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October 1, 2020

Ms. Hillary H. Salo
Technical Director
File Reference No. 2020-200
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Via email: director@fasb.org

Re: *Proposed Accounting Standards Update Compensation—Stock Compensation (Topic 718) Determining the Current Price of an Underlying Share for Equity-Classified Share Option Awards (Update) (File Reference Number 2020-20)*

Dear Ms. Salo:

We appreciate the opportunity to comment on the proposed Update referenced above. Our comments will be in the form of responses to specific questions included in the proposed Update as well as other comments.

Questions for Respondents

Question 1: Is the practical expedient as drafted in this proposed Update operable? If not, please explain why.

Yes, we believe that the practical expedient in the proposed Update is operable, evidenced by the fact that many nonpublic entities are already utilizing Section 409A valuations for Topic 718 purposes without issue. However, since the acceptability of Section 409A valuations for Topic 718 purposes is not expressly included in the Accounting Standards Codification, in practice, we have observed disagreements between management, valuation specialists and auditors over the use Section 409A valuations for Topic 718 purposes. This proposed Update would resolve those disagreements.

Question 2: The practical expedient in this proposed Update is applicable only for equity-classified share-option awards. Should the scope of the practical expedient in this proposed Update be expanded to include other equity-classified share-based compensation arrangements (for example, nonvested shares)? Please explain why or why not.

We believe that the scope of the practical expedient in the proposed Update should be expanded to allow for the use of Section 409A valuations in valuing other equity-classified share-based compensation arrangements. We believe that this should be allowed for the following reasons: 1) as stated in the proposed Update's basis for conclusions, "the measurement objectives of Topic 718 and Section 409A are generally aligned," therefore, it can be "expected that the current price value determined using a valuation method satisfying the presumption of the reasonableness requirements of Section 409A would be consistent with the value that would have been determined using a valuation method that is compliant with Topic 718," 2) we have not identified any substantive differences between equity-classified share-option awards and equity-classified share-based compensation arrangements that would result the valuation methodologies utilized in Section 409A valuations being inconsistent with Topic 718 when valuing equity-classified share-based compensation arrangements, and 3) in many cases, Section 409A valuations are already being utilized by nonpublic entities to value equity-classified share-based compensation arrangements without issue.

In addition, we believe that the scope of the proposed Update should be expanded to include liability-classified awards. The Update states the following in support of its conclusion to exclude liability-classified awards, "The PCC decided that the practical expedient in this proposed Update should not be available for liability-classified awards, primarily because those awards are required to be remeasured at the end of each reporting period. It is not expected that nonpublic entities would obtain valuations that satisfy the presumption of reasonableness requirements of Section 409A at each reporting date. Additionally, private companies are already afforded a practical expedient for liability-classified awards whereby those awards may be remeasured based on intrinsic value."

We have observed that many nonpublic entities issue equity-classified share-option awards and equity-classified share-based compensation arrangements on a regular basis, and therefore, also obtain Section 409A valuations on a regular basis, many times annually. We have also observed that many valuation firms charge less per individual valuation report when updating annual Section 409A valuations, therefore, we do not believe that the incremental cost to obtain annual Section 409A valuations for those entities not already obtaining them would be significant. We also do not believe that the practical expedient currently available to nonpublic entities to remeasure liability-classified instruments using intrinsic value provides significant relief to nonpublic entities as the current stock price still needs to be estimated in determining intrinsic value (i.e. the entity still needs to obtain a valuation). Also, not including in the proposed Update that the use of Section 409A valuations to value liability-based awards is acceptable, could suggest to entities, valuation specialists and auditors that Section 409A valuations are not acceptable for valuing liability-classified instruments for Topic 718 purposes, which we do not believe is the Board's intent and which would be contradictory to what is currently occurring in practice.

Question 3: Will the proposed practical expedient reduce costs, including audit costs or fees, associated with the current price input? Please explain why or why not.

Depending on the specific views of individual entities, their valuation specialists and their auditors, some entities do obtain separate valuations for Section 409A and Topic 718 purposes. While we believe that the proposed Update would result in some cost savings for those entities, estimating the significance of that cost savings is difficult due to the fact that valuation specialists can often leverage the work performed in preparing the first valuation when preparing the second valuation, and therefore, they often charge less in total than they would for two completely unrelated valuations. As it relates to audit fees, since the proposed Update does not change the audit procedures required to be performed (i.e. the entity's valuation still needs to be audited), we do not believe that the proposed Update will result in a significant decrease in audit fees. In addition, many nonpublic entities already utilize Section 409A valuations for Topic 718 purposes, therefore, the audit effort for those entities would remain the same.

Question 4: Do you or your clients obtain separate valuations to satisfy GAAP requirements (Topic 718) and tax regulations (Section 409A)?

The majority of nonpublic entities that we are aware of utilize one valuation for both purposes.

Question 5: Do you agree with allowing the proposed practical expedient to be elected on an award-by-award basis?

As stated in the proposed Update's basis for conclusions, "the measurement objectives of Topic 718 and Section 409A are generally aligned," and therefore, it can be expected that Section 409A will yield a current price value, "consistent with the value that would be determined using a valuation method that is compliant with Topic 718." As such, we support allowing the proposed practical expedient to be elected on an award-by-award basis as the resulting values should be consistent regardless of whether Section 409A or a Topic 718 compliant valuation methodology is utilized.

Question 6: Will the proposed practical expedient compromise the decision usefulness of information related to equity-classified share-option awards? If yes, please explain how.

As stated in the proposed Update's basis for conclusions, "the measurement objectives of Topic 718 and Section 409A are generally aligned," and therefore, it can be expected that Section 409A will yield a current price value, "consistent with the value that would be determined using a valuation method that is compliant with Topic 718." Since Topic 718 and Section 409A are expected to yield similar values, we do not believe that the proposed practical expedient would comprise the decision usefulness of information related to equity-classified share-option awards.

Question 7: Do you agree with the proposed prospective transition requirements? If not, please explain why.

Yes, as stated in the proposed Update's basis for conclusions, "the measurement objectives of Topic 718 and Section 409A are generally aligned," and it can be expected that Section 409A will yield a current price value, "consistent with the value that would be determined using a valuation method that is compliant with Topic 718," therefore, we do not believe that the benefits of requiring retrospective application would outweigh the costs.

Other Comments

Significant Changes in Section 409A Valuations Between the Valuation Date and Grant Date

Section 409A allows the use of, "A valuation determined by an independent appraisal within the 12 months preceding the grant date." We believe that the Board should consider adding criteria to the proposed Update indicating to entities when the utilization of a Section 409A valuation prepared prior to the grant date might be inappropriate (e.g. when an economic recession occurs subsequent to the valuation date), and therefore, when an updated valuation should be obtained.

Public Entities With Limited or No Trading Activity

As stated in the proposed Update's basis for conclusions, "the measurement objectives of Topic 718 and Section 409A are generally aligned," and it can be expected that Section 409A will yield a current price value, "consistent with the value that would be determined using a valuation method that is compliant with Topic 718," therefore, we believe that the Board should consider expanding the scope of the proposed Update to public entities whose stock has limited or no trading activity.

We appreciate the opportunity to provide the above comments and are available for further discussion with the Board if that would be useful to the process. Should you wish to discuss any of these comments, please contact David Johnson, Professional Practice Group Partner, at david.johnson@bakertilly.com or +1 (608) 240.2422.

Sincerely,

Baker Tilly US, LLP

BAKER TILLY US, LLP
David Johnson, Professional Practice Group Partner