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January 31, 2006

Letter of Comment No: /2
File Reference: FSP123R-D

Technical Director
File Reference 1235-001
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

RE: Proposed FASB Staff Position No. FAS 123(R)-d, Classification of Options and Similar Instruments Issued as Employee Compensation That Allow for Cash Settlement upon the Occurrence of a Contingent Event

Dear Technical Director:

We agree with the Board's conclusion in Proposed Staff Position FAS 123(R)-d, "Classification of Options and Similar Instruments Issued as Employee Compensation That Allow for Cash Settlement upon the Occurrence of a Contingent Event," to modify paragraphs 32 and A229 of FASB Statement No. 123 (revised 2004), Share-Based Payment, to incorporate a probability assessment in the evaluation of when to classify a share option or similar instrument as equity or liability. Consistent with the Board's views described in paragraph B4, we believe that the same process should be applied for classifying share-based payments whether the instruments are shares or share options. Following a consistent approach will reduce the complexity of applying this aspect of the Standard. We also agree with the effective date and transition provisions of the proposed FSP.

Our responses to the two issues identified in the proposed FSP and other comments are provided in the following paragraphs.

Issue 1—Restrict to Specific Types of Contingent Events

We believe that the guidance in the proposed FSP should not be limited to specific types of contingent events. Companies have been making assessments of the probability of occurrence for all types of contingent events (e.g., change of control, IPO or other liquidity event, death or disability) in applying other accounting literature and are capable of making those same probability assessments when applying the proposed revision to paragraphs 32 and A229 of Statement 123R. In addition, paragraph 31 of Statement 123R is not limited to certain types of contingent events. Many companies grant both shares and share options that have contingent repurchase features. We believe that all such share-based payments should be treated the same.



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We understand that some may believe that the assessment of probability should be different for contingent events that are employee-specific (e.g., death or disability) than it is for contingent events that affect all share option holders (e.g., change of control). Since Statement 123R requires the determination of equity or liability classification be made for each individual instrument, we believe that contingent events that are employee-specific should be treated the same as those that apply to all grantees. In addition, we believe it would be inappropriate to require actuarial evaluations of the grantee population for purposes of classifying awards with employee-specific contingencies. Such a process would not be consistent with the application of Statement 123R to individual awards and many companies that grant share-based awards may not have actuarial data with respect to the grantees because they may not have defined benefit pension or other postretirement benefit arrangements. Requiring an actuarial approach would add additional cost and unneeded complexity to the classification of share options and similar instruments with contingent cash settlement features.

Issue 2—Grandfathering

As described above, we believe that the probability approach proposed by the Board is the most appropriate way to address this issue. The grandfathering approach would result in a different treatment for shares and share options issued in exchange for employee services after the adoption of Statement 123R. Since both instruments would otherwise be equity-classified and the contingent event would be the same for both instruments, it would not be appropriate for shares and share options to result in different classification in these circumstances. Additionally, the grandfathering approach could result in share options issued before the adoption of Statement 123R being equity-classified, while those issued after its adoption being liability-classified. This result would create unnecessary complexity in the application of Statement 123R.

Although we acknowledge that employee and nonemployee share options would be treated differently as a result of the proposed FSP, Statement 123R already provides for different accounting treatment for employee share options than for similar nonemployee share options (e.g., nonemployee share options are measured pursuant to EITF Issue No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services," and classified pursuant to EITF Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock," and related literature once future performance is no longer required). We believe that consistent treatment for all employee share-based payments is more important, particularly pending the completion of the Board's project on liabilities and equity.



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Application of ASR 268 and EITF D-98

Footnote 18 attached to paragraph 31 of Statement 123R provides a reminder that public companies must consider the requirements of SEC ASR No. 268, Presentation in Financial Statements of "Redeemable Preferred Stocks." That consideration may result in puttable shares which are classified as equity pursuant to Statement 123R being reported outside of permanent equity in the company's balance sheet. We believe that a reminder to public companies about ASR 268 and EITF Topic D-98, "Classification and Measurement of Redeemable Securities," attached to the amended paragraph 32 would also be helpful.

Contingent Events

Events that can result in cash settlement of employee share options include a change of control of the entity, an IPO, other liquidity events, and death or disability of the employee. We believe that existing practice has treated all of these as contingent events when evaluating the classification of and accounting for employee share options. If that is not consistent with the Board's intent, we believe that the final FSP should clearly indicate which events the Board considers to be contingent events pursuant to the revised guidance of paragraphs 32 and A229.

If you have any questions about our comments or wish to discuss any of the matters addressed herein, please contact Mark Bielstein at (212) 909-5419, Paul Munter at (212) 909-5567, or Jeff

Sincerely,

KPMG LLP

Jones at (212) 909-5490.

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