McGladrey LLP
One South Wacker Drive, Suite 500
Chicago, IL 60606
www.mcgladrey.com

McGladrey

August 11, 2015

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

File Reference No. 2015-270

Dear Ms. Cosper:

McGladrey LLP is pleased to comment on the proposed Accounting Standards Update (ASU), *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting* (the "proposed ASU"). We continue to support the Board's Simplification Initiative to identify, evaluate, and improve areas of generally accepted accounting principles (GAAP) for which cost and complexity can be reduced while maintaining or improving the usefulness of the information provided to users of the financial statements.

In addition to our overall support of the Board's Simplification Initiative, we support the provisions of this proposed ASU and its amendments to the existing guidance on share-based payment transactions, as modified by our comments below. Our responses to the "Questions for Respondents" on which specific comment is sought, along with comments and suggestions on other matters related to the accounting for share-based payments, are included below for your consideration.

Responses to Questions for Respondents

Question 1: *Do you agree that the proposed amendments 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 believe that the proposed ASU does reduce cost and complexity while maintaining or improving the usefulness of the information provided to users of financial statements.

Question 2: *Should excess tax benefits and tax deficiencies be recognized in the income statement? If not, why, and are there other alternatives that are more appropriate? Should an entity delay recognition of an excess tax benefit until the benefit is realized through a reduction to taxes payable? If yes, why?*

We concur with the Board's decision that all excess tax benefits and all tax deficiencies be recognized as income tax expense or benefit in the income statement. We also support the decision to no longer delay recognition of a tax benefit until the tax benefit is realized through a reduction to taxes payable. The current accounting for excess tax benefits and deficiencies is burdensome and unnecessarily complex. The proposed changes would result in a significant reduction in the cost and complexity of accounting for the income tax consequences of share-based payments without sacrificing information that is useful for financial statement users.

Question 3: *Should the effect on tax cash flows related to excess tax benefits be classified as an operating activity on the statement of cash flows? If not, what classification is more appropriate and why?*

We agree that excess tax benefits should be classified in the same manner as other cash flows related to income taxes (i.e., as operating activities).

Question 4: *Should entities be permitted to make an accounting policy election either to account for forfeitures when they occur or to estimate forfeitures? If not, why?*

We agree with the proposal to simplify the accounting for forfeitures by allowing an entity to make an entity-wide accounting policy election either to estimate its accrual of compensation cost based on an estimate of the number of forfeitures expected to occur or to recognize in compensation cost the effects of forfeitures when they occur.

The current requirement to estimate the number of forfeitures can be subjective and difficult to apply, and given that total compensation cost ultimately recognized is the same under either method, for many entities it may not be worth the additional effort. We also agree, however, that entities should not be required to account for forfeitures when they occur as some entities may have sufficient historical information and a well-developed process for estimating forfeitures, and seek to avoid the income statement volatility that may result from accounting for forfeitures as they occur.

Question 5: *Is the proposed expansion of the exception to liability classification related to the amount withheld for employee's taxes appropriate? If not, is there another exception that is more appropriate and why?*

We believe the proposed expansion of the exception to liability classification related to the amount withheld for employee's taxes is appropriate. A net settlement feature, under which shares are withheld (i.e., effectively a partial cash settlement) to meet an employer's tax withholding requirements, is commonly included in employee stock compensation awards and should not on its own result in liability classification.

The requirements under current GAAP for an award to be classified and accounted for as a liability if an amount in excess of the employer's minimum statutory tax-withholding requirements is withheld or may be withheld at the employee's discretion can be difficult to apply and audit. The proposed requirement which changes the amount which may be withheld from the *minimum* statutory amount to the *maximum* individual statutory tax rate in the applicable jurisdiction is much more practical to apply as an entity would need to determine only one maximum rate in each jurisdiction rather than determining a rate for each employee under the existing exception.

Question 6: *Should the cash paid by an employer to the taxing authorities when directly withholding shares for tax-withholding purposes be classified as a financing activity on the statement of cash flows? If not, what classification is more appropriate and why?*

We believe it is appropriate to classify cash paid by an employer to the taxing authorities when directly withholding shares for tax-withholding purposes as a financing activity on the statement of cash flows. The nature of such transaction is a share repurchase and classification of the related cash flows as a financing activity best reflects this.

Question 7: *When assessing the classification of an award with a repurchase feature that can only be exercised on the occurrence of a contingent event, should a contingent event within the employee's control be assessed in the same manner as a contingent event outside the employee's control? If not, why should there be a difference in the assessment?*

We agree that a contingent event within an employee's control should be assessed in the same manner as a contingent event outside the employee's control. The practice of classifying certain awards with contingent repurchase features as liabilities without regard to probability when such contingency is within the employee's control results in difficult and confusing accounting consequences.

For example, a repurchase feature may be contingent upon employee termination. If employee termination as defined for this purpose includes voluntary termination, the contingent event is within the employee's control. If the probability of employee termination is ignored because it is within the employee's control, liability classification may result if the employee could avoid being subject to the risks and rewards normally associated with equity share ownership for a reasonable period of time (i.e., six months or more, as defined by paragraph 718-10-25-9). Once the shares have been vested and held for six months reclassification to equity may be appropriate for those shares. This 'temporary" liability classification and subsequent equity reclassification may be further complicated when awards are subject to graded vesting, are issued to multiple employees, or are issued at different dates. Further, we believe there is no benefit in requiring liability classification for an award when it is not probable the contingency will be met and the repurchase feature will become active.

