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August 14, 2015

Via email to director@fasb.org

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

Re: Proposed Accounting Standards Update, Compensation – Stock Compensation (Topic 718) (File Reference No. 2015-270)

Dear Ms. Cosper:

We are pleased to provide comments on the proposed accounting changes regarding certain aspects of the share-based compensation accounting guidance, including income taxes, cash flow presentation, repurchase features, estimated forfeitures and expected term. We believe the requirements under current U.S. GAAP have led to unintended consequences and significant compliance costs.

BDO supports the Board's initiative to reduce or eliminate unnecessary complexity from the current accounting guidance, while maintaining the quality and relevance of financial reporting information for users. We believe these proposals, if finalized, will significantly reduce complexity related to share-based compensation accounting for a majority of reporting entities.

Our responses to the Board's specific questions are provided in the appendix to this letter.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Yosef Barbut (212) 888-8292 or Patricia Bottomly at (310) 557-8538.

Very truly yours,

BDO USA, LLP

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Appendix

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

Yes. These proposals clearly benefit preparers from a cost savings perspective without diminishing the relevance and usefulness of information provided in the financial statements to users. The proposals would have a widespread impact on all businesses that issue share-based compensation, across industries, and regardless of size. The income tax accounting decisions alone improve the relevance and transparency of reported income tax effects from stock options and other share-based awards, while significantly reducing complexity and accounting compliance costs. The remaining proposals should also result in similar cost savings. Therefore, we support these proposals as further explained in our responses below.

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 agree with the income statement recognition of tax benefits and deficiencies. Moreover, we recommend that the Board also clarify in Subtopic 740-270 that excess tax benefits and deficiencies are not considered tax effects from ordinary income as defined for interim period calculations and thus should be accounted for discretely. Separately, we do not believe an entity should delay the recognition of an excess tax benefit when the deduction increases a net operating loss ("NOL") position and believe revisions to that effect should be made to 718-740-25-9.

The tax accounting for share-based payments is one of the most complex areas in current U.S. GAAP. The current accounting is complicated and results in significant compliance costs, while obscuring the income tax effects from share-based awards. For example, an entity might adopt an accounting policy to recognize a tax benefit from NOLs or credits before utilizing windfall deductions even though for tax purposes the entity utilizes windfall deductions before the NOLs or credits. This leads to a mismatch between the information presented in the financial statements and what actually occurs on the tax return because "tax law ordering" rules must be followed for tax purposes. It also creates a burden of ensuring that the NOLs or credits carried forward are recognized in equity (as opposed to income tax benefit) when they are actually utilized.

Similarly, the current requirement to delay the recognition of a windfall NOL has resulted in a mismatch between NOLs reported in the balance sheet and NOLs that actually exist in the tax returns. This accounting not only obscures the existence of a tax asset an entity is legally entitled to claim, but it also adds the undue burden of reconciling the NOLs on the balance sheet with the NOLs on the tax return.

Additionally, the current requirement to allocate windfall benefits to equity, as opposed to the income tax provision, leads to a disparity between as-reported income tax expense and income tax payable. The income statement is effectively "grossed-up" to reflect an add-back (for financial reporting purposes) of the share-based compensation windfall deduction.

Furthermore, the complexity to quantify the benefit that can be allocated to equity under the so-called "with-and-without" intraperiod allocation method is significant and may result in financial reporting misstatements. The proposed changes will align the financial statements with the tax return presentation of tax effects from share-based awards and thus significantly improve the usefulness and transparency of income tax information presented in the income statement and the balance sheet. This proposal will also eliminate the need to track a pool of accumulated tax windfalls and shortfalls in additional paid-in-capital ("APIC pool") which currently requires undue time and cost to maintain.

We understand that some constituents may have concerns with the impact these decisions will have on an entity's effective tax rate. However, we believe the tax rate impact of excess tax benefits and deficiencies could be identified in the rate reconciliation.

We also believe that the Board can address concerns along these lines by allowing entities to determine windfalls and shortfalls on a jurisdiction-by-jurisdiction basis against a jurisdictional pool of deferred tax assets. Under this approach, the current tax benefit from share-based awards would be offset by a deferred tax expense and an income tax benefit would only be recognized when the deferred tax asset pool in a relevant jurisdiction is reduced to zero. This accounting would require less work than under current accounting and virtually no system modification as deferred taxes are already determined and maintained by jurisdiction. It would also reduce the need to track the deferred tax asset value of an individual award. Shortfalls would only be recognized when a fully vested award expires unused (there would be a need for some accounting policy or practical expedient to estimate the deferred tax asset to be written off – e.g., using an "average" value of deferred tax assets in a particular jurisdiction, unless the award's specific deferred tax asset value is available in the accounting and payroll system). This would not only reduce work and complexity but also minimize tax rate volatility since for many entities the deferred tax assets for share-based awards are generated annually.

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?

Yes. The tax effects from excess tax benefits and deficiencies impact an entity's income tax, which is an operating cash flow. The current model's treatment is an exception to presenting income tax-related activities as operating activities, resulting in additional complexities for preparers and potential confusion for users. This change would also reduce accounting compliance costs related to preparing and reviewing cash flow statements.

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?

Yes. Estimating forfeitures for some entities can be time-consuming, costly and subjective. Forfeiture estimation may depend on a number of factors, such as the type and terms of an award or a class of awards, and the class of employees receiving the award(s). While some larger entities may have the resources necessary to adequately estimate forfeitures, for many entities this accounting can prove difficult. Therefore, we support providing an accounting policy choice in the context of accounting for forfeitures as outlined in the proposal, as this change would enable

entities to avoid the time and cost incurred to estimate forfeitures and rather account for them when 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?

