

MINUTES



To: Board Members
From: Bellantoni (ext. 445)
Subject: Minutes of the September 14, 2005
Board Meeting—Proposed FSP FAS 123(R)-b **Date:** September 21, 2005
cc: Leisenring, Smith, Bielstein, Petrone, Golden, Cassel, Oakley, Sarno,
Tovey, Richards, Wilkins, Bellantoni, Gibbons, Murphy, Gabriele,
Carney, Vernuccio, Polley, Mahoney, FASB Internet

The Board meeting minutes are provided for the information and convenience of constituents who want to follow the Board's deliberations. All of the conclusions reported are tentative and may be changed at future Board meetings. Decisions become final only after a formal written ballot to issue a final Statement or Interpretation.

Topic: Proposed FSP FAS 123(R)-b

Basis for Discussion: Memorandum dated August 26, 2005

Length of Discussion: 1:00 p.m. to 1:45 p.m.

Attendance:

Board members present: FASB: Batavick, Crooch, Herz, Schipper,
Seidman, Trott, and Young

IASB: Leisenring

Board members absent: None

Staff in charge of topic: Oakley

Other staff at Board table: Bellantoni, Golden, and L. Smith

Outside participants: None

Summary of Decisions Reached

The Board discussed issues related to the proposed FASB Staff Position (FSP) FAS 123(R)-b, "Practical Exception to the Application of Grant Date as Defined in Statement 123(R)," that would provide guidance on the application of grant date as defined in FASB Statement No. 123 (revised 2004), *Share-Based Payment*. The Board made the following decisions:

1. Practical guidance should be provided related to the concept of mutual understanding, which is one component of the definition of grant date in Statement 123(R).
2. Assuming all other criteria have been met, a mutual understanding of the key terms and conditions of an award to individual employees should be presumed to exist at the date the award is approved in accordance with the relevant corporate governance requirements (that is, by the Board or management with the relevant authority) if both of the following conditions are met:
 - a. The recipient does not have the ability to negotiate the key terms and conditions of the award with the employer.
 - b. The key terms of the award are expected to be communicated to the recipients within a relatively short time period* from the date of approval.

*A relatively short time period is that period an entity could plausibly complete all actions necessary to communicate the awards to the recipients in accordance with the entity's customary human resource practices.

3. A change in the key terms of an approved award that meet the conditions described above should be accounted for as a modification.
4. The guidance in the FSP should be applied upon initial adoption of Statement 123(R). An entity that adopted Statement 123(R) prior to the issuance of this FSP should apply the guidance in this FSP in the first reporting period beginning after the date the FSP is posted to the FASB website.

Objective of Meeting

The purpose of this meeting was for the Board to consider whether to (a) provide practical guidance related to the application of the definition of grant date in Statement 123(R), (b) if they agreed to provide practical guidance, what form that guidance should take, and (c) the appropriate transition period for the practical guidance.

Matters Discussed and Decisions Reached

Definition of Grant Date

1. Mr. Oakley opened the meeting by introducing the issue. He stated that the definition of “grant date” in Appendix E of FAS 123(R) includes multiple factors that must be satisfied to conclude that a share-based payment award has been granted. One such factor is that an employer and an employee reach a mutual understanding of the key terms and conditions of the award. Though the notion of mutual understanding was included in the definition of grant date in FASB Statement No. 123, *Accounting for Stock-Based Compensation*, most constituents have assumed that the grant date is the date the award is approved in accordance with their corporate governance provisions, so long as the approved grant is communicated to employees within a reasonable period of time from the date of approval. The reasonable period of time interpretation appears to have been created as a practical matter. Preparers often like to communicate the granting of employee awards personally with each of the employees. For many preparers, the size and geographic dispersion of employees receiving options limits their ability to communicate with each of their employees immediately after the award has been approved by the Board. For example, companies with thousands of employees that span multiple foreign jurisdictions may take as long as a few weeks to communicate individual grants to each of their employees.

2. Mr. Oakley then noted that the questions posed to the Board would diverge from the Board handout due to feedback that was recently received from external constituents. He asked the Board if practical guidance should be provided related to the concept of mutual understanding?

3. Mr. Herz asked for the staff's opinion on the matter. Mr. Oakley responded by stating that the staff believes there are practical considerations related to individually communicating the awards. The staff recommends that the Board issue guidance on the matter if it believes that personal communication is important.

4. Mr. Crooch stated that the Board had not changed the language with regard to the grant date in a significant way from Statement 123 to Statement 123(R). Additionally, he noted that in the process of writing Statement 123(R), the Board did not have any indications that this would be a problem, primarily because the language was the same. However, he did recognize the need to issue guidance on this matter.

5. Mr. Trott stated that he was opposed to issuing any guidance on this matter. He stated that the application of the standard is going to require some judgment, and he believed such judgment should be exercised related to this issue.

6. Mr. Batavick agreed with Mr. Trott that guidance on this matter would not change the necessity of using judgment in the application of the standard. However, based on his personal discussions with constituents, Mr. Batavick stated that he recognized a need for such guidance on this matter and was therefore in favor of the proposal.

7. Mr. Herz noted that, through the inquiry process, the staff was asked if a "mutual understanding" meant that an employee needed to be aware of the terms of the award before a grant date could be established. The staff affirmed that the employee must have specific knowledge of the award before the grant date exists. This response diverged from current practice. He also noted that with regard to general practice under APB Opinion No. 25, *Accounting for Stock*

Issued to Employees, and Statement 123, the grant date has been the approval date.

