Karen Salmansohn

From: Director - FASB
Sent: Saturday, Febru
To: Karen Salmansc
Subject: FW: File referen Based Compens ›unting for Stock-

Letter of Comment No: 195
File Reference: 1102-001
Date Received: 2-4-03

-----Original Message-----
From: blopez@bankunitedfla.com [mailto:blopez@bankunitedfla.com]
Sent: Saturday, February 01, 2003 12:40 AM
To: Director - FASB
Cc: RDiaz@bankunitedfla.com; bwong@clplaw.net
Subject: File reference number 1102-001 Response to invitation for comment on Accounting for Stock-Based Compensation

Dear Sir or Madam:

BankUnited Financial Corporation appreciates the opportunity to submit its comment concerning Accounting for Stock-Based Compensation.

BankUnited does not agree with the expensing of stock options. We believe that expensing stock options does not follow the accounting framework for transparent, consistent and relevant reporting in the income statement.

Stock options given to employees are diversely different from stock options that are traded in the market place. By their very nature these options are not tradable. Employee received stock options for the most part do not have a readily available market value, they are normally not transferable (except in certain limited occasions), and have contractual or regulatory limits on exercising during blackout periods due to insider trading situations. Also one must recognize that the exercising of the option is not an event that has an income statement impact, but rather is reflected directly in the equity section.

Any argument made to expense these options will have the effect of creating additional dilution to the earnings per share (EPS) as the options which are "in the money" are presently included in the share calculation for EPS. Increasing the expense and at the same time including the dilutive options will result in an EPS amount which undervalues the performance of the company during that period. This goes not only against transparency but will allow companies to use options to manage their EPS figures through the issuance, or lack of issuance, of stock options. Currently the market price is the measuring factor in determining if stock options are dilutive and must be included in the EPS calculation. There is no direct management co ntrol over stock price as there may be over the issuance and subsequent valuation of stock options.

For those users of the financial statements which may consider the expensing of stock options to be an important investment criteria, the current language of FAS 123 requires that disclosure be made in a pro-forma format of the results expensing stock options would have had on the net income and EPS of the company. The current FAS suffices to give the information these readers feel is important while maintaining the accounting principles of transparency in the income statement.

Notwithstanding the discussions above, if FASB goes forward with the intent to expense options, then a careful analysis and development of true employee stock option models needs to be constructed. We believe the models currently used to calculate the market value of employee stock options fall short of providing any rational value for these options. Models such as Black-Scholes, GARCH, and others recognize the expansiveness of a freely traded option in the market and thus are not able to capture the limitations and blackout periods created during normal operations of companies. Accordingly, we do not believe that the use of a specific option pricing model should be mandated and corporations should be allowed to use ot her valuation techniques such as estimates provided by investment banking firms.

In conclusion, until models with greater accuracy are developed and widely available BankUnited believes that requiring direct charges to the income statement will serve no benefit to the investor above the current footnote disclosure of FAS 123.

Sincerely,

Bert Lopez
Chief Financial Officer
BankUnited Financial Corporation

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