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From: Sent: Rogan Fry [RFry@nuvasive.com] Tuesday, June 29, 2004 1:54 PM Letter of Comment No: 5674

File Reference: 1102-100

To: Subject: Director - FASB FASB - Options

Importance:

High

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> To: Director of FASB
> Ref: File No.1102-100
> 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,
Rogan Fry
Senior Vice President for Corporate Development
NuVasive, Inc.
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