

September 30, 2016

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Via mail: [director@fasb.org](mailto:director@fasb.org)

File Reference: 2016-270 *Disclosure Framework – Changes to the Disclosure Requirements for Income Taxes*

Dear Chairman Golden:

The American Bankers Association<sup>1</sup> (ABA) appreciates the opportunity to comment on the exposure draft, *Income taxes (Topic 740) Disclosure Framework – Changes to the Disclosure Requirements for Income Taxes* (ED). The ED proposes to expand certain required income tax-related disclosures, particularly for those organizations with significant foreign operations.

Representing both preparers and users of financial statements, we appreciate the Board's continuing efforts to improve the effectiveness of disclosure requirements. Providing users of financial statements with accurate and usable information is critical and promotes transparency that facilitates appropriate decision making by investors. We support these objectives.

Before providing comments on several of the specific changes proposed, we would like to express a general concern about the additional disclosures being proposed, specifically with respect to foreign tax matters. We appreciate that having a general understanding of foreign tax matters is important to users of the financial statements. However, the significant complexity of domestic and international tax rules related to international activities makes it very difficult to have concise and decision-useful disclosures. We believe that the proposed expansion of certain of the disclosures will not significantly improve the financial statement user's assessment of the prospects for future cash flows and may often lead to confusion and incorrect conclusions.

In addition, certain readers of the disclosure may apply the data in negative or inaccurate ways in order to advance political or other purposes irrelevant to the conceptual objectives of U.S. GAAP. We note that tax authorities in the U.S. and other foreign jurisdictions are in the process

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$8 trillion in loans.

of implementing country by country disclosure rules as part of the tax return filing process. If this information must be provided by operation of tax rules in the various jurisdictions, we believe that this confidential forum (tax returns) is the appropriate place for preparers to provide the information and not in public footnotes. We understand that these concerns have been raised during the deliberations of the Board preceding the issuance of the ED.

We have the following more specific comments on the ED:

1. We do not believe the elimination of the terms “nonpublic entity” and “public entity” and substituting “public business entity” and “other than public business entity” will result in significant additional burdens for our members. We believe that, for many of our members whose reporting status could change under the new terms, the incremental required information is already prepared or is readily available.
2. The Board should consider potential confusion caused by the disclosure of gross (as opposed to tax-effected) net operating loss (NOL) carryforwards. The impact of gross NOL carryforwards is dependent on apportionment of losses, based on various jurisdictional statutes and other applicable rules. Simply disclosing the tax effect of the losses should provide the user with relevant information and would decrease the data required in the footnote. However, should the gross amount of the carryforwards be required, the Board should clarify whether the carryforwards should be based on tax return reporting or be “grossed up” to align with pre-tax equivalent deferred tax asset reporting (as proposed in paragraphs 740-10-50-6A and 740-10-50-8A).
3. We support the elimination of the 12 month “look forward” requirement with respect to unrecognized tax benefits. This is a difficult estimate to develop, given the significant number of variables involved.
4. For the same reasons as item 3 above, we recommend that the Board reconsider the requirement regarding a description of an enacted change in tax law that is expected to have an impact in a future period. Our members have concerns about determining when this requirement would be triggered and how to measure the potential impact in a future period. Although the impact is not required to be disclosed, implicit in this disclosure requirement is the need to quantify the impact in order to determine the materiality of the disclosure. This is another “look forward” type of requirement that will generate estimation challenges.
5. Our members have concerns about the requirement to disclose “legally enforceable agreements” with a government. There is a variety of agreements that might be in place with a government that could be interpreted to be within the scope of the disclosure requirement. In the U.S. for example, many taxpayers receive private letter rulings and advance pricing arrangements that provide clarity with respect to tax positions. There are similar administrative provisions in other countries. We assume that the intent of the disclosure is to identify situations in which an entity benefits from exceptional governmental aid; however, it may be difficult for an entity to assess whether it is receiving benefits that are not “broadly available to taxpayers”. If the Board moves

forward, there needs to be additional guidance on the circumstances where this disclosure may be applicable. Additionally, we have concerns about the confidentiality of a taxpayer's interactions with tax authorities, including arrangements that may be the subject of nondisclosure agreements. Finally, we believe this requirement would be difficult to administer and may lead to the types of incorrect negative conclusions we note above.

6. We have concerns about the disclosure of cash, cash equivalents and marketable securities held by foreign subsidiaries. We believe this disclosure is intended to provide more transparency into the liquidity of foreign subs and related potential tax exposures. As noted in the ED background information, however, there is a myriad of challenges with meeting this disclosure objective. For example, not all foreign subsidiary earnings are designated as indefinitely reinvested and, therefore, such a disclosure may provide a false impression of repatriated cash. In addition, the assets subject to disclosure may be deployed in the operation of the international business or subject to restrictions which make them unavailable for repatriation.

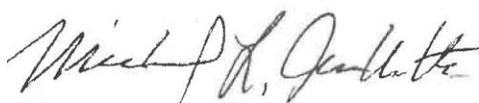
The Board should also consider clarifying the definition of "foreign subsidiary", as it is unclear whether this term is meant to be limited to controlled foreign corporations or also include foreign branches and disregarded entities. Finally, we question the relevance of the disclosure to investors in a financial institution whose liquid assets vary significantly day-to-day and are part of normal business operations. It is difficult to imagine how such information would be informative in assessing the prospects for future cash flows of a banking entity.

7. We have concerns regarding the requirement for the disaggregation of income taxes paid between domestic and foreign operations. The amount of taxes actually paid is affected by required payment dates, book / tax differences and other rules which can vary significantly by jurisdiction. Accordingly, disclosure of the amount of foreign taxes paid may not provide any useful insight into legitimate trends of income tax expense, and may lead users to incorrect conclusions.

We support the Board's efforts to improve transparency in financial reporting. Although we believe that our members can provide the requested information, we question whether, for several of the disclosures, such information will be decision useful to our financial statement users.

Thank you for your attention to these matters and for considering our views. Please feel free to contact John Kinsella ([jkinsella@aba.com](mailto:jkinsella@aba.com); 202-663-5317) or me ([mgullette@aba.com](mailto:mgullette@aba.com); 202-663-4986) if you would like to discuss our views.

Sincerely,



Michael L. Gullette