

FENWICK & WEST LLP

SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041
TEL 650.988.8500 FAX 650.938.5200 WWW.FENWICK.COM

May 8, 2008

Thomas Kim, Esq.
Office of Chief Counsel
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RECEIVED
MAY 9 11:32 AM
SECURITIES AND EXCHANGE COMMISSION
CORPORATION FINANCE

Re: Facebook, Inc.
Request for Exemptive Relief from Registration under Section 12(g) of the
Securities Exchange Act of 1934

Dear Mr. Kim:

On behalf of Facebook, Inc., a Delaware corporation (the "**Company**"), we hereby apply for an exemption under Section 12(h) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or request no-action relief, from the registration requirements of Section 12(g) of the Exchange Act with respect to restricted stock units ("**RSUs**") that the Company has granted and proposes to grant to employees, directors and certain consultants of the Company under its 2005 Stock Plan (the "**Plan**").

In connection with this request, the Company has authorized us to make on its behalf the factual representations herein.

I. Background

The Company provides a leading social networking web site on the Internet. The Company's outstanding capital stock consists of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock. There are currently fewer than 500 holders of each of these classes of securities. The Company has also granted options to purchase its Common Stock to its employees, directors and consultants for compensatory purposes. The Company intends to comply with the applicable requirements set forth in the provisions of paragraph (f)(1) of Rule 12h-1 promulgated under the Exchange Act with respect to its stock option grants. More recently, the Company has begun granting RSUs to its employees for compensatory purposes (and may in the future grant RSUs to directors and certain consultants as well). The Company currently has fewer than 500 holders of RSUs.

II. Summary of the Material Terms of the RSUs

The Company's RSUs represent the right to receive a specified number of shares of the Company's Common Stock in the future if certain conditions are met. Recipients of RSUs do

not make any payments or provide any other consideration to the Company, other than continued employment or provision of services. Additionally, unlike a stock option, the RSUs do not require the payment of any consideration to the Company in order to receive the Common Stock subject to the RSUs.

Each currently outstanding RSU and RSU that the Company may grant in the future (for so long as it is relying on the relief requested herein) contains or will contain the following material terms:

1. *Restrictions on Recipients.* RSUs will only be issued to employees and directors of the Company and consultants permitted under Rule 701(c) of the Securities Act.

2. *Restrictions on Transfer.* RSUs granted under the Plan cannot be sold, assigned, pledged, hypothecated, transferred or otherwise disposed of by the person to whom they are granted.¹ The restrictions on transfer will also include a prohibition on any short position, any "put equivalent position" or any "call equivalent position" by the RSU holder until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or is no longer relying on the relief requested.

3. *No Issuance until Liquidity Event.* The shares of Common Stock subject to the RSU will not be issued to the RSU holder unless and until either of the following events occurs: (A) a Change of Control² of the Company, or (B) 180 days after the initial public offering of the Company's Common Stock (each, a "*Liquidity Event*"). Absent a Liquidity Event, the RSUs expire upon the tenth anniversary of the date of grant (the "*Expiration Date*").

4. *No Rights as Stockholders.* Holders of RSUs have no voting, dividend, liquidation or other rights of stockholders and will not be reflected as stockholders in the Company's records until shares of Common Stock are issued pursuant to the RSUs.

5. *No Forfeiture upon Termination of Employment.* Holders whose employment or other service with the Company terminates retain their RSUs. Within 30 days of the occurrence

¹ Transfers may be permitted by will or the laws of descent and distribution or qualified domestic relations order, however any such transferred RSUs, and the transferees that receive them, would continue to be subject to the same terms and conditions as described herein.

² A "Change of Control" is defined under the Plan as (1) a sale of all or substantially all of the Company's assets or (2) any merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction; provided, however, that none of the following shall be considered a Change of Control: (a) a merger effected exclusively for the purpose of changing the domicile of the Company, (b) an equity financing in which the Company is the surviving corporation, or (c) a transaction in which the stockholders of the Company immediately prior to the transaction own 50% or more of the voting power of the surviving corporation following the transaction.

of a Liquidity Event, the RSUs will be settled and a number of shares of Common Stock will be issued based on the specific holder's length of continuous service to the Company. For holders whose employment or other service with the Company terminates prior to the Liquidity Event, the Common Stock will be issued, regardless of the duration of time between the termination of employment or service and the occurrence of the Liquidity Event, so long as the Liquidity Event occurs prior to the Expiration Date and, in most cases, so long as the specified periods of continuous service have been met prior to termination of employment or service. Upon such termination of employment or service, however, the number of shares of Common Stock to be delivered to such persons pursuant to the RSUs would cease to increase.

6. *Provision of Information.* The Company will agree in the relevant grant agreement to provide holders of RSUs the information specified under Rule 12h-1(f)(1)(vi) of the Exchange Act.

