June 5, 2017

Susan M. Cosper, CPA  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

Re: FASB Proposed Accounting Standards Update, Compensation - Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting (File Reference No. 2017-220)

CFGI, LLC is a unique and highly specialized financial consulting firm that supports companies through a range of complex business scenarios. CFGI works alongside a client’s internal staff to serve a variety of roles – from technical accounting advisor and M&A support to interim Controller and CFO – and delivering valuation and other support services. CFGI provides these services to a wide array of companies from minimally staffed early-stage entities to Fortune 500 companies. Our responses within this comment letter reflect our experience and observations that comes from working with 100s of Companies, both private and public, over a period of seventeen years.

We appreciate the opportunity to comment on the FASB’s Exposure Draft of a Proposed Statement of Financial Accounting Standards, Compensation – Stock Compensation (the “Update”). We agree with the Board’s decision to continue its simplification initiative to reduce cost and complexity while maintaining or improving the usefulness of information to users of the financial statements. We have reviewed the Update and believe that it will achieve those goals relative to the accounting for certain share-based payment transactions with nonemployees.

Question 1: Do you agree that the amendments in this proposed Update would result in a reduction (or potential reduction) of cost and complexity while maintaining or improving the usefulness of information provided to users of financial statements? If not, why?

We agree that the amendments in this proposed Update would result in a reduction of cost and complexity while maintaining or improving the usefulness of information provided to users of financial statements. Among other things, use of the grant date as the measurement date for equity-classified nonemployee awards would reduce the cost and complexity associated with the assessment of the performance commitment date required under current GAAP. Further, the proposed elimination of the requirement to reassess the classification of equity-classified awards once the good has been delivered or the service has been rendered, would reduce the cost and complexity of accounting for such awards, while limiting the potential reclassifications to situations in which the terms of the award have been modified. Finally, use of the grant date as the measurement date would improve the usefulness of the financial statements as it would
align the economics of the transaction with similar transactions settled with cash (e.g. pricing of a cash transaction would be negotiated at inception).

**Question 2:** Should entities be required to measure nonemployee share-based payment transactions by estimating the fair value of the equity instruments they are obligated to issue? If not, why should there be a difference in the measurement objective for employee awards and nonemployee awards, and are there other alternatives that are more appropriate?

No, we do not believe entities should be required to measure nonemployee share-based payment transactions by the fair value of the equity instruments they are obligated to issue. Under current GAAP, nonemployee share-based payments are measured at the fair value of the consideration received or the fair value of the equity instruments issued, whichever can be more reliably measured. We believe the fair value of the equity instruments issued is generally more reliably measured and this would (1) align the measurement objective for employee awards and nonemployee awards; and (2) eliminate potential disparity in treatment of similar awards due to the subjective determination or whether the fair value of the award or the consideration received is more reliably measurable. However, we acknowledge that there may be facts and circumstances where the consideration received is more reliably measured and not allowing that measurement to be utilized as the fair value of the transaction would add additional cost and complexity. We propose maintaining the provision to measure the transaction at the more readily determinable fair value.

**Question 3:** Should the measurement date for equity-classified nonemployee awards be the grant date? If not, why should there be a difference in the measurement date for employee and nonemployee share-based payment awards, and what other alternatives are more appropriate?

Yes, the measurement date for equity-classified nonemployee awards should be the grant date. Use of the grant date as the measurement date would reduce the complexity and potential disparity in practice related to the assessment of the timing of the performance commitment date required under current GAAP. Further, as the timing of expense recognition for nonemployee share-based payments is intended to mirror that of cash-based transactions, it makes sense to measure the cost at the same point (i.e. the grant date). Further, we agree with the observations noted in BC10 regarding the notion that the differences between the relationship that employees and nonemployees have with the entity granting the awards may be overstated. Accordingly, using the grant date as the measurement date would further align the treatment of employee awards and nonemployee awards.

**Question 4:** Should entities be required to use the contractual term of share options and similar instruments issued to nonemployees as an input to the measurement of those share-based payment awards? If not, what other alternatives are more appropriate?
No, we do not believe entities should be required to use the contractual term of share options and similar instruments issued to nonemployees as an input to the measurement of those awards. While awards issued to nonemployees generally do not contain specific terms which prohibit transferability and hedgeability and truncate the contractual term due to post-vesting service termination; if such provisions are present, use of the contractual term would not incorporate the economic impact of these provisions. While the use of the contractual term eliminates the complexity involved with determining the estimated term which is often difficult for nonemployee awards due to limited data and low volume of transactions, we propose instead that the guidance recommend use of the contractual term, unless the term may be adjusted by post-vesting conditions, in which case the expected term should be utilized.

**Question 5:** Should nonemployee share-based payment awards containing performance conditions consider the probability that the performance condition will be met in determining the appropriate period(s) of recognition? If not, why should there be a difference in the accounting for employee and nonemployee share-based payment awards with performance conditions, and what other alternatives are more appropriate?

