

December 19, 2006

Mr. Lawrence W. Smith
Director, TA&I – FSP
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116



LETTER OF COMMENT NO. 9

File Reference No. FSP EITF 03-6-a

Re: Proposed FASB Staff Position No. EITF 03-06-a, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities"

Dear Mr. Smith:

Deloitte & Touche LLP is pleased to comment on proposed FASB Staff Position No. EITF 03-6-a, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities" ("the proposed FSP").

We support the FASB's efforts to provide guidance related to assessing whether an award granted in a share-based payment is a participating security. Further, we agree with the concept in the proposed FSP that an award should be evaluated, based on its rights to receive dividends or *dividend equivalents*, to determine whether an award contains participation rights. We also agree that in situations in which an award contains participation rights, the award should be included in the computation of earnings per share (EPS). Accordingly, we support the issuance of the proposed FSP as a final standard. However, we believe a simpler approach would be include these pre-vested instruments in the scope of EITF Issue No. 03-6, "Participating Securities and the Two-Class Method Under FASB Statement No. 128," rather than provide a separate, but similar, model in an FSP. Additionally, we believe that the following aspects of the proposed FSP would benefit from further clarification.

Determination of a Participating Security

If the Board concludes that providing a new model is a more desirable approach than simply including such transaction in the scope of Issue 03-6, we believe the determination of whether an award is participating (or contains participation rights) should be based on the definition of a participating security in Issue 03-6. That is, the language in the proposed FSP should mirror the language that Issue. For example, the first sentence of paragraph 5 of the proposed FSP contemplates that rights to dividends and dividend equivalents result in participation rights, while the remainder of the paragraph discusses dividends as "cash" payments.

Further, the proposed FSP indicates that rights in an award that provide a noncontingent transfer of value are participation rights, and thus, under the two-class method, awards containing such rights should be included in the computation of EPS. Again, Issue 03-6 bases the determination of whether a security is participating on whether the security conveys the right to "participate in undistributed earnings with common stock." We believe that the statement in paragraph 6 of the

proposed FSP, which indicates that awards in which the undistributed earnings are given through the reduction of the exercise price are not considered participating because “the transfer of value to the holder of the award is contingent upon the exercise of the award,” is inconsistent with the conclusions reached in FASB Statement No. 123(R), *Share-Based Payments* (Statement 123(R)). That is, options convey value to the holder regardless of whether the value is realized by a subsequent exercise. Likewise, the reduction of the exercise price or increase in shares to reflect an adjustment for dividends conveys value on a noncontingent basis regardless of whether such value is realized through exercise. We agree that such rights should not result in a conclusion that an award contains participating rights. However, we believe that the basis for such a conclusion should be based upon the notion that dividends or dividend equivalents transferred in the form of a reduction of the exercise price of an option do not represent a right to participate in **undistributed earnings** (as concluded in Issue 03-6).

Other Issues

The guidance in the proposed FSP should be expanded to fully address forfeitable or contingently returnable dividends. Based on the proposed FSP, awards with forfeitable or contingent dividends would not be classified as participating securities. Therefore, dividends on such awards would never result in a reduction of income available to common shareholders. However, the FSP does not address whether there is an EPS impact when the dividends subsequently become nonforfeitable or noncontingent. One potential approach to address this issue would be to account for such awards as participating securities, which means that net income available to common shareholders would be reduced in the period the dividends are declared. If the dividends are subsequently forfeited or returned, the dividends would be added back to income available to common shareholders in the period of forfeitures or returns.

Paragraph 7 of the proposed FSP appropriately excludes from the earnings allocation process dividends that are paid and are accounted for as compensation cost under Statement 123(R) because the share-based payment awards are not expected to vest. However, following the model in Statement 123(R), such amounts are subsequently reclassified as dividends if in a later period it becomes probable that the underlying award will vest. We believe the proposed FSP should also illustrate how subsequent changes in estimated and actual forfeitures would impact the EPS calculation under the two-class method. For example, if an entity’s estimate of forfeitures changes as a result of the actual forfeiture experience, causing a credit to compensation expense (i.e., more share-based payments awards vest than estimated), is the adjustment to compensation expense also excluded from the earnings allocation of computing basic EPS?

We appreciate the opportunity to comment on the proposed FSP. If you have any questions concerning our comments, please contact Jim Kroeker at (203) 761-3726.

Yours truly,

Deloitte & Touche LLP

cc: Rich Starzecki