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Letter of Comment No: 5687  
File Reference: 1102-100

**From:** Judee Wheeler [jwheeler@nuvasive.com]  
**Sent:** Tuesday, June 29, 2004 6:39 PM  
**To:** Director - FASB  
**Subject:** Ref: File No. 1102-100

To: Director of FASB

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Dear Sir or Madam,

My Company and I are strongly opposed to the proposed changes in the expensing of stock options. As the primary fact, we do not believe that options are truly an expense that can be valued at the time they are awarded. There are prevailing accounting arguments in favor of this, as you are very well aware.

Perhaps more to the point, I believe if your proposed change were in place just a few years ago our company would not have successfully recruited the talented individuals who met the milestones leading to our IPO this past May 13. NuVasive, a rapidly growing spine company that is reducing surgery time and rehabilitation time while saving money would not exist.

Moreover, any changes in options expensing in the future would likely have very negative consequences on our earnings creating a tremendous problem in meeting financial expectations. As you know, missing numbers has serious ramifications along with a lowered stock price - namely, a negative impact on our market capitalization which could otherwise, for example, have allowed us to do a strategic deal in exchange for stock, as well as of course, not being able to adequately provide our employees with options as an incentive. It could also lead to a hostile acquisition of our company at a price that is far less than desirable.

Every employee in our company is given stock options. In fact we use the term shareowner vs. employee at NuVasive because of how important equity mind share is to building a company. Obviously, if we cant afford to give out an adequate number of options for fear of missing our numbers, our short and long term retention and recruiting prospects would be dismal indeed. This would in effect be a slow starvation process for the talent outlook for our company.

We implore you to reconsider your initiative. Please do not destroy our ability to attract and retain top talent, nor our chances to compete effectively in our market, nor greatly compound our challenges in meeting our financial milestones.

Sincerely,

*Judee Wheeler*  
*Executive Assistant*  
*Marketing*  
*858-527-1972*

6/30/2004