7. *No Trading Market.* There is no trading market or other method that would allow RSU holders to receive any consideration or compensation for their RSUs prior to a Liquidity Event.

III. Discussion

A. Exchange Act Registration Requirements

As a general rule, Section 12(g) and Rule 12g-1 of the Exchange Act require every issuer meeting the jurisdictional requirements of the Exchange Act that has total assets of more than \$10 million and a class of equity security held of record by 500 or more persons to register that class of equity security under the Exchange Act. Section 3(a)(11) of the Exchange Act defines "equity security" as "any stock or similar security...or any security convertible, with or without consideration, into such a security." Accordingly, we believe the RSUs would be deemed to be an equity security for purposes of Section 12(g), and, absent the relief requested herein, the Company would become subject to the registration and reporting requirements of the Exchange Act at such time as it had 500 or more holders of record of RSUs.

Section 12(g) was added to the Exchange Act by Section 3(c) of the Securities Acts Amendments of 1964, Pub. L. 88-467; 78 Stat. 565 (the "1964 Amendments"). The purpose of the 1964 Amendments has been expressed in various ways:

(a) The preamble to the legislation states that its purpose was "to extend disclosure requirements to the issuers of additional publicly traded securities."

(b) A report of the House Committee on Interstate and Foreign Commerce accompanying J.R. 6793, the version of the bill introduced in the House of Representatives, states that "Section 3(c) of the bill would ... provide for registration of securities traded in the over-the-counter market and for disclosure by issuers thereof comparable to the registration

and disclosures required in connection with listed securities.” H.R. 6793, U.S. Code Cong. and Admin. News, 88th Cong. 2d Sess., at pages 3027-3028.

(c) A release of the Securities and Exchange Commission, citing a report on its study that made the legislative recommendations on the basis of which the 1964 Amendments were enacted, describes the scope of the registration and reporting provisions of Exchange Act as extending “to all issuers presumed to be the subject of active investor interest in the over-the-counter market.” Exchange Act Release No. 18189, October 20, 1981 (citing Report of the Special Study of Securities Markets of the Commission, House Committee on Interstate and Foreign Commerce, H.R. Doc. No. 95, pt. 3, 88th Cong. 1st Sess. (1963) at pages 60-62).

(d) A later release of the Commission states that the numerical thresholds contained in Section 12(g) were selected because it was believed “that issuers in these categories had sufficiently active trading markets and public interest and consequently were in need of mandatory disclosure to ensure the protection of investors.” Exchange Act Release No. 23407, July 8, 1986.

All of the above strongly suggest that it was not the intent of Congress to require Exchange Act registration of the RSUs because they are neither “securities traded in the over-the-counter market” nor subject to any active investor interest, as they are not transferable.

Additionally, we note that in SEC Release No. 34-56887 (Dec. 7, 2007) (the “*Rule 12h-1 Release*”), in noting the appropriateness of exempting employee stock options from the registration requirements of Section 12(g), the Staff suggested that securities issued in connection with employee benefit plans do not require the same level of regulation as securities traded in public markets:

“We believe that the characteristics of *many employee benefit plans*, which are by their own terms limited to employees, not available to the general public, and subject to transfer restrictions, obviate the need for applicability of all the rules and regulations aimed at public trading markets.” Rule 12h-1 Release, note 24 (emphasis added).

B. Authority to Grant Relief

Section 12(h) of the Exchange Act allows the Staff to exempt an issuer from the registration requirements of Section 12(g) if it finds, “by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer or otherwise, that such action is not inconsistent with the public interest or the protection of investors.”

C. Appropriateness of Exemption or Other Relief

We believe that it would be appropriate for the Staff to grant the Company an exemption or no-action relief from the registration requirements of Section 12(g) for the RSUs because such exemption or relief would be consistent with the standards articulated in Section 12(h), as applied in prior no-action letters issued by the Staff and recently-enacted Rule 12h-1. We believe that neither the public interest nor the protection of investors will be furthered by requiring the Company to meet the registration requirements of the Exchange Act if it were to have over 500 holders of RSUs.

1. Number of Public Investors

The first factor specified in Section 12(h) is the number of public investors in the issuer. Because the Company grants RSUs under the Plan without cash or other tangible consideration, the Staff should not consider the holders of RSUs to be investors in the Company. Moreover, other than the limited circumstances described in paragraph II.2. above, the RSUs cannot be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of. Further, any such limited permitted transfer is conditioned upon the transferee agreeing in writing to be bound by all applicable transfer restrictions described above. Therefore, it would not be possible for RSUs to be held by public investors. Further, the shares of Common Stock that are subject to the RSUs cannot be traded in the public market until 180 days after the occurrence of an initial public offering.

