



LETTER OF COMMENT NO. 2

November 20, 2006

Director, TA&I - FSP  
File Reference No. – Proposed FSP EITF 03-06-a  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5166

RE: Proposed FASB Staff Position EITF 03-6-a, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities.*

Dear Director,

UnionBanCal Corporation appreciates the opportunity to comment on the Proposed FASB Staff Position EITF 03-6-a *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities.* UnionBanCal Corporation, headquartered in California, is a bank holding company with commercial and consumer banking activities. UnionBanCal Corporation grants restricted stock awards to its employees that meet the criteria of participating securities.

UnionBanCal Corporation supports the FASB's position that would include share-based payment awards that contain a nonforfeitable right to receive cash when dividends are paid to common shareholders in the calculation of basic earnings per share. For UnionBanCal Corporation, not including the shares in our basic earnings per share has created a conflict with the disclosure of our common shares outstanding. Because our nonvested restricted stock holders are entitled to nonforfeitable dividends, as well as a proportionate share of the value of our company in the event of exchange or liquidation, our period end common shares outstanding are shown including these shares even though they were not used in the calculation of the basic earnings per share disclosed for the period ending June 30, 2006. This was due to the fact that we have a majority shareholder whose equity percentage ownership would have been overstated at their reporting date had we excluded the shares from the calculation. By issuing this proposed EITF, we will no longer have such a conflict.

#### *Effective Date and Transition*

We disagree with the FASB's proposed effective date for this FSP, which would be applied retrospectively beginning with the interim period following the date of issuance. Prior to the June 30, 2006 reporting period, UnionBanCal Corporation had always included the Company's nonvested restricted shares in the average common stock outstanding and in the calculation of

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basic earnings per share. Based upon our auditing firm's internal guidance we changed our method of calculating basic earnings per share on a prospective basis. Further delaying the implementation of this EITF would cause us to restate our calculations that we believe have been correct all along. We suggest that the proposed EITF allow for early adoption upon issuance of the final EITF.

We would also like to call to your attention other literature that would conflict with the guidance provided in this proposed EITF.

SFAS No. 123(R), Illustration 11(a) – Share Award Granted by a Nonpublic Entity.<sup>1</sup> This illustration provides an example for the entries upon the grant of shares of stock. This illustration does not recognize any entries on the date of grant. We suggest that this illustration be changed to indicate that upon grant, participating securities would result in entries to common stock (for the par value) and an offset to additional paid-in-capital.

SFAS No. 123(R) – Appendix E – Glossary

The Glossary explains that the terms “issued, issuance or issuing” do not apply to the grant of stock options or other equity instruments that are subject to vesting conditions. This definition would need to indicate that participating securities are excluded from the vesting condition.

In both SFAS No. 123(R) and SFAS No. 128, references are made to the computation of diluted earnings per share and the treasury stock method. These references would need to clarify that nonvested participating securities would be excluded from the diluted earnings per share calculation since they are included in the basic earnings per share calculation.

We appreciate your consideration of these comments. Should you have any questions or would like to further discuss these comments in more detail, please contact me at (415) 765-2742.

Sincerely,

Jacqueline Bean  
Senior Vice President and Manager  
Accounting Policy and Financial Reporting  
Union Bank of California

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<sup>1</sup> This paragraph contains footnote 100 that indicates that this illustration is applicable to a public entity as well. This footnote would not be read by the average public entity as they would skip over the illustration as being not applicable to them