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Ms. Suzanne Bielstein
Director – Major Projects and Technical Activities
File Reference No. 1102-100
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Letter of Comment No: 5838
File Reference: 1102-100

Dear Ms. Bielstein:

Lyondell Chemical Company (Lyondell) appreciates this opportunity to submit our comments on the Exposure Draft, *Share-Based Payment*. We commend the FASB for continuing to pursue this topic in light of the perceived controversy among certain constituents and the threatened interference by the United States Congress in the accounting standard setting process.

Lyondell agrees that share based payments should be reflected in the income statement. Lyondell previously has adopted the fair value measure for employee stock options as defined by Statement 123. These payments meet the definition of an expense in accordance with Statement of Financial Accounting Concepts, (SFAC) No. 6, *Elements of Financial Statements* and fair value is the most appropriate measurement attribute. We believe the Proposed ED will further improve the relevance of financial statements; however, we also request that the FASB reconsider certain aspects of the current proposal.

Valuation Methodology

Although we agree with the Board's approach to measurement for share-based compensation, we do not believe that the Board should specify preferred valuation methodologies for preparers. We believe that a principles-based approach to standard setting would lead the Board to establish the principle that fair value is the appropriate and required measurement attribute, but would provide limited guidance on determining fair value.

Income Taxes and Cash Flows

We question the Board's conclusion that the tax effects of equity instruments awarded to employees is best viewed as the result of two transactions. We believe that the Board should reconsider the income tax effects of equity instruments awarded to employees in favor of the IASB approach in IFRS 2.

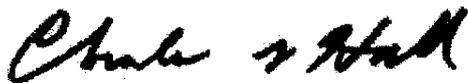
We disagree with the Board's conclusion to amend Statement 95. We believe it is inappropriate to identify one of the many types of tax effects that relate to non-operating activities, and to require its effect on taxation to be treated as though it were a cash flow, and outside of cash flows from operations. We believe that the decision reflected in Statement 95 to reflect all tax effects in operations recognized the complex interrelationships among numerous factors contributing to taxation. The effect in question is not significantly different from many other factors.

Nonpublic Company Intrinsic Value Measurement Alternative

We believe the Board should reconsider the alternative provided to nonpublic companies to utilize the intrinsic method of accounting for stock-based compensation rather than a fair value approach. We believe that this alternative for nonpublic companies diminishes the comparability of financial statements across companies and is inconsistent with the measurement attribute deemed most appropriate.

We welcome any questions regarding our positions on matters addressing this proposed Statement. Please contact me at 713-309-3887 with any questions.

Sincerely,



Charles L. Hall
Vice President and Controller

Appendix

The following issues have been paraphrased from the proposed Standard and contain our position for the issues described.

Issue 1: Do you agree with the Board's conclusion that stock based compensation be recognized as compensation cost in the financial statements?

We agree that stock based compensation should be recognized as compensation cost in the financial statements.

Issue 2: The Board concluded that pro forma disclosures are not an appropriate substitute for recognition of compensation cost in the financial statements. Do you agree with that conclusion?

We agree that pro forma disclosures are not an appropriate substitute for recognition of compensation cost in the financial statements.

Issue 3: Do you agree with the view that public companies should measure the compensation cost related to employee services received in exchange for equity instruments based on the grant-date fair value of those instruments?

We agree that public and nonpublic companies should measure the compensation cost related to employee services received in exchange for equity instruments based on the grant-date fair value of those instruments.

Issue 4(a): Do you believe that this proposed Statement provides sufficient guidance to ensure that the fair value measurement objective is applied with reasonable consistency?