Question 8: *Is the practical expedient for nonpublic entities to estimate the expected term of all awards with performance conditions that affect vesting or service conditions appropriate? If not, are there other practical expedients that are more appropriate and why? Should the expedient be limited to nonpublic entities?*

We agree with the Board's proposal to provide nonpublic entities with a practical expedient to estimate the expected term of awards with service conditions and performance conditions that affect vesting. It has also been our experience that many nonpublic entities already analogize to and utilize the practical expedient provided for SEC registrants for awards with service conditions pursuant to SAB Topic 14.C. Further, many nonpublic entities do not have sufficient relevant historical data to support a different estimate of the expected term. We also support the Board's decision to include a practical expedient for awards with performance conditions.

We do not believe that the expedient should be limited to nonpublic entities. As previously discussed, SEC registrants currently have and utilize a similar practical expedient for awards with service conditions only. Additionally, many public entities experience similar restraints related to the lack of historical data for awards with performance conditions and would benefit from a practical expedient for these awards as well.

Question 9: *Should nonpublic entities be allowed to make a one-time election to switch from measuring liability-classified awards at fair value to intrinsic value? If not, why? While not proposed, should the Board consider making the ability to elect intrinsic value an ongoing election alternative for nonpublic entities?*

We believe that nonpublic entities should be allowed a one-time election to switch from measuring liability-classified awards at fair value to intrinsic value. While some nonpublic entities elected to measure liability-classified awards at intrinsic value upon adoption of FAS No. 123(R) (as codified in Topic 718), we understand that some nonpublic entities may not have been aware of the election and may now be precluded from making such election because they have subsequently recorded liability-classified awards at fair value. We believe the intrinsic value measurement alternative reduces cost and complexity without diminishing the usefulness of information provided to financial statement users, and that by providing this one-time election, the Board provides more entities with the ability to take advantage of this existing simplification.

Question 10: *Are the transition requirements for each area appropriate? If not, what transition approach is more appropriate?*

We believe that each of the proposed transition requirements is appropriate for the respective issue.

Question 11: *How much time will be necessary to adopt the amendments in this proposed Update? Should the amount of time needed to apply the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities?*

We believe that the expected transition time and costs of adopting the proposed ASU will be minimal. Therefore, we do not believe the amount of time needed to apply the proposed amendments by entities other than public business entities would be different from the amount of time needed by public business entities. We believe that requiring the proposed amendments to be effective for annual periods and interim periods within those annual periods beginning after December 31, 2015 would provide sufficient time for adoption.

Other Comments and Suggestions

We encourage the Board to continue to consider additional aspects of the accounting for share-based payment transactions for simplification. We believe one such area for improvement is the accounting for share-based payments to non-employee for services which is addressed by Topic 505-50, *Equity—Equity Based Payments to Non-Employees*. By requiring entities to apply two different frameworks for share-based payments, one for employees and one for non-employees, current GAAP introduces unnecessary complexity and unwarranted variances (for example, measurement date versus grant date.) Further, the guidance for non-employee awards under ASC 505-50 can produce counterintuitive results for awards in which the quantity and terms of the share-based payment depend on the achievement of counterparty performance conditions. In those situations, under ASC 505-50 the share-based payment is measured at each reporting date based on the outcome that results in the lowest fair value, which can be zero, until all performance conditions have been resolved. Such guidance is in direct contradiction to the guidance related to performance conditions provided under Topic 718 and can result in delayed recognition of expense even when it is probable that the resolution of the performance condition will result in issuing equity. As has already been suggested by certain of the Board's members, we strongly recommend the Board amend the scope of Topic 718 and Topic 505-50 such that share-based payments to non-employees for services are subject to Topic 718. We believe this will be a fairly simple change to implement and will result in significant improvement in the accounting for many of the awards issued to non-employees.

We also encourage the Board and the Private Company Council (PCC) to continue to pursue different measurement alternatives for liability-classified awards. While we do not support requiring (or allowing) all nonpublic entity awards be accounted for as liabilities, we do believe further consideration should be given to intrinsic settlement value (as discussed in the May 2015 PCC Meeting) as the measurement objective for liability-classified awards. For many of the liability-classified awards of nonpublic entities the intrinsic settlement value may best reflect the current obligation of the entity.

Finally, we believe the Board should revise paragraph 718-20-35-7 of the Codification. As this paragraph is currently written, there is no discussion as to why liability reclassification is not considered for a repurchase of an equity award (perhaps because it is a one-time offer and not pursuant to a pre-existing repurchase right). This leads some preparers to conclude that all award repurchases are equity transactions even if pursuant to an existing repurchase option. Such a position is in direct contradiction to paragraph 718-10-25-9. Further, the acceleration of the recognition of the grant date fair value at the repurchase date for awards for which the requisite service has not been rendered seems to assume that a Type I probable to probable modification has occurred. However, this assumption is not documented and therefore, may lead preparers to apply this paragraph to situations such as a repurchase in conjunction with employee termination, when in fact a Type III improbable to probable modification has occurred and grant date fair value is no longer relevant. We suggest the Board amend this paragraph to clarify these inherent assumptions.

We appreciate this opportunity to provide feedback on the proposed ASU and would be pleased to respond to any questions the Board or its staff may have concerning our comments. Please direct any questions to Rick Day at 563.888.4017 or Ginger Buechler at 612.455.9411.

Sincerely,

McGladrey LLP

McGladrey LLP