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Director of Major Products
File Reference No. 1102-100
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, Connecticut 06856-5116

RE: Comments – Exposure Draft, Proposed Statement of Financial Accounting Standards, Share-Based Payment, an amendment of FASB Statements No. 123 and 95 (Statement)– Issued March 31, 2004

To Whom It May Concern:

This letter presents the comments of Gerald A. Miller, Executive Vice President and Chief Operating Officer of Ben S. Cole Financial Incorporated, a prominent executive compensation consulting firm, headquartered in Boston, Massachusetts, with regard to the above referenced Exposure Draft.

Our comments concern two overall aspects of the Statement: (a) good corporate governance practices; and (b) guidance regarding the option pricing model.

Good Corporate Governance Practices

Good accounting practices for share-based compensation and good corporate governance practices are complimentary. The Statement provides additional encouragement following the Sarbanes-Oxley Act of 2002 for companies to govern better through well thought out performance-based compensation practices.

Executives and compensation professionals have historically espoused *pay-for-performance* as a cornerstone of compensation programs. The reality is that pay packages are composed generally of passive elements. Clearly, salaries are paid whether or not performance is achieved, or a profit is made. The value of long-term instruments, particularly stock options, reflects a highly influential and complex set of external factors, such as general economic conditions and stock market expectations that in many instances disengage company stock price from financial performance.

The proposed Statement provides an impetus for independent members of boards of directors to structure equity awards that have a more favorable accounting basis by making such awards performance-based, whereby the ultimate value of the share-based payment is cancelled when both service and financial performance conditions are not achieved. This impetus provides the framework to make equity compensation more pay-for-performance oriented.

Thus, we believe that, while most of the focus so far has been on the technical aspects of equity accounting, the real impact will be on how companies will change their share-based award practices. We anticipate that more companies will employ a portfolio of long-term compensation instruments rather than relying merely on stock options. *Competitive norms*, both in terms of magnitude and characteristics of awards, by which companies benchmark their compensation practices will change.

Fair Value Pricing Models

At one time, preambles to stock option plans contained such language as *to align executives and key employees with the interests of shareholders*. Now, preambles to omnibus equity plans contain such language as *to share in increased shareholder value*. This subtle but important change underscores the long-term shift in stock compensation from actively promoting shareholder interests to relying on the stock market to reward executives.

Historically, relying on stock-based compensation because of its favorable accounting treatment and non-cash requirements of companies, stock options became the *currency* of choice. For these reasons, we agree with the FASB that stock-based payments are compensation and the financial statements should reflect the cost of such compensation, similar to payments made for salaries and bonuses.

At the time leading up to and following adoption of Statement 123 in 1995, the Black-Scholes methodology for determining fair value of a stock option was advocated as the solution. Proponents touted its mathematical rigor and sophistication. Opponents complained about volatility at stock highs and lows and other matters that made the calculation inappropriate. Eventually, almost everyone agreed the Black-Scholes model was imperfect for determining the fair value of employee stock options.

No matter what names they are called, i.e., Black-Scholes or currently advocated lattice, these methodologies produce representations of theoretical values only and are not generally reflective of realistic compensation costs. Therefore, we believe the guidance provided for estimating fair value is inadequate. We recommend deferring implementation for six months until a special task force of prestigious economists, accountants and consultants prepares alternative recommendations on this important aspect of financial accounting standards for share-based payments.

I would like to speak at the roundtable discussion on June 29th in Norwalk, Connecticut.

Sincerely yours,

Gerald A. Miller
Executive Vice President and
Chief Operating Officer