Stacey Sutay

Subject: FW: Revised File Reference No. 1102-100

Letter of Comment No: 2287B
File Reference: 1102-100

InterScan_SafeStamp.txt (296 B...

-----Original Message-----
From: Frederic Cook [mailto:FWCook@fwcook.com]
Sent: Tuesday, May 25, 2004 10:36 AM
To: Director - FASB
Cc: Michael Tovey
Subject: Revised File Reference No. 1102-100

Mike:

Two small but important comments:

Market, Performance, and Service Conditions That Affect Factors Other Than Vesting and Exercisability

B35: Why should a condition other than a market, performance or service condition turn an award that is otherwise an equity award into a liability award?

For example, we give someone restricted stock (time vest) but also conditioned on his maintaining a certain ownership level in company stock. If he sells down his position, which he's free to do, he forfeits some of the restricted stock.

Also, increasingly, equity grants may have "clawback" provisions for forfeiture if there is accounting fraud (Sarbanes Oxley provision) or various restrictive covenants are breached (non-compete, non-solicitation issues, etc.).

These types of conditions should not cause the award to become a liability, with variable accounting. Rather, they should remain as equity awards. The award value should be fixed at grant, disregarding the special conditions(s). The special conditions should not affect grant date valuation, like fixed market conditions would. But if they are triggered and the award forfeited, then we should reverse prior accrued expense.

Employee Share Purchase Plans

C75-76: I think we should continue the 5% noncompensatory discount in FAS 123 for broad-based plans. Here's why. It relates to share issuance costs in a public offering. For example, it is very common in IPOs to set aside a pool of shares, that would otherwise be sold to the public, for direct sale to employees, bypassing the underwriter. These are variously called "friends and family shares" or "directed share programs."

Shares are sold under these programs at the IPO price less the underwriting discount which is typically 5-7% of IPO price. There are no option or look back features. The company receives the same proceeds it would have received had the sale occurred through the underwriter; hence, there is no cost.

Yet, I believe the ED would impose a cost for these plans where none exists.

*   *   *

Thank you for reconsidering these two issues.

Best regards,

Frederic W. Cook