

Joseph L. Sclafani Executive Vice President and Controller

Letter of Comment No: 9
File Reference: FSP123R-C
Date Received:

Director, TA&I—FSP Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: Comments on Proposed FASB Staff Position No. FAS 123(R)-c

Ladies and Gentlemen:

JPMorgan Chase & Co. appreciates the opportunity to comment on the proposed FASB Staff Position No. FAS 123(R)-c, Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards ("proposed FSP"). As currently drafted, the proposed FSP seems to create a different, and relatively unattractive, accounting result for awards accounted for at fair value compared to paragraph 81 of FASB Statement No. 123 (revised 2004), Share-Based Payment ("SFAS 123(R)"). Accordingly, we believe this proposed FSP should not be issued without appropriate revisions or clarifications to resolve this inconsistency.

The apparent flaw in the approach is found in paragraph 5 of the proposed FSP, which provides an alternative way to determine the beginning balance of the APIC pool under SFAS 123(R). The approach involves starting with existing APIC credits, then subtracting compensation expense that was either recognized or disclosed in the financial statements. While this approach approximates the paragraph 81 methodology for entities that never adopted the recognition provisions of FASB Statement No. 123, Accounting for Stock-Based Compensation ("SFAS 123"), there is a punitive element in the accounting for awards previously recognized in the financial statements at fair value (e.g., restricted stock, SFAS 123 options). For these awards, because compensation expense measured at fair value was recognized in the financial statements, any existing APIC credit already would be net of this compensation expense. The proposed FSP would require it to be deducted a second time in calculating the beginning balance of the APIC pool. This double-count only affects awards previously accounted for at fair value.

To correct this flaw, the proposed FSP should be revised (or clarified, if the result described above is not the intent of the proposed FSP) to allow entities to retain all existing APIC credits that arose from awards accounted for in the financial statements at fair value. The methodology described in the proposed FSP then should be followed only for those awards that were never recognized in the financial statements at fair value. With this revision or clarification, we would support the proposed FSP because, in that case, it would promote consistent accounting among different entities and types of awards. We would also then

consider it beneficial, as its primary effect would be to reduce the need for <u>detailed</u> historical data both around the initial implementation date of SFAS 123 and in support of the pro forma disclosures.

In summary, while we believe the proposed FSP as drafted is flawed, we believe this shortcoming can be easily corrected as described above. If corrected, the proposed FSP would provide a practical and relevant solution to an issue that a number of companies seem to be facing. If you have any questions, please contact me at 212-270-7559, or Shannon Warren at 212-648-0906.

Very truly yours,

Joseph L. Sclafani