Yes. Issuing an entity's stock upon the vesting and exercising of stock-based awards is fundamentally an equity event. A net settlement feature that requires the entity to repurchase shares to settle withholding tax remittance should not by itself change the accounting. A statutory withholding requirement on the issuance of stock compensation, as with other compensation, effectively has the entity acting as a conduit for the employees' withholding tax payments. The substance of net settlement due to withholding tax requirements is the same as if the entity remits withholding tax from its cash and simultaneously receives a full reimbursement from the employee(s). The current accounting exception accommodates this common practice. The proposed expansion would provide further relief from liability classification in these situations by allowing the use of a "maximum" withholding tax rate, which may be more readily available (or more easily determinable) than a "minimum" tax rate.

However, to better achieve the Board's simplification objective, the Board's basis for conclusions in paragraph BC16 should be incorporated in revised paragraph 718-10-25-18 to make it clear that this exception is intended to apply by using a single maximum tax rate per jurisdiction as opposed to varying maximum tax rates depending on a particular employee's income level. That is, an entity would have a single "ceiling" rate per jurisdiction to ensure compliance with this exception. In addition certain tax jurisdictions may have a minimum withholding rate, which may exceed the highest individual statutory rate, for example the state of New York. In these situations, the Board may also wish to allow the higher of the two rates to be withheld without triggering liability treatment. For example, paragraph 718-10-25-18 might read as follows: "That is, to qualify for equity classification the employer must have a statutory obligation to withhold taxes on the employee's behalf and the amount withheld cannot exceed the relevant jurisdiction's maximum statutory tax rate applicable to individuals, or mandatory withholding tax rate if higher than the statutory rate."

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?

Yes. This proposal is consistent with the cash flow classification of stock repurchase transactions (e.g., treasury stock) and the entity's acting as a withholding tax conduit on behalf of its employee(s). Therefore, a financing activity classification is appropriate for the withholding tax payment the entity is making on behalf of its employee(s) in connection with share-based awards.

Additionally, the Board should clarify paragraph 718-10-25-23 to specifically exclude an employee's payroll tax paid through a net settlement feature. Paragraph 718-10-25-23 currently reads as if all payroll taxes, including taxes withheld on stock compensation, is an operating expense and cash flow.

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 do not object to allowing the consideration of probability for contingent events which are within the employee's control for the purpose of determining an award's classification. However, it may prove difficult for entities to properly assess the probability of such events.

The Board may wish to clarify whether the underlying principle in this proposal is for the entity to determine whether it is probable that within six months from an award's vesting, it would have to settle the award for either cash (or repurchase the shares within six months of issuance). Articulating a principle to this effect may be helpful in framing the analysis for practitioners.

Lastly, we note the proposal aligns the rules for contingent puts and calls, which we also support.

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 support allowing private entities a practical expedient for estimating expected terms of certain share-based awards. However, we believe the practical expedient should only apply to "plain vanilla" awards, as contemplated in the SEC staff's guidance. We do not support extending this proposed practical expedient to awards with performance conditions, which affect vesting. Allowing the use of this expedient to determine the term of an award with performance conditions would appear to be in direct conflict with existing guidance in Topic 718, which prohibits consideration of performance conditions in estimating the fair value of an award at the grant date (refer to ASC 718-10-30-27).

That said, the Board might clarify whether it believes there is a distinction between using the practical expedient solely to estimate the expected term versus the larger issue of estimating fair value. If limited solely to the expected term of an award with a performance condition, a practical expedient would seem less contradictory to existing U.S. GAAP on this point.

Additionally, the Board might want to include a parenthetical reference in paragraph 718-10-30-20B(b) to state that "limited time" to exercise typically means a period of 30 to 90 days as explained in the SAB Topic 14C.

We support expanding this practical expedient to public entities. The current guidance in ASC 718-10-S99 permits public entities to determine expected term based on their historical share option exercise experience when that experience is the best estimate of future exercise patterns. A public entity with insufficient vesting experience or with experience not deemed representative of future vesting patterns is still required to demonstrate it can use the simplified method. Expanding this proposal to public entities would eliminate the need to determine whether the entity qualifies to use the simplified method, thus reducing the effort required to comply.

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?

Yes, we believe private entities can benefit from this election and would be open to it on an ongoing basis.

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

We support all but one of the Board's proposed transition requirements.

We support the transition for the changes to the recognition and measurement of share-based payments through a cumulative–effect adjustment to equity, including any changes to the valuation allowance that result from recognizing deferred tax assets.

We also support a prospective adoption related to recognition of income tax windfalls and deficiencies in income tax expense (proposal Issue no. #1). Prospective adoption would avoid reversing prior accounting related to income tax effects that have already been reported on prior years' tax returns.

However, we believe the proposed full retrospective transition method for cash flow presentation of windfall benefits (proposal Issue no. #2) would not be reflective of the accounting for windfall benefits for the periods presented. Therefore, we suggest allowing prospective transition for proposal Issue no. #2 to be consistent with the prospective transition related to windfall benefits and deficiencies in income tax expense (proposal Issue no. #1).

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 the amount of time needed will depend largely on the volume of outstanding awards at the date of transition, and the processes and systems that an entity has in place to track this information. A prospective adoption of the income tax proposal would eliminate a significant amount of the work that would otherwise be necessary to apply this guidance. As the current recognition and measurement of income tax effects from share-based awards already require calculation on an award-by-award basis, we would not expect the need for significant system changes as a result of this proposal. However, entities using less sophisticated systems may require additional time.