Invitrogen™
life technologies

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By email: director@fasb.org

Letter of Comment No: 5548
File Reference: 1102-100

Financial Accounting Standards Board
Director of Major Projects
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: File Reference No. 1102-100
Share-Based Payment, an amendment of FASB Statements No. 123 and 95

Dear Sirs & Madams:

I appreciate this opportunity to share the views of Invitrogen Corporation on Proposed Statement of Financial Accounting Standards, Share-Based Payment.

Invitrogen Corporation is the leading supplier of tools, technologies, and services for life science research. Invitrogen's 10,000+ products are currently used in thousands of research organizations in more than 70 countries. Our research and development efforts are focused on breakthrough innovation in all major areas of biological discovery including functional genomics, proteomics, bioinformatics and cell biology. Our quest is to improve the human condition through improvements in science and technology that enhance biological understanding.

In 1999, Invitrogen had fewer than 400 employees and sales of $35 million. Today we have nearly 4000 employees and annual sales of over $1 billion. We have a very broad-based stock option plan with more than 60 percent of our employees possessing company stock options. We also provide an Employee Stock Purchase Plan in which more than 1400 US-based employees participate. These tools allow us to give rank and file employees the pride and satisfaction of ownership, and the possibility of meaningful wealth creation. Our experience supports the numerous studies that show that stock options and stock ownership increase employee satisfaction.

Invitrogen has serious concerns about the mandatory expensing of employee stock options outlined in the Exposure Draft. I will outline our four major concerns below. Overall, we believe the benefits of the pending proposal are not sufficient to warrant the costs and risks of implementing it. The sharing of company ownership through the provision of stock options to employees at all levels has been one of the major developments in US industry in the last two decades, and a key factor in the growth of the US technology and biotechnology industries. We believe the FASB Share-Based Payment proposal will greatly restrict the granting of stock options to non-executive employees – to their detriment, the detriment of their companies, and the detriment of the US economy.

Employee stock options do not represent an expense

We do not believe that an employee stock option meets the definition of an expense. Stock options do not represent outflows or other using up of assets or the incurring of liabilities. In fact, the exercise of a stock option represents an increase to assets by the amount of cash paid by the employee to exercise the stock option. The potential dilution that may occur with respect to employee stock options is currently reflected in the diluted earnings per share calculation. The inclusion of a cost for employee stock options in the statement of operations will result in an inaccurate "double charge" in the financial statements.

The proposed valuation models are unrealistic and untested

The proposed "fair value" models proposed in the ED are untested. Both the Black-Scholes and binomial models use assumptions that bear no resemblance to real world employee stock option plans. As you may know, Mark Rubinstein, the UC Berkeley Haas School of Business finance professor who helped develop the fair value method said at the recent FASB Palo Alto public meeting, "I was one of the inventors of the (board-proposed) model, and I say: Don't use it. It doesn't work."

Even those who disagree about option expensing agree that the current proposed models will not add clarity or realism to financial statements. Organizations representing tens of thousands of American companies and employees, including the Business Roundtable, the Chamber of Commerce, the National Association of Manufacturers, and the Biotechnology Industry Organization have all recommended field-testing the proposed models before requiring their use, and we support that suggestion. We believe that the proposed models will result in an unnecessary and unfounded accounting bias against stock options, with the unfortunate result that broad based stock option plans benefiting large numbers of workers will be scaled back or terminated.

The models are untested, and unrealistic, but they are also complex. As such, they create particular challenges for small firms. Invitrogen has acquired all or substantially all of seven companies in the last twelve months, six of them private companies, and five with fewer than 40 employees. The majority of these companies had existing stock option plans at the time of the acquisition. As a result, employees at all levels benefited from the company's success and sale. It's been estimated that complying with the FASB ED will cost companies without big finance staffs (ie, most small companies) $100,000 in outside accounting services – plus the reduction in earnings or increase in loss that results from expensing. The proposed models create big headaches for small firms and will result in fewer employees getting stock options and the ownership stake they represent.

The proposed valuation models penalize high growth business sectors

The adoption of the proposed models, given their emphasis on stock price volatility as an input, would make the cost of stock option plans in high tech and biotech companies significantly more expensive than in other industries. An Ernst & Young 2003 survey indicated that the average volatility assumption for a sample of 25 public biotechnology companies was **59%,** vs. an average volatility assumption of approximately **36%** of 100 public companies across a variety of industries.

Because of the higher stock price volatility in our industry and the more extensive use of broad-based employee stock compensation programs, the impact of the adoption of the Exposure Draft will be much more significant for biotech than for many other industries. For example, the average percentage change of the Statement 123 pro forma net income (loss), as compared to the net income (loss), of the same sample of 25 public biotechnology companies was a 21% decrease in net income or 30% increase in net loss, as compared to an average decrease in net income of 11% from a survey of 100 public companies from a variety of other industries. Furthermore, the impact of the pro forma charges to an individual company can be even more significant. For example, the pro forma increase in the 2003 net loss for Gilead Sciences, Inc. was 84%.

Our own preliminary estimates show that expensing of stock options would cost Invitrogen tens of million of dollars annually in company earnings.

Mandatory expensing of employee stock options will decrease the reliability and comparability of financial statements

We believe that the mandatory expensing of stock options will decrease the reliability and comparability of financial statements for companies in our industry.

While it may be useful to disclose a hypothetical stock option charge in the footnotes to the financial statements, the inclusion of employee stock option expense in the statement of operations will result in less clarity, consistency and reliability of the financial statements. The sensitivity of the option pricing models to significant estimates and judgments would permit two similar companies to have significant differences in the reported expenses. Because of the magnitude of this charge to our industry, we believe that differences in judgment are certain to adversely impact comparability and reliability.

Benefits do not justify costs

I strongly urge you to reconsider the Exposure Draft, and especially its valuation models. The proposal will result in greater expenses for small and large companies, reduced corporate earnings, no additional clarity for investors, and a considerable reduction in the number of rank and file employees who become company shareowners. Equity ownership has fueled the growth of small business, spurred innovation, and contributed to the competitiveness of US businesses and strength of the economy in general. I urge to reconsider the current proposal so as not to undermine these important benefits of stock options.

If you have any questions regarding this letter, feel free to contact me at any time.

Sincerely,

Gregory T. Lucier
Chairman and CEO

GTL / sdr