Yes, nonemployee share-based payment awards containing performance conditions should consider the probability that the performance condition will be met in determining the appropriate period(s) of recognition. This requirement would eliminate current practice that often results in the determination that the lowest aggregate fair value is $0, thereby creating an inconsistency with the treatment had the grantor been required to pay cash for the goods or services instead of paying with or using equity instruments (i.e. recognition of expense when cash outflow was probable). Further, this would align the treatment of employee and nonemployee awards.

**Question 6:** Is the application of the classification guidance in Topic 718 to nonemployee share-based payment awards that have vested and for which the nonemployee is no longer providing goods or services appropriate? If not, why should there be a difference in the postvesting classification assessment for employee and nonemployee share-based payment awards?

Yes, the application of the classification guidance in Topic 718 to nonemployee share-based payment awards that have vested and for which the nonemployee is no longer providing goods or services is appropriate. We agree that employee share-based payment awards and nonemployee share-based payment awards are economically similar, as noted in BC 17, and thus there should be no substantive difference in classification guidance.

**Question 7:** Is the application of forfeiture guidance in Topic 718 to nonemployee share-based payment awards appropriate? If not, why should there be a difference in accounting for forfeitures for employee and nonemployee share-based payment awards?
No, we do not believe that the application of forfeiture guidance in Topic 718 to nonemployee share-based payment awards is appropriate. The forfeiture guidance for awards granted to employees, which allows entities to estimate the number of forfeitures expected to occur, is based on the presumption that historical forfeiture and termination activity of a relatively homogenous population is indicative of future forfeiture activity. It is not likely that entities would have a sufficient volume of historical transactions with nonemployee entities, nor would such entities represent a homogeneous population. Accordingly, we do not believe that the proposed forfeiture guidance of ASC 718-10-35-D(a) is appropriate. Rather, we believe that entities should be required to recognize the effect of forfeitures when they occur, pursuant to the proposed guidance of ASC 718-10-35-D(b). This is consistent with the optional treatment for employee awards pursuant to ASU 2016-09.

Question 8: Is the practical expedient for nonpublic entities to substitute calculated values for expected volatilities when measuring share options and similar instruments issued to nonemployees appropriate? If not, why should there be a difference in the application of practical expedients for employee and nonemployee share-based payment awards?

Yes, we believe the practical expedient for nonpublic entities to substitute calculated value, for example through the use of an appropriate industry sector index, is appropriate and would reduce the cost and complexity in deriving expected volatilities from the historical activity of public peer companies. Further, it is consistent with the policy election available to private companies for employee stock options.

Question 9: Should nonpublic entities be allowed to make a one-time election to switch from measuring liability-classified nonemployee share-based payment awards at fair value to intrinsic value? If not, why should there be a difference in accounting policy elections for employee and nonemployee share-based payment awards?

Yes, nonpublic entities should be allowed to make a one-time election to switch from measuring liability-classified nonemployee share-based payment awards at fair value to intrinsic value. This policy election is already available for employee share-based payment awards, and as employee share-based payment awards and nonemployee share-based payment awards are economically similar, the policy election should be equally applicable. Further, it is consistent with the policy election available to private companies for employee stock options.

Question 10: Are the transition requirements for the proposed amendments appropriate? If not, what transition approach is more appropriate?

No, we believe that requiring an entity to determine the fair value of a nonemployee award based on the original grant date may not be feasible if the information is not available. Creating such a requirement to determine the cumulative-effect adjustment to retained earnings will likely be costly and complex for
entities with many nonemployee awards. We propose allowing entities an alternative to instead elect to
calculate the fair value on the date of adoption, but require that the election be applied to all outstanding
nonemployee awards.

**Question 11:** Should the Board require an entity to adjust the basis of an asset that includes share-based
payment costs when applying the transition requirements? If not, what transition approach is more
appropriate?

No, we believe that an entity should not be required to adjust the basis of an asset that includes share-based
payment costs when applying the transition requirements as doing so may be impractical.

**Question 12:** Should the Board require separate disclosures for nonemployee share-based payment
transactions?

Yes, we believe that separate disclosures for nonemployee share-based payment transactions are
appropriate. Although the proposed Update will further align the treatment of awards issued to employees
and nonemployees, the nature and extent of an entity’s use of each type of award would be useful for users
of the financial statements.

**Question 13:** How much time will be necessary to adopt the proposed amendments? Should the amount
of time needed to apply the proposed amendments by entities other than public entities be different from
the amount of time needed by public entities?

We do not believe a significant amount of time would be needed to adopt the amendments in the proposed
Update. Further, we do not believe that the amount of time needed to apply the amendments in this
proposed Update by entities other than public entities should be different from the amount of time needed
by public entities.

Sincerely,

CFGJ, LLC

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