R)-a as a final position of the FASB staff. For reference, see our comment letter dated April 15, 2005, which responded to the proposed FASB Staff Position that led to the issuance of FASB Staff Position No. EITF 00-19-1, “Application of EITF Issue No. 00-19 to Freestanding Financial Instruments Originally Issued as Employee Compensation.” In the aforementioned comment letter, we encouraged the Board to move toward a framework for distinguishing between liabilities and equity that can be applied consistently to all freestanding financial instruments. Further, we expressed that having two financial instrument classification models combined with the required “reassessment” in paragraph A231 of FASB Statement No. 123 (revised 2004), *Share-Based Payment*, creates complexity when applying generally accepted accounting principles in this area. Finally, we noted that FSP EITF 00-19-1 would only partially blunt the effect of the reassessment.

Accordingly, we support the Board’s elimination of the reassessment requirement pending the outcome of its liability and equity project.

Effective Date and Transition

Paragraph 7 of the proposed FSP states that FSP FAS 123(R)-a is effective upon initial adoption of Statement 123(R). The FASB staff should consider providing a transition method for entities that have adopted Statement 123(R) prior to the issuance of the final FASB staff position (e.g., prospective application).



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April 15, 2005

Mr. Lawrence W. Smith
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Letter of Comment No: 5
File Reference: EITF 19A

File Reference No. EITF 00-19-a
Re: Proposed FASB Staff Position No. EITF 00-19-a

Dear Mr. Smith:

Deloitte & Touche LLP is pleased to comment on the Proposed FASB Staff Position No. EITF Issue 00-19-a, "Application of EITF Issue No. 00-19, 'Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock,' to Freestanding Financial Instruments Originally Issued as Employee Compensation" (FSP EITF 00-19-a or the proposed FSP).

Deloitte & Touche LLP supports the issuance of the proposed FSP as a final position of the FASB staff. However, financial accounting would be better served if there was one model for evaluating the classification of financial instruments. Nevertheless, as a practical solution for moving forward prior to establishing a comprehensive framework, FASB Statement 123(R) No. 123 (revised 2004), *Share-Based Payment*, establishes an "accounting model" for share-based payment transactions that differs from the accounting requirements for all other freestanding financial instruments. Perpetuating this differential model adds complexity to Statement 123(R). Thus, we continue to encourage the Board to move toward a framework for distinguishing between liabilities and equity that can be applied consistently to all freestanding financial instruments. Our comment letter on the exposure draft that led to the issuance of Statement 123(R) provides further details on our thoughts on this matter.

Compounding the complexity of having two financial instrument models is the required "reassessment" in paragraph A231 of Statement 123(R). The proposed FSP is an opportunity for the Board to clarify why it believes that entities should reassess accounting models midway through the life of a financial instrument.

In applying the requirements of other applicable GAAP at the reassessment date, the proposed FSP introduces an exception to the registered share requirements of Issue 00-19. This, in effect, establishes a third model for distinguishing between liabilities and equity. The three models can be summarized as follows:

1. Share based-payments during the periods in which the rights conveyed are contingent upon employment,
2. All other freestanding financial instruments, and now

3. Share-based payments upon the required reassessment.

In the event that the Board does not eliminate the reassessment requirement in paragraph A231, the proposed FSP should be issued because it partially blunts the effect of the reassessment.

Application of the A231 Assessment to other Common Share-Based Payment Provisions

In addition to the exception to Issue 00-19 dealing with registered share requirements, Statement 123(R) provides a number of other "exceptions" to the liability/equity classification requirements for other freestanding financial instruments (i.e., instruments that would, absent the exception, be recorded as liabilities). These include:

- Required repurchases of shares or options for employees' minimum tax withholding,
- Instruments with market conditions indexed to the price of equity shares of unrelated parties,
- Instruments with exercise prices denominated in a foreign currency, and
- Classification of awards with repurchase features.

The proposed FSP addresses only one of the provided exceptions that allow for continuation of the specific exception at the A231 assessment date. The proposed FSP should also explicitly address the other exceptions in Statement 123(R) described above in the context of the A231 assessment. For example, the terms of most existing share-based payment arrangements contain features that, absent the aforementioned exceptions, would appear to require liability treatment (e.g. repurchase features for employee tax withholding). Accordingly, absent consideration of the exceptions in Statement 123(R), the final FSP should clearly indicate whether the presence of any of the other exceptions in Statement 123(R) will result in liability classification for awards upon the required paragraph A231 assessment date.

The FSP Appears to Require a One-Sided Reassessment

Paragraph 6 of the proposed FSP requires companies to "evaluate the substantive terms of an instrument that can be settled only by delivering registered shares to determine whether it qualifies as a liability." The purpose for this paragraph is unclear, as Statement 123(R) already requires this assessment for instruments within its scope. As such, the clarity of the proposed FSP would be improved if the staff provided an example and elaborated on its intent for including this requirement in FSP EITF 00-19.

One possible interpretation of this paragraph is that the "substantive liability" notion must continue to be applied at the A231 assessment date. This would require an entity, at the A231 assessment date, to consider the liability/equity requirements applicable to other freestanding financial instruments plus the "substantive liability requirements" of paragraph 34. If this requirement was the staff's intent, then we would disagree. Statement 123(R) is clear that GAAP applicable to freestanding financial instruments "does not incorporate the same notion of a substantive liability that is included in [Statement 123(R)]." Including paragraph 6 in the Proposed FSP would result in a one-sided reassessment. That is, under Statement 123(R), upon the A231 assessment date, awards classified as equity could be reclassified as a liability, but all awards classified as a liability under Statement 123(R) would remain classified as a liability subsequent to the A231 assessment date.

Other Comments

The final FSP should provide guidance on how the change in classification from equity to liability (and vice versa) should be accounted for. That is, the final FSP should address whether any changes in the fair value of the instrument during the period the instrument is classified as equity should be recorded in the income statement (as required for modifications under Statement 123(R)) or as an adjustment to stockholders' equity (as required for reclassifications under Issue 00-19).

Deloitte & Touche LLP appreciates the opportunity to comment on FSP EITF 00-19-a. If you have any questions concerning our comments, please contact James Kroeker at (203) 761-3726 or James Johnson at (203) 761-3709.

Yours truly,

Deloitte & Touche LLP

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File Reference No. FSP FAS 123(R)-a

We appreciate the opportunity to comment on FSP FAS 123(R)-a. If you have any questions concerning our comments, please contact James Kroeker at (203) 761-3726.

Yours truly,

Deloitte & Touche LLP

cc: James Johnson