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August 14, 2015

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

RE: Proposed Accounting Standards Update, *Compensation-Stock Compensation (Topic 718)* – Improvements to Employee Share-Based Payment Accounting (File Reference No. 2015-270)

Dear Ms. Cosper:

The Silicon Valley Tax Directors Group[1] appreciates the opportunity to comment on the FASB's proposed guidance on employee share-based payment accounting. The input provided within this comment letter is based on our collective experience as preparers of financial statements, responsible for administering accounting for income taxes in an increasingly complex global tax and business environment.

We support the proposed changes to the accounting for forfeitures, and the minimum statutory tax withholding requirements to qualify for equity classification. We also support the proposed change to require the recognition of an excess tax benefit even if it does not reduce current taxes payable. These changes meet the requirements of the Simplification Initiative and will reduce the cost and complexity in financial reporting while maintaining or improving the usefulness of the information provided to users of financial statements.

We do not support the proposed change to require the recognition of both excess tax benefits and excess tax deficiencies directly to the income statement. We believe such change lacks conceptual merit, will increase costs and complexity, and will reduce the usefulness of information provided to users of financial statements.

The conceptual model in SFAS 123(R) provides that the granting of options and the exercise of that option by the employee represent two distinct transactions: 1) the granting of the option is a compensation arrangement for services that results in an income statement compensation cost; and 2) the exercise of the option represents an equity transaction.[2] The SFAS 123(R) conceptual model recognizes that the difference between the compensation expense determined at the grant date and the fair market value on the exercise date is an equity transaction (recorded in APIC). The proposed change to require all tax effects (both excess tax benefits and tax deficiencies) be recorded in the income statement is fundamentally inconsistent with the SFAS 123(R) conceptual model that recognizes that the change in value between grant and exercise (the amount giving rise to an excess tax

[1] The Silicon Valley Tax Directors Group ("SVTDG") is a group of 79 high technology companies with significant presence in the Silicon Valley (California). The SVTDG includes public and private cvompanies, from start-up companies to large multinational companies, with sales ranging from $100m/yr to over $180b/yr. The SVTDG supports sound tax and accounting policies that allow the U.S. high technology industry to continue to innovate and be competitive in the global marketplace.

[2] SFAS 123R Basis for Conclusions (paragraph B209 and B213). Please note also, while options are discussed herein, SFAS 123(R) provides similar treatment for equity shares or other equity instruments.

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benefit or a tax deficiency) is an equity transaction. We do not believe it is appropriate or an improvement in financial reporting to require excess tax benefits and tax deficiencies to be recorded in the income statement, as it is inconsistent with the accounting for the underlying option exercise which is included in APIC.

We believe the proposed change will lead to increased cost and complexity and reduce the usefulness of information provided to users of financial statements. The proposed change would recognize tax effects (in the income statement) inconsistent with the accounting of the underlying transaction, which is recorded in APIC. We believe the proposed accounting will confuse users of the financial statements by creating net income/loss due solely to external factors (share price movements and employee exercise/sale activity). The proposed change will make the provision for income taxes volatile in the extreme (due to movements in stock prices and employee exercise/sale activity) and impossible to forecast (as such a forecast would require knowing future stock prices and employee exercise/sale behavior). Importantly, the proposed change would make the provision for income taxes essentially meaningless as there will no longer be a correlation between the provision for income taxes and pre-tax income. Because internal and external stakeholders rely on the provision for income taxes, net income and EPS, companies will incur additional time, costs, and complexity to adjust internal systems and processes, and provide expanded disclosure and messaging to explain why the provision for income taxes, net income and EPS are inherently volatile.

We recommend that the Board adopt a symmetrical equity approach whereby excess tax benefits and tax deficiencies are both recorded in APIC. Such approach would meet the requirements of the Simplification Initiative. This symmetrical equity approach is fully consistent with the SFAS 123(R) conceptual model by requiring that all tax effects (excess tax benefits and tax deficiencies) be recorded to APIC consistent with the accounting related to the underlying option exercise (or share vest/settlement). This approach would greatly simplify the tax accounting for share-based payments by eliminating the concept of the "windfall pool" and the need to determine excess tax benefits and tax deficiencies on an individual grant basis. We believe this approach would improve financial reporting by ensuring tax deficiencies are not recorded to the income statement (as can occur under the current accounting) inconsistent with the accounting treatment of the exercise giving rise to the tax deficiency and potentially leading to inconsistent results across otherwise comparable entities. Importantly, this symmetrical equity approach would maintain the relationship between the provision for income taxes and pre-tax income.

The SVTDG's answers to the tax related Board's questions for respondents (questions 1, 2, 3, 5, 6, 10, and 11) are shown in the attached Appendix.

We very much appreciate the Board's consideration of our comments. We would be pleased to meet with the Board or Staff at your convenience to answer any questions you might have.

Sincerely,

Jeffrey K. Bergmann
Co-Chair, Silicon Valley Tax Directors Group

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APPENDIX

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 pr ovided to users of financial statements? If not, why?***

We agree that the proposed amendments for forfeitures, the minimum statutory tax withholding requirements to qualify for equity classification, and the change to require recognition of an excess tax benefit even if it does not reduce current taxes payable, will result in a reduction of cost and complexity while maintaining or improving the usefulness of information provided to users of financial statements.