2. Trading Interest

The second factor specified in Section 12(h) is the level of trading interest in a company's equity securities. There is no trading interest in the RSUs, and the Plan has been structured to preclude any trading of RSUs from developing. As discussed above, the RSUs cannot be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of by the person to whom they are granted, other than potentially by will or the laws of descent and distribution and pursuant to qualified domestic relations orders as noted above. In the event such a permitted transfer was to occur, any such transferred RSU and the transferee would continue to be subject to the same terms and conditions. As a result, there is no opportunity for any trading to take place or any trading interest in the RSUs to develop.

3. Nature of Issuer

The last factor specifically set forth in Section 12(h) is the nature and extent of the activities of the issuer and the income or assets of the issuer. While the assets and income of the Company are not insubstantial, it is a private company. Moreover, the fact that the Company's business is large with a large number of employees should not be disqualifying. See, for example, *Kinko's, Inc.* (Nov. 30, 1999) and *Starbucks Corporation* (Apr. 2, 1992).

D. Information Provided

1. Information Provided to RSU Holders

The Company believes that the underlying reasons for the informational requirements set forth in recently-enacted Rule 12h-1(f) equally apply in the case of the RSUs. As noted in the Rule 12h-1:

“the type and amount of disclosure needed in a compensatory securities transaction differs from that needed in a capital-raising transaction. In a bona fide compensatory arrangement, the issuer is concerned primarily with compensating the employee-investor rather than maximizing its proceeds from the sale. Because the compensated individual has some business relationship, perhaps extending over a long period of time, with the securities issuer, that person will have acquired some, and in many cases, a substantial amount of knowledge about the enterprise. The amount and type of disclosure required for this person is not the same as for the typical investor with no particular connection with the issuer.”

As previously stated, the Company intends to provide holders of RSUs the same type of information (and at the same frequency) required to be provided to holders of stock options under Rule 12h-1(f)(1)(vi).

Rule 701 under the Securities Act requires that investors receive the information specified under Rule 701(e) within a reasonable time prior to the date of sale. In the case of stock options, the date of sale of the underlying Common Stock would clearly be the date of exercise of the option. With respect to the RSUs, it is not as clear when a “sale” occurs, as the recipients are never required to pay any additional consideration to receive the shares of Common Stock subject to the RSUs. Accordingly, the Company intends to maintain on its corporate intranet site that is accessible by all holders of RSUs while they are providing services to the Company the information required under Rule 12h-1 (and therefore Rule 701(e)). In the case of former employees or consultants holding RSUs, similar to the note to paragraph (f)(1)(vi) of Rule 12h-1, the Company would provide this information, provided the recipient agreed to maintain the confidentiality of the information.

We believe the Company’s proposed method of providing information to RSU holders would result in RSU holders receiving at least the same amount of information as holders of stock options exempt from Section 12(g).

2. Information Provided at the Time of a Liquidity Event

If a Liquidity Event occurs as a result of an initial public offering of the Company’s Common Stock, the Company will have been subject to the reporting requirements of the Exchange Act for six months, and would intend to continue to comply with the informational requirements of the Exchange Act. Additionally, the Company would intend to file a registration

Statement on Form S-8 to register the shares of Common Stock issuable in connection with the RSUs prior to the issuance of the Common Stock pursuant to such RSUs.

A Liquidity Event occurring as a result of a Change of Control of the Company would be determined by the controlling stockholders of the Company, not holders of RSUs or stock options. Generally holders of Company Common Stock would be entitled to receive either cash consideration in the merger or equity or other securities of the acquiring entity. If the consideration consisted of securities of the acquiror, the Company would need to evaluate the need to register the transaction under the Securities Act as well as the need to register the class of securities to be issued under the Exchange Act, or seek an available exemption. Absent an exemption, the registration of the transaction and the registration of the class of securities issued in the transaction, would give the former holders of RSUs the benefit of ongoing disclosure.

E. Consistency with Grants of Relief Prior to the Rule 12h-1 Release

We believe that granting the relief request in this letter would be consistent with the Staff's prior no-action letters, including one relating to securities similar to the RSUs.

Prior to the enactment of Rule 12h-1, the Staff has previously granted no-action relief to other applicants that typically granted stock options instead of RSUs. These no-action letters include: *Nordstrom.com L.L.C.* (February 22, 2002), *DataCard Corporation* (November 2002), *Unisphere Networks, Inc.* (January 15, 2002), *Gen-Probe Incorporated* (Aug. 15, 2001), *NewSouth Holdings, Inc.* (Aug. 6, 2001), *AMIS Holdings, Inc.* (July 30, 2001), *Mitchell International Holding, Inc.* (Dec. 27, 2000), *General Roofing Services, Inc.* (Apr. 13, 2000), *Kinko's, Inc.* (Nov. 30, 1999), *WRQ, Inc.* (Dec. 31, 1997), *BSG Corporation* (Aug. 1, 1995), *Superior Services, Inc.* (Mar. 18, 1994) and *Starbucks Corporation* (Apr. 2, 1992).

