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Technical Director Financial Accounting Standards Board 401 Merritt 7 Norwalk, CT 06856-5116

Proposed FSP EITF 03-6-a—Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities

Dear Sir/Madam:

JPMorgan Chase ("JPMorgan Chase" or the "Firm") appreciates the opportunity to comment on the Proposed FASB Staff Position No. EITF 03-6-a, Determining Whether Instruments Granted in Share-Based Payment Transactions are Participating Securities" (the "Proposed FSP"). As further discussed below, JPMorgan Chase does not support the issuance of this Proposed FSP for both conceptual and practical reasons. In theory, JPMorgan Chase does not believe it is clear that unvested share-based payment awards are participating securities. From a practical perspective, it is not clear why the Board is addressing the EPS issues on its agenda on a piecemeal basis — particularly since the result may be to require multiple restatements of an entity's reported earnings per share, potentially within a relatively short period of time. The Firm believes that a better approach would be for the Board to address its EPS issues comprehensively in connection with the Earnings Per Share project that is currently on its agenda. The Firm's specific comments on the Proposed FSP are discussed in more detail below.

UNVESTED SHARE-BASED PAYMENT AWARDS ARE NOT PARTICIPATING SECURITIES

EITF Issue No. 04-12, Determining Whether Equity-Based Compensation Awards Are Participating Securities (EITF 04-12), addressed whether unvested instruments that provide the right to participate in dividends or dividend equivalents with common stock of the issuer are participating securities if the right is nonforfeitable or contingent only on employee on employee service and the passage of time. The Issue Summary underlying EITF 04-12 presented five different views on this particular issue and the EITF was ultimately unable to reach a consensus.

Existing accounting standards for participating securities were essentially carried forward without revision from the now superseded APB Opinion No. 15, *Earnings per Share* (APB 15) into SFAS No. 128, *Earnings per Share* (SFAS 128), which suggests that the Board generally agreed with that guidance. However, there is one particular passage within APB 15 that was not incorporated into SFAS 128, which the Firm believes is relevant to this particular issue. The final paragraph of the APB 15 discussion of participating securities and the two-class method states in part, "Dividend participation does not PER SE make a security a common stock equivalent. A determination of the status of one of these securities should be based on an analysis of all the characteristics of the security, including the ability to share in the earnings potential of the issuing corporation on substantially the same basis as the common stock." JPMorgan Chase agrees with this idea and believes it is important to thoroughly analyze all the characteristics of instruments before concluding that they are participating securities. It clearly appears that the EITF was attempting to do that in EITF 04-12, as evidenced by the fact that numerous alternatives were presented and debated.

The Proposed FSP seems to set forth two factors in support of the conclusion that unvested share-based payment awards are participating securities—the dividend participation rights and a noncontingent transfer of value. However, the Firm believes that the vesting requirement itself represents a contingency and, therefore, the rights to dividends or dividend equivalents would not constitute a "noncontingent transfer of value" under the Proposed FSP. If there is no noncontingent transfer of value, only the dividend participation right remains. Based on the idea that the existence of dividend participation rights do not provide prima facie evidence that an instrument is a participating security, JPMorgan Chase does not believe that these awards should be considered participating securities and included in the computation of basic EPS under the two-class method.

Overall, and to a large extent based upon the guidance and deliberations that have preceded the Proposed FSP, the Firm believes that the Proposed FSP neither acknowledges nor appropriately addresses this issue's complexities and nuances. Considering both the arguably contingent nature of unvested share-based payment awards and the idea that dividend participation per se may not lead to the conclusion that an instrument is a participating security, the basis for the conclusion that these awards are participating securities is unclear.

PIECEMEAL APPROACH TO ADDRESSING EPS ISSUES

Besides the Proposed FSP, the Firm understands that the Board is drafting a second FSP that will provide computational guidance for the two-class method of reporting EPS. In addition to both of these FSPs, the Board is also reconsidering certain provisions of SFAS 128 in connection with a short-term convergence project. According to the FASB website, an Exposure Draft of a Proposed Statement of Accounting Standards, *Earnings Per Share – an amendment of FASB Statement No. 128* (SFAS 128R), is scheduled to be issued in the first quarter of 2007. The Firm believes that it is difficult, and potentially ineffective, to address conceptual issues related to participating securities separately from the related computational issues. Similarly, it may be difficult to address both of these issues outside of the overall framework of SFAS 128. In order to increase both the effectiveness and the efficiency of the standards-setting process surrounding these issues, the Firm believes that both the Proposed FSP and the second planned FSP should be incorporated into the existing SFAS 128R project. Addressing these issues within the context of SFAS 128 would also give the Board the opportunity to more clearly articulate the basis for all of its resulting conclusions.

From a preparer's point of view, JPMorgan Chase is also concerned that both the Proposed FSP and SFAS 128R, when issued, would require retrospective restatements of EPS. Therefore, another benefit of combining these three separate projects would be to minimize the operational burden of potentially performing multiple restatements. The Firm also believes that multiple restatements may be confusing to financial statement users – particularly when the same data elements could be restated more than once within a short time period.

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JPMorgan Chase appreciates the opportunity to comment on this Proposed FSP and urges the Board to incorporate the issue addressed therein, as well as any issues that will be presented in the forthcoming FSP on SFAS 128, in its ongoing redeliberation of SFAS 128.

If you have any questions or would like to discuss our comments further, please do not hesitate to contact me at 212-270-7559 or Shannon Warren at 212-648-0906.