We believe that the proposed Statement provides more than sufficient guidance on the topic of fair value measurement for stock based payments. We would suggest that the Board reconsider the recommendation of a preferred valuation approach in the final Standard. Fair value is ascertained more readily when quoted market prices for specific instruments exist and, when instruments are not quoted on an exchange, professional judgment is necessary in determining value. This professional judgment will seldom result in two similar companies with separate management teams determining the same fair values for identical non-quoted instruments. This is an inherent risk when fair value is selected as the most appropriate measurement basis for a transaction and there is a lack of transparency in the pricing of similar but illiquid instruments. However, we believe that this trade off in reliability related to various valuation techniques is more appropriately addressed through a fair value hierarchy and disclosures such as those considered by the Board in the Proposed Exposure Draft, *Fair Value Measurements* rather than "preferred" valuation guidance on individual financial instruments. We believe that the proposed detailed guidance on fair value measurement is inconsistent

with a principles-based approach, and suggests an unattainable degree of precision in options valuation.

Issue 4(b): Do you agree with the Board's conclusion that the fair value of employee share options can be measured with sufficient reliability? Do you agree with the Board's conclusion that a lattice model is preferable because it offers greater flexibility needed to reflect the unique characteristics of employee share options?

We agree that the value of share options can be measured with sufficient reliability. However, although the lattice model has advantages compared to other option valuation techniques currently available, we question whether the Board should provide specific valuation guidance in this proposed Statement.

Issue 4(c): Do you believe that the Board should require a specific method of estimating expected volatility?

We do not believe that the Board should mandate a specific method of estimating expected volatility.

Issue 4(d): Do you agree that using expected term and recognition tied to vesting give appropriate recognition to the unique characteristics of employee share options?

We agree that the characteristics of employee share options identified by the Board may affect the determination of fair value. However, we continue to believe that the unique characteristics of many financial instruments, not just share-based options, give rise to several considerations necessary to determine fair value. We believe that it is impracticable for the Board to prescribe the consideration requirements for all financial instruments and, thus, prefer that the Board move away from this approach in the proposed Statement.

Issue 5: Do you agree that the intrinsic value method with remeasurement through the settlement date is the appropriate alternative accounting treatment when it is not possible to reasonably estimate the fair value?

We believe that it should be rare for a reporting company to be unable to reasonably estimate the fair value of share options or other equity instruments at the grant date. We believe an inexact estimate is preferable to the intrinsic method. Therefore, we do not support this form of alternative accounting treatment.

Issue 6: Do you agree with the principle that an employee stock purchase plan transaction is not compensatory if the employee is entitled to purchase shares on terms that are not more favorable than those available to all holders of the same class of the shares?

We agree with the principle that an employee stock purchase plan transaction is not significantly compensatory if the employee is entitled to purchase shares on terms that are not more favorable than those available to all holders of the same class of the shares.

Issue 7: Do you believe that the requisite service period is the appropriate basis for attribution?

We agree with the Board's conclusion that compensation expense should be recognized over the service period; however, we disagree with the Board's conclusion that the "service inception date" can occur prior to the grant date. We believe that it is inappropriate to begin a compensation accrual related to share based payments if the required authorizations and approvals, and therefore the associated legal obligation, have not occurred.

Issue 8: Do you believe that the guidance pertaining to the requisite service period is sufficient?

We believe that the guidance pertaining to requisite service period is sufficient.

Issue 9: Do you agree that graded vesting schedules are in substance separate awards?

We agree that graded vesting schedules are in substance separate awards.

Issue 10: Do you believe the principles for modification and settlements, including cancellation of awards of equity instruments, are appropriate?

We believe that Type III modifications should not result in reporting total compensation expense less than the amount determined at the grant date of the initial grant. We believe that this approach undermines a basic tenant of the proposed Statement that share-based payments in equity instruments are measured at the grant date and with recognition through the requisite service period. The proposed Statement's approach to Type III modifications effectively provides for an alternative measurement method for certain stock-based payments.

Issue 11: Do you agree with the method of accounting for income taxes established by this proposed Statement?

We question the Board's conclusion that the tax effects of equity instruments awarded to employees is best viewed as the result of two transactions. We believe that there is one transaction, the initial grant of options, which is determined to have a compensation component that is inextricably linked to the issuer's equity. A temporary difference (as defined by Statement 109), and therefore a deferred tax asset, does not exist until the option has intrinsic value. We believe that the Board should reconsider the income tax effects of equity instruments awarded to employees in favor of the IASB approach in IFRS 2.

