Letter of Comment No: 88 File Reference: 1101-SCU Date Received: 04/10/03

Stacey Sutay

Subject: FW: Revision of FASB Statement 123

----Original Message----

From: Calvin Johnson [mailto:chjohnson@mail.law.utexas.edu]

Sent: Thursday, April 10, 2003 7:54 PM

To: Robert Herz

Subject: Revision of FASB Statement 123

Sir

By Press Release of March 12, 2003 you announced FASB's intent to revisit Statement 123, Accounting for Stock Based Compensation, with an Exposure Draft by the end of the year to be effective in 2004. I applaud you.

I urge you to write the ED to conform stock plans to identical compensatory plans (SARs and phantom stock) paid out in cash: Accrue as a cost the bargain available with the option as it arises. If market price drops reverse some of the expense into income because the company's expense in fact has gone down. On payout only the appreciation not previously debited would be recorded.

There is no economic difference between a cash payout and stock payout plan and indeed one would think that we would find plans that allow either stock or cash at the option of either the executive or the corporation. Accruing the bargain will match the earnout to the effect accomplished for the the year, without the artificial capitalization and straight-line amortization that Black-Scholes valuation at grant requires. Accruing the bargain as it arises ends the snivelling about how hard Black-Scholes valuation is to understand, which was such a large part of the stated reason that the 1993 Exposure Draft, No. 127-C, Accounting for Stock-Based Compensation was defeated. Accruing the bargain as it accrues allows FASB standards to apply to thin market stocks that do not generate the volatility measures required for Black Scholes. My "Stealing form the Company with Free Stock Options (Part II), 65 Tax Notes 479 (1994), available by link from by website linked from the signature block below states the argument with more words.

I applaud your effort. Reporting zero cost for an option with no initial spread between FMV and exercise price is not a good faith attempt to assess either value or cost of the option. Top management has been given options under the reporting theory that they are worthless, free and too cheap to meter or account for, when they are in fact worth hundreds of millions of dollars. If the options are free, corporate management does not even have any stewardship or fiduciary responsibilities toward the options because they are not economic resources. That is fraud, or at best, attempted fraud on investors. As you understated in your press release so nicely, the no-cost rule if there is no initial spread on the option needs to be re-evaluated in the light of the "market meltdown and corporate reporting scandals."

I stand ready to help you in any way that I can.

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