8. Mr. Golden clarified the substance of the staff's response to the inquiries. He noted that the staff told the constituents that they had to make the information concerning the award available to the employee. In most cases, if that information was provided within a reasonable period of time, the constituents would use their judgment to determine if a material difference between the date of approval and the date of communication existed. Within a reasonable period of time, without significant and unusual volatility, most people believed it would not result in a material difference. However, the constituents were concerned about how to determine if there was a material difference and whether that could be audited. Mr. Golden then restated the question by asking the Board whether or not it wanted to change the definition of "mutual understanding." After that decision is made, the Board would be able to discuss how it wanted to change the definition.

9. Mr. Herz recapped the Board members' positions to that point. He noted that Mr. Crooch and Mr. Batavick supported changing the definition and Mr. Trott was opposed. He then asked Ms. Schipper for her viewpoint.

10. Ms. Schipper noted that the intended definition of the grant date was to establish a date, after which, the changes in share price are ignored for purposes of measuring the fair value of the instrument. Another component of the grant date definition as it exists in Statement 123(R) is the date that an employee begins to benefit from, or is adversely affected by subsequent changes of the price of the employer's equity shares. If general practice is confused on this matter, then the Board has a responsibility to clarify that confusion.

11. Mr. Leisenring clarified that the confusion in practice did not include a situation where the award is altered due to a significant change in value of the stock price between the approval date and the point of communication. Mr. Golden stated that the majority of constituents viewed such an event as a modification. Mr. Golden noted that the confusion existed in a situation where a

significant change in stock price occurred between the two dates mentioned above and the company needed to include the latter stock price in its option valuation model. Ms. Schipper clarified that the constituents were looking for affirmation that the grant date could be defined as the board approval date.

12. Ms. Seidman agreed with the comments made by Ms. Schipper above. In addition, she stated that she believed if an employee did not have the power to negotiate the terms of an award, the board approval date would be the grant date for such an award. However, if the employee had the ability to negotiate the terms of the award, the grant date would differ.

13. Mr. Crooch stated that defining grant date as a date after which the changes in stock price affect the employee is not necessarily consistent with the idea of mutual understanding. Mr. Herz agreed that this inconsistency was confusing. Mr. Young also agreed that the Board take action to issue guidance on this matter.

14. Mr. Oakley stated that prior to the Board meeting, the staff distributed a draft with some language that might provide practical guidance. The same draft was discussed with the 123(R) Resource Group who gave feedback prior to this meeting. As a result of that feedback, the staff proposed two alternatives in regard to what that guidance would look like. Just prior to the meeting, Mr. Oakley distributed a supplement to the Board outlining the two models. The substantive difference between the two models is whether a change in the award after approval date but prior to the date of communication should be reflected as a modification. The first model was consistent with the Board handout and draft circulated to the Board and Statement 123(R) Resource Group. The second model reflected changes to that model the staff believed were necessary if the Board concluded that changes after approval date should be accounted for as a modification. Mr. Oakley then asked the Board whether they believed a change in the key terms of an award subsequent to the approval date should be accounted for as a modification.

15. Mr. Golden clarified that the concern with the second model is the issue of tainting. Under that model, on the date of approval, the company is forecasting whether or not it is likely they will communicate the award within a relatively short period of time. Assuming that the company decides that it will communicate the award in a relatively short period of time, the approval date would become the grant date. If the company changes the award prior to communicating it to the employee, it would use modification accounting. However, the next time an award is approved, the prior modification would impact the company's estimate on whether or not it would be able to communicate the award in a relatively short period of time.

16. Mr. Oakley noted that the first alternative distributed by the staff was not a change from mutual understanding to approval date. It was a practical exception that allows a company to use valuation inputs as of a date other than the actual grant date. If the Board views this as a modification, it is effectively moving the definition of grant date from the date of mutual understanding to the approval date.

17. Ms. Schipper voted for the second alternative, consistent with viewing a change after the approval date as a modification. She clarified that the second alternative was also consistent with the view that the company should measure an award on the date that the employee begins to experience the effects of changes in stock price. If the governing board reprices the instrument, the employee does not experience the effects of stock price changes until after the reprice date.

18. Mr. Batavick also supported the second alternative, consistent with viewing a change after the approval date as a modification. He clarified that the proposed FSP was actually an amendment to FAS 123(R). He also clarified that the second alternative was supported by the Resource Group.

19. Mr. Oakley stated that this issue would not impact the service inception date.

20. Mr. Crooch stated that he supported the second alternative. Ms. Seidman agreed with Mr. Crooch, stating that the second alternative dealt with repricing more appropriately. Then he asked Ms. Schipper if she was comfortable with the provided definition of “relatively short period of time.” Ms. Schipper stated that she believed the definition was clearly presented.

Transition

21. Mr. Oakley asked the Board to consider transition for the proposed FSP. The staff recommended that an entity that adopted FAS 123(R) prior to the issuance of this FSP adopt the guidance prospectively. All other entities would adopt it concurrently with the adoption of FAS 123(R). Mr. Oakley stated that the recommended comment period for the proposed FSP would be 15 days. The Board members made no objections for the transition or the comment period.

Follow-up Items:

22. A ballot draft of the proposed FSP was distributed on September 21, 2005. The proposed FSP was also posted to the FASB website on September 21, 2005 for a comment period of 15 days.

General Announcements:

23. None.