We believe that footnote 29 in Appendix B is inconsistent with the treatment of operating loss carryforwards under Statement 109. Footnote 29 should be modified to apply the same limiting criteria as would require establishment of a valuation allowance relating to deferred tax assets associated with future benefits of existing operating loss carryforwards.

Issue 12: Do you believe that the disclosure objectives set forth in this proposed Statement are appropriate and complete?

We agree that the disclosure objectives set forth in this proposed Statement are appropriate and complete.

Issue 13: Do you agree with the transition provision of this proposed Statement?

We agree that based on the level of publicity and attention this topic has received that the transition provisions of the proposed Statement are reasonable. However, in principle, we do not support such expedited transition provisions for standards that are significantly complex in nature and require a significant amount of due process. We would rather see transition provisions that provide reporting companies with adequate time to fully understand and implement new standards.

Issue 14(a) Do you agree with the Board's conclusion to allow an intrinsic value method for nonpublic entities?

We believe the Board should reconsider the alternative provided to nonpublic companies to utilize the intrinsic method of accounting for stock based compensation rather than a fair value approach. We believe that this alternative for nonpublic companies diminishes the comparability of financial statements across companies and is inconsistent with the measurement attribute deemed most appropriate.

Issue 14(b): Do you believe the decisions related to the adoption by nonpublic companies are appropriate?

We are not opposed to the extension of the effective date of this proposed Statement for nonpublic companies.

Issue 15: Do you believe that some or all of the alternatives provided to nonpublic entities should be extended to small business issuers?

We do not believe that measurement alternatives should be provided to nonpublic companies or small business issuers for the reasons cited in Issue 14(a) above.

Issue 16: Do you agree with reflecting those excess tax benefits as financing cash inflows?

We disagree with the Board's conclusion to amend Statement 95. We believe it is inappropriate to identify one of the many types of tax effects that relate to non-operating activities, and to require its effect on taxation to be treated as though it were a cash flow, and outside of cash flows from operations. We believe that the decision reflected in Statement 95 to reflect all tax effects in operations recognized the complex interrelationships among numerous factors contributing to taxation. The effect in question is not significantly different from many other factors.

Issue 17: If you prefer the accounting treatment accorded by IFRS 2, please identify the difference and provide the basis for your preference. If you prefer the accounting treatment in the proposed Statement, do you believe the Board nonetheless should consider adopting the accounting treatment prescribed in IFRS 2 in the interest of achieving convergence?

We support the Board's effort to work with the IASB and, when possible, to converge international and U.S. accounting standards. We also favor the IASB's position on matters related to (a) options granted by a nonpublic entity, (b) accounting for Type III modifications, (c) effects of a liability to equity modification and (d) accounting for the income tax effects of an award of equity instrument.

Options Granted by a Nonpublic Entity

We support the IASB's approach to options granted by a nonpublic entity.

Accounting for Type III Modifications

Please see response to Issue 10 above.

Effects of a Liability to Equity Modification

We support the IASB's recognition approach for stock-based payment modifications from equity to liability through the income statement. We agree with the Board's conclusion that compensation expense for equity awards should not be less than the fair value determined at grant date; however, the modification from equity to liability determines a different measurement basis (i.e. remeasurement). We believe that an approach that provides for remeasurement through earnings subsequent to the equity to liability modification is more appropriate and encourage the Board to reconsider this position.

Accounting for the Income Tax Effects of an Award of Equity Instrument

We support the IASB's approach to the accounting for income tax effects of an award of equity instrument for the reasons cited above.

Issue 18: Do you believe that this proposed Statement, taken as a whole, achieves the objective of understandability?

We believe that this proposed Statement, taken as a whole, is an improvement in financial reporting. This proposed Statement should provide reasonable measurement comparability across reporting entities and improve the relevance of information provided to the user community. We believe that, in general, the proposed Statement achieves the objective of understandability to the user community. However, we believe the proposed detailed measurement guidance is excessive.