Tel: 312-856-9100
Fax: 312-856-1379
www.bdo.com

330 North Wabash, Suite 3200
Chicago, IL 60611

December 20, 2013

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, *Accounting for Share-Based Payments When the Terms of an Award Provide That a Performance Target Could Be Achieved after the Requisite Service Period* (File Reference No. EITF-13D) ("the ED")

Dear Ms. Cosper:

We are pleased to provide comments on the share-based payments ED. We agree a performance target that is achievable after an employee's service period should be treated as a performance condition that affects vesting. That approach is consistent with our experience in practice and will codify what we believe is the most cost-effective alternative among the options that the Task Force considered.

We also believe this approach has several important implications that should be reflected in the final amendments. Specifically, we note the existing measurement guidance only addresses performance conditions that exist during the requisite service period, as opposed to afterward.[1] As such, the final amendments should clearly state a performance target that is achievable after the requisite service period should not be considered in the grant date fair value estimate of the award. In addition, we recommend addressing the determination of the requisite service period since there are sections of Topic 718 that leave open the possibility of a requisite service period extending beyond the explicit service period, an outcome we do not believe the Task Force intended in this situation. We also believe examples would enhance the final standard by illustrating how to determine the requisite service period for awards within the scope of this issue. We elaborate on these thoughts in the appendix.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Debbie MacLaughlin in the National SEC Department at (312) 616-4656 or Adam Brown in the National Accounting Department at (214) 665-0673.

Very truly yours,

BDO USA, LLP

BDO USA, LLP

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[1] ASC 718-10-30-13

Appendix

Question 1: Do you agree that a performance target that could be achieved after the requisite service period should be treated as a performance condition that affects vesting? If not, please explain why.

We agree a performance target that could be achieved after the requisite service period should be treated as a performance condition that affects vesting. We also believe the final amendments should clarify the related implication: that the performance target would not be considered in estimating the fair value of the instrument at the grant date. In our view, the final standard will be more operational by addressing measurement, rather than remaining silent on that issue as proposed in 718-10-30-28. Specifically:

- We note ASC 718-10-30-10 currently states "restrictions <u>and conditions</u> inherent in equity instruments awarded to employees are treated differently depending on whether they continue in effect after the requisite service period (emphasis added)." Such language could be interpreted as requiring performance targets in the scope of this ED to be treated the same way as restrictions that continue in effect after the requisite service period, i.e., reflected in the initial fair value estimate. Therefore, paragraph 30-10 should be amended to clarify that is not the case.
- In addition, ASC 718-10-30-13 currently states "the effects on the grant-date fair value of service and performance conditions that <u>apply only during the requisite service period</u> are reflected based on the outcomes of those conditions (emphasis added)." The final ASU should clarify that the same measurement guidance applies to performance conditions after the requisite service period, rather than incorporating their effect into the initial fair value estimate on the grant date.

Beyond measurement concerns, we believe the final standard should address how and when compensation cost should be recognized for awards that contain performance targets that could be achieved after the requisite service period. Paragraph BC6 refers to the total amount of compensation cost to be recognized "during and after the requisite service period" but provides no guidance on how to determine the requisite service period in these situations. Examples that illustrate the accounting for liquidity-event targets such as an IPO or a change in control vs. other types of performance targets, such as a cumulative EBITDA level, would be helpful. Similarly, examples that demonstrate how the requisite service period would be determined for awards containing performance conditions that are considered probable vs. those that are not would help ensure consistency in application.

For example, an award may include a service condition with an explicit service period (e.g., 3 years) and a performance condition with a longer implicit service period (e.g., specified EBITDA after 5 years). Although both conditions must be met in order to earn the award, the individual is not required to provide services at the time the performance condition is met. That is, there is no remaining risk of the employee forfeiting the award after completing the three year explicit service period. In this scenario, we believe the requisite service period should correspond with the explicit service period, i.e., the period over which services are required. It should not take into account, or be extended for, the performance condition expected to be met after this period of time. If the performance condition is considered probable at inception, expense would be recognized over a three year requisite service period.

We also suggest illustrating the accounting for a performance-based award where the recognition threshold (probable) is first met in a period subsequent to an employee's service requirement (e.g., retirement). Building on the prior example, assume it first becomes probable in year 4 (instead of at inception) that the EBITDA target will be met in year 5. No compensation cost would have been recognized prior to year 4 during the requisite service period. Consequently, a cumulative catch-up entry would be recorded in year 4 equal to 100% of the award's grant date fair value because there is no remaining risk of employee forfeiture.

We believe our recommended treatment in both of the prior examples is consistent with the recognition principle for share-based payment transactions in ASC 718-10-25-2 which says "an entity shall recognize the services received in a share-based payment transaction with an employee as services are received (emphasis added)."

Plainly, vesting conditions play an important role in estimating the requisite service period. For example, ASC 718-10-35-2 suggests that the requisite service period "often is the vesting period." Similarly, ASC 718-10-55-76 states "If an award vests upon the satisfaction of both a service condition and the satisfaction of one or more performance conditions" and the performance condition is considered probable "the requisite service would be ... the longest period of both the explicit service period and the implicit service period." Without specific guidance for awards within the scope of the ED, one might conclude that the requisite service period may extend beyond the explicit service period (i.e., to the 5 year implicit service period in the examples above) – a conclusion we believe to be inappropriate. As such, we believe the final amendments should i) address the determination of the requisite service period and ii) clarify that it cannot extend beyond the period(s) in which an employee is required to render service.

Lastly, we recommend revising paragraph 718-10-55-88 to delete the contradiction that will result if the ED is finalized as proposed, i.e., that the awards in question contain a performance condition:

> Because the employee is eligible to retire at the grant date, the award's explicit service condition is nonsubstantive. Consequently, Entity A has granted an award that does not contain a ~~performance condition or~~ service condition for vesting, that is, the award is effectively vested, and thus, the award's entire fair value should be recognized as compensation cost on the grant date. All of the terms of a share-based payment award and other relevant facts and circumstances must be analyzed when determining the requisite service period

Question 2: Are there circumstances in which a performance target that could be achieved after the requisite service period should be treated as a nonvesting condition? If yes, please explain why.

Subject to our response to Question 1, we believe the performance targets contemplated in the ED should be treated as performance conditions that affect vesting.

Question 3: The amendments in the proposed Update do not require any incremental disclosures for share-based payments in which a performance target could be achieved after the requisite service period. Should incremental disclosures be required for those awards? If yes, please explain why.

We agree that existing disclosures for share-based payment awards are sufficient.

Question 4: Do you agree that the proposed amendments should be applied prospectively to all share-based payments granted or modified on or after the effective date? Should early adoption be permitted? Under the proposed Update, retrospective adoption would not be allowed. Should retrospective adoption be allowed? If yes, please explain why.

We agree with prospective transition, and also that early adoption should be permitted.

With respect to an option allowing retrospective adoption, we note the FASB and EITF have permitted the use of hindsight in other instances (e.g., the recent EITF issue regarding joint and several liability arrangements) and would not be troubled by it in this circumstance if it improves consistency.

Question 5: The proposed amendments would apply to public and nonpublic entities. Should the proposed amendments be different for nonpublic entities? If so, please describe how and why they should be different.

We believe public and private entities should apply the same guidance.

Question 6: What is the level of effort and time needed to implement the proposed amendments?

We do not anticipate a significant amount of time and effort to implement the proposed amendments.