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LETTER OF COMMENT NO. 6

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Proposed FSP EITF 00-19-b, "Accounting for Registration Payment Arrangements"

We appreciate the opportunity to comment on proposed FASB Staff Position EITF 00-19-b, "Accounting for Registration Payment Arrangements." We support the Board's decision to address this issue for which there is currently diversity in practice that is resulting in widely divergent accounting results. We agree with the Board's decision to require separate accounting for the registration payment arrangement. We do not, however, support its decision to require use of Statement 5, *Accounting for Contingencies*, for the recognition and measurement of the arrangement.

Separate accounting and form of consideration

We support the Board's decision to require that a registration payment arrangement be accounted for separately from the financial instrument to which it relates, regardless of whether the arrangement is included in the financial instrument agreement or in a separate agreement. That decision avoids adding a layer of complexity to the already complex accounting applicable to many financial instruments.

We agree that the form of consideration, for example, equity shares or cash, should not affect the accounting for registration payment agreements. In addition, we concur that the contingent obligation to transfer assets under registration payment agreements meets the definition of a liability in Concepts Statement 6, *Elements of Financial Statements*.

Recognition and measurement

In our view, Statement 5 does not provide investors with the most relevant recognition and measurement information for registration payment arrangements. Under Statement 5, an entity would provide no financial statement recognition of a registration payment agreement until it is probable—that is, likely—that payment will be required under the arrangement and the amount is reasonably estimable. We believe the entity incurred a liability when entering into an arrangement to stand ready to use its assets if it is unable to obtain and maintain a registration statement for its shares. Further, the most relevant measure of that liability to investors is its fair value. We do not find the application of Statement 5 to registration payment arrangements conceptually consistent with the valuation concepts and accounting principles in other

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pronouncements issued by the FASB in recent years. As the FASB recently said in Statement 157, *Fair Value Measurements*, “[i]n many accounting pronouncements, the Board has concluded that fair value information is relevant, and users of financial statements generally have agreed.” Paragraph B7 of the proposed FSP states that some Board members have concerns about the relevance and reliability of using a fair value measurement because similar arrangements are not currently entered into on a standalone basis. However, Statement 157 does not limit the application of fair value to Level 1 assets and liabilities. Therefore, we do not understand why the existence of a similar arrangement on a standalone basis has any bearing on whether the measurement attribute should be fair value. Entities are required to estimate the fair value of asset retirement obligations, reporting units, and other assets and liabilities whose valuations are more complex and require the use of more assumptions than the valuation of a registration payment agreement, which has to do with the entity’s ability to obtain and maintain an effective share registration. Another reason given in paragraph B7 for not requiring a fair value measurement is that the fair value will be minimal at inception and that the difficulties of determining it outweigh the costs, especially if the likelihood of payment is low and the value is immaterial. We do not understand the cost/benefit argument as accounting standards need not be applied to immaterial items. However, if the obligation is material, we believe recognition should be required and the most relevant measurement is fair value.

Effective date

Although many preparers and their accountants anticipate the issuance of a final FSP that clarifies the accounting for registration payment arrangements as current practice is diverse, we believe a reasonable period of time is needed for promulgation of the guidance in the final FSP. We therefore suggest that the effective dates for new or modified arrangements be deferred until the first fiscal period beginning after the final FSP is issued, with earlier application permitted.

Some entities, particularly those with global operations, may require time to identify financial instruments affected by the final FSP and determine the accounting impact. We therefore suggest that for previously issued financial instruments subject to registration payment arrangements the guidance be effective for financial statements for fiscal years beginning at least six months after the issuance of the final FSP.

Examples

We support the Board’s inclusion of examples illustrating the accounting guidance and the transition provisions. However, we believe the example that is most needed is one that provides the transition for a convertible debt instrument that has a beneficial conversion feature at inception and a bifurcated conversion option that will not require bifurcation on application of the FSP (that is, the Example 9 situation with a beneficial conversion feature).

Other EITF Issue 00-19 practice issues

As noted above, we commend the Board for addressing the practice issue related to registration payment arrangements. There are, however, other practice issues related to EITF Issue 00-19. Because phase 2 of Statement 150 will be only in the Preliminary Views stage next year, we encourage the Board to undertake a comprehensive reconsideration of the guidance in EITF Issue 00-19 to resolve other practice issues that are having significant impacts on accounting for financial instruments or are inappropriately influencing the structure of financial instruments.

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We would be pleased to discuss our comments and recommendations with Board members or the staff. Please direct your questions or comments to Joseph Graziano at (732) 516-5560 or Mark Scoles at (312) 602-8780.

Very truly yours,

/s/ Grant Thornton LLP