

Letter of Comment No: 7  
File Reference: FSP123R-B  
Date Received:

September 29, 2005

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

**RE: File Reference No. FSP FAS 123(R)-b, Practical Exception to the Application of Grant Date as Defined in FASB Statement No. 123(R)**

Dear Mr. Smith:

PricewaterhouseCoopers LLP appreciates the opportunity to respond to the Financial Accounting Standards Board (FASB or the "Board") on its proposed FASB Staff Position (the "FSP") noted above. We support the issuance of the FSP because we believe it will assist preparers by simplifying the process of determining the grant date of a stock-based-compensation award under FASB Statement No. 123 (revised 2004), *Share-Based Payment* (FAS 123(R)). We also continue to support the Board's efforts to respond to implementation issues that arise as preparers adopt (or prepare to adopt) the provisions of FAS 123(R). We do, however, have the following comments regarding the FSP as currently drafted:

- In paragraph 5 of the FSP, we recommend deleting the phrase "shall be presumed to exist" and replacing it with the word "exists." We believe that the phrase "shall be presumed to exist" suggests a rebuttable presumption that can be overcome based on facts and circumstances. Further, we suggest replacing the phrase "assuming all other criteria have been met" in the first sentence of paragraph 5 with the phrase "assuming all other criteria in the grant date definition have been met." As drafted, it is unclear what "other criteria" are contemplated.
- In paragraph 5a, we recommend clarifying the phrase "the recipient does not have the ability to negotiate." Generally, an employee has the ability to attempt to negotiate the terms of his or her award. We believe that the intent of the condition in paragraph 5a is that the award is a unilateral grant and the employer will not permit negotiation of the key terms and conditions. Accordingly, we recommend the following changes to paragraph 5a:

The award is a unilateral grant and the recipient does not have the ability is not permitted to negotiate the key terms and conditions of the award with the employer.

- In paragraph 5b, we suggest reconsidering the requirement that the key terms of the award must be communicated to “all of the recipients.” This wording implies that if the award terms were not communicated to a small percentage of employees (e.g., 5%) within a relatively short time period, there would be no grant date established for the other 95% of employees until communication occurred, even if communication occurred within a relatively short time period for those employees (i.e., a “tainting” of awards issued to all employees). We believe that in this situation, it would be appropriate to conclude that a mutual understanding exists on the approval date for the awards issued to the 95% of employees for which communication was completed within a relatively short time period, given the appropriate facts and circumstances.
- We suggest that the Board revise Footnote 1 to paragraph 5 of the FSP to conform to the language within the answer to Question 23 of the FASB Staff Implementation Guide to FAS No. 106, Employers’ Accounting for Postretirement Benefits Other Than Pensions. Further, we believe the use of the phrases “could plausibly complete” and “the entity’s customary human resource practices” could be misleading. “Plausible” is defined in one dictionary as “appearing worthy of belief.” We believe that the use of “plausibly” allows for too wide of a range of interpretation as many events can be worthy of belief, while not necessarily reasonable. “Customary human resource practices” implies that a company can look to its historical practices, even if such practices included waiting an unreasonable period of time (e.g., several months) to communicate the terms of an award to an employee. Accordingly, we suggest the following revisions to the footnote:

A relatively short time period is that period that would ordinarily be required to prepare information and disseminate it to employees an entity could plausibly complete all actions necessary to communicate the awards to the recipients in accordance with the entity’s customary human resource practices employer’s preferred method of communication.

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If you have questions regarding our comments, please contact John Horan at (973) 236-4997.

Sincerely,

PricewaterhouseCoopers LLP