Letter of Comment No: File Reference: 1203-UTU

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November 5, 2004

Mr. Donald B. Thomas Project Manager Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: Classification of Liabilities Related to Uncertain Tax Positions

Dear Donald,

We are writing to urge the Board to revisit the decision reached in the July 27, 2004 Board meeting regarding the current classification of liabilities related to uncertain tax positions. Reconsideration should be given because the decision was based, in part, on hypothetical scenarios that are not reflective of the tax dispute resolution process. As a result, we believe that the financial statements reflecting these liabilities as current would not be representationally faithful and could be misleading.

In the case of many multinational companies with valuable trademarks, tax-filing positions are based on transfer pricing economist reports that involve valuations for royalties and expense allocations. As any homeowner knows, valuation is an art not a science with no "right" answer. As a result, returns are filed with legitimate but challengable positions for these permanent items. If we can not conclude that it is probable that we will prevail, we reflect higher tax expense and a liability for probable disallowance in our financial statements.

The classification of this liability is based on the expected timing of the audit by the tax authorities and, if appropriate, the expected timing of the judicial appeal process. This process typically involves five or more years of negotiation. For example, our MD&A critical accounting policy disclosure on income taxes indicates that the settlement with the IRS at the end of 2003 was for open tax years through 1997. In fact, the statute of limitations (SOL) is three years for federal income tax returns and most large corporate taxpayers file extensions of the SOLs. We know of no corporate taxpayer with experience that is different. Classifying liabilities subject to this long-term negotiation process as current leads financial statement users to conclude that there is a current call on cash. Such a conclusion is misleading. The measurement and classification of these liabilities is reviewed quarterly and adjusted, if necessary, in light of changing facts and circumstances, including the status of negotiations with tax authorities and progress of a tax audit.

In addition, we believe that some of the arguments in favor of the decision made on July 27 regarding current classification are flawed and the Board should consider the following:

- Most calendar year corporations file their federal returns in September of the following year.
- Even if one were to consider the highly improbable unlimited supply of revenue agents, a taxpayer with a legitimate position can always appeal an agent's determination through the judicial process. The judicial process is generally not short term in nature.
- There are many examples of liabilities arising out of the current business cycle which could be argued are "due" if demanded but are not classified as current. Pension liabilities for retirement eligible employees readily come to mind, as well as, deferred compensation liabilities and warranty reserves covering periods beyond one year. Exclusive consideration of an analogy to accounts payable customarily paid within 30 days is not appropriate.

Finally, with current classification of these liabilities, there is a greater likelihood of separate disclosure in the financial statements that would not be helpful to a taxpayer's negotiating position. The minutes did not reflect any consideration by the Board of this obvious concern.

We ask that the Board reevaluate the decision reached on classification of liabilities related to uncertain tax positions considering the above concerns. We believe that investors and other users of financial statements are best served if the definition of current reflects liabilities or assets that an entity expects to convert into cash within the following business cycle. We further believe that classification should be based on the taxpayer's judgment as to the timing of payment. Such classification combined with disclosure of the nature of such liabilities and the financial statement impact upon ultimate settlement provides representationally faithful financial statements.

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that you may have. Please do not hesitate to contact Nancy at (914) 253-3756 or Peter at (914) 253-3406.

Sincerely,

Nancy Schroeder

Director, External Reporting and Technical Accounting

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