We believe the Plan and the terms of the RSUs satisfy the requirements set forth in the Staff's prior no-action letters, as modified by the Staff's statements in *Current Issues and Rulemaking Projects, Quarterly Update March 31, 2001* (the "**Quarterly Update**"), and we note in particular the following factual similarities:

(a) RSUs will be granted under the Plan only to employees and directors and to consultants eligible under Rule 701 of the Securities Act (see, for example, the Quarterly Update);

(b) RSUs, like options, are granted under the Plan without consideration for the purposes of incentivizing holders of RSUs to work to improve share value, however, unlike holders of options, holders of RSUs are not required to make any additional payments to the Company in order to receive shares of Common Stock upon a Liquidity Event;

(c) The RSUs are non-transferable (other than by will or the laws of descent and distribution or by gift or domestic relations orders to persons enumerated in Rule 701) and, as a result, holders of RSUs should not be treated as public investors;

(d) There is no market by which any holder of RSUs can receive anything of value prior to a Liquidity Event, and accordingly no trading interest in the RSUs exists (see, for example, *Nordstrom.com L.L.C.* and *DataCard Corporation*);

(e) The relief requested is limited to the RSUs under the Plan;

(f) The Company has made undertakings relative to providing holders of RSUs with the type of information that is now required under Rule 12h-1; and

(g) Similar to the permitted retention of the vested portion of stock options, former employees may continue to hold RSUs, although the number of shares issuable upon settlement of the RSUs will not increase (see, for example, the Quarterly Update).

Additionally, we note that in the *Kinkos, Inc.* ("Kinkos") no-action letter, the Staff granted the no-action request of an issuer that was implementing a stock incentive plan that would consist of both stock options and grants of deferred shares. According to the no-action letter request, Kinkos intended to grant the deferred stock awards for the first two years of the plan. The RSUs and these deferred share awards have many key similarities:

Recipients. The deferred share awards were only available to employees of *Kinkos*. The Company may award RSUs only to employees and directors and permitted consultants under Rule 701.

No Payments. The deferred shares and the RSUs represent the right to receive shares of Common Stock for no consideration upon the occurrence of future events.

Triggering Events. Deferred share awards were payable only upon the occurrence of a "Trigger Event," which was defined as 180 days after the occurrence of an initial public offering, the occurrence of a "change of control," or eight years after the date of grant. Except for the eight year term, these "Trigger Events" are substantially similar to the Liquidity Events.

Form of Payment. Payments with respect to deferred stock awards were to be made in the form of Common Stock of Kinkos, except that upon a "change of control," the recipient could receive cash or the other consideration received by holders of Kinkos common stock, or an equivalent award with respect to common stock of the acquiror. Payments with respect to RSUs would be made in a similar manner.

Transfer Restrictions. The deferred stock awards were not permitted to be sold, transferred, assigned, given, or otherwise hypothecated by the grantee. The RSUs are similarly non-transferable, subject to the very limited exceptions described in paragraph II above.

Forfeiture. The deferred stock awards were generally forfeited if an employee's employment were terminated prior to the "Trigger Event," except in cases of disability, retirement or death. Here, a ratable portion of the RSU would be retained by the holder in the


event of termination of employment or cessation of services prior to a Liquidity Event, but would be forfeited in the Liquidity Event does not occur prior to the expiration date of the RSU.

F. Conclusion

Because of the absence of public investors and trading interest in the RSUs, and the absence of any payment for delivery of shares of Common Stock, we believe that there is no need for the disclosure of the information required by the Exchange Act and neither the public interest nor protection of investors would be furthered by requiring the Company to register the RSUs under the Exchange Act. Under the standards articulated in Section 12(h) of the Exchange Act and consistent with prior no-action letters issued by the Staff and recently-enacted Rule 12h-1(f) with respect to stock options, we believe the Company meets the conditions necessary to receive relief from registering the RSUs under Section 12(g) of the Exchange Act.

We respectfully request that the Staff issue an exemptive order pursuant to Section 12(h) of the Exchange Act, or otherwise take a no-action position, relieving the Company from registering under Section 12(g) of the Exchange Act the RSUs it has issued and will issue under the Plan. We further request that this order or grant of no-action relief remain in effect until such time as the Company becomes a reporting company, is required to register under the Exchange Act with respect to any other class of its securities other than the RSUs or undergoes a Liquidity Event. If for any reason you do not concur with our conclusions, we would appreciate the opportunity to confer with members of the Staff by telephone prior to any written response to this letter.

Sincerely,



Jeffrey R. Vetter

cc: Gordon K. Davidson, Esq.
Theodore G. Wang, Esq.