We do not agree that the proposed amendment to require the recognition of both excess tax benefits and excess tax deficiencies directly to the income statement will result in a reduction of cost and complexity while maintaining or improving the usefulness of information provided to users of financial statements. We believe the proposed change lacks conceptual merit and is inconsistent with the conceptual model of SFAS123(R) which provides that the difference between compensation expense (at grant) and the value (at exercise) is an equity transactions recorded to APIC. We believe the tax effects (both excess tax benefits and tax deficiencies) related to such difference should be recorded to APIC, consistent with the accounting of the option exercise, which is included in APIC. We believe the proposed accounting will confuse readers (tax effects recorded inconsistent with the accounting for underlying exercise transaction), will distort the provision for income taxes (by creating a permanent difference for these tax effects that have no corresponding item of pre-tax income), will result in information that is less useful to readers (provision for income taxes, net income, and EPS inherently volatile and random), and will require companies to incur increased costs and complexity (to adopt systems and processes, and provide disclosure and messaging to internal and external stakeholders that look to provision for income taxes, net income and EPS).

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?***

No. We do not believe that excess tax benefits and tax deficiencies should be recognized in the income statement. The proposed change is fundamentally inconsistent with the conceptual model of SFAS123(R) which provides that provides that the difference between compensation expense (at grant) and the value (at exercise) is an equity transaction recorded to APIC.

We recommend that the Board adopt a symmetrical equity approach whereby excess tax benefits and tax deficiencies are both recorded in APIC. Such approach would meet the requirements of the Simplification Initiative. Such a symmetrical equity approach is fully consistent with the SFAS123(R) conceptual model by requiring that all tax effects (excess tax benefits and tax deficiencies) be recorded to APIC consistent with the accounting for the amounts related to the underlying option exercise (or share vest/settlement). This symmetrical equity approach would greatly simplify the tax accounting for share-based payments by eliminating the concept of the "windfall pool" and the need to determine excess tax benefits and tax deficiencies on an individual grant basis. We believe this approach would improve financial reporting by ensuring tax deficiencies are not recorded to the

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income statement (as can occur under the current accounting) inconsistent with the accounting treatment of the underlying exercise transaction and potentially leading to inconsistent results across otherwise comparable entities. Importantly, this symmetrical equity approach would maintain the relationship between the provision for income taxes and pre-tax income and would not distort the provision for income taxes or the effective tax rate reconciliation.

If the Board proceeds with its proposal to require recognition of excess tax benefits and tax deficiencies in the income statement, we recommend the Board issue clarifying guidance to make clear that companies would not have to forecast these amounts in their annual effective tax rate. This result recognizes the inherent challenges that companies would experience in trying to forecast future stock prices and employee exercise/sale behavior. We suggest such clarifying guidance make clear that companies should account for excess tax benefits and tax deficiencies as discrete items in the reporting period in which they occur.

No. We do not believe that an entity should delay recognition of an excess tax benefit until the benefit is realized through a reduction to taxes payable. We believe the deferred tax asset related to the excess tax benefit should be recognized and tested for valuation allowance consistent with other deferred tax assets.

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?***

No. We believe the excess tax benefit should be recorded as a financing activity in the statement of cash flows, consistent with conceptual model of SFAS 123(R) which provides that the change in value between grant and exercise is an equity transaction. We believe tax effects should be classified consistent with the underlying exercise transaction (as equity) and as such we believe the excess tax benefit should be recorded in financing activity on the statement of cash flows.

However, we would not object to a conclusion to present the excess tax benefit as an operating activity to simplify the presentation in the statement of cash flows.

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. The expansion of the exception to liability classification related to the amount withheld for employee's taxes is appropriate and welcome. We would request that the references in ASC 718-10-25-18 referring to each (or any) individual employee's maximum tax rate should be deleted to be consistent with the basis for conclusions in BC 16 which provides that an entity needs to determine only the one maximum statutory tax rate in each jurisdiction rather than determining a rate for each (or any) employee.

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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. We believe the cash paid by an employer to the taxing authorities when directly withholding shares for tax-withholding purposes should be classified as a financing activity on the statement of cash flows. We agree with the Basis for Conclusions - BC 19 that such a transaction is in effect a share repurchase with the cash related to the in substance repurchase remitted to the taxing authorities on behalf of the employee. Accordingly, we agree that such cash paid should be reflected as a financing activity.

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

We believe that the proposed transition requirements are appropriate. However, as mentioned above, we recommend that the proposed change to require the recognition of both excess tax benefits and excess tax deficiencies directly to the income statement not be adopted. We believe this proposed change is without conceptual support, will increase cost and complexity, and reduce the usefulness of information provided to users of financial statements.

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 amendment in this proposed update to require the recognition of both excess tax benefits and excess tax deficiencies directly to the income statement will increase costs and complexity for companies as they will need to adopt systems and processes, and provide disclosure and messaging to internal and external stakeholders that look to provision for income taxes, net income and EPS.