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Ms. Susan M. Cosper
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File Reference No. 2016-270
Financial Accounting Standards Board
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30 September 2016

Re: Proposed Accounting Standards Update, *Income Taxes (Topic 740): Disclosure Framework — Changes to the Disclosure Requirements for Income Taxes* (File Reference No. 2016-270)

Dear Ms. Cosper:

We appreciate the opportunity to comment on the Proposed Accounting Standards Update (ASU), *Income Taxes (Topic 740): Disclosure Framework — Changes to the Disclosure Requirements for Income Taxes* (the Proposed Standard), from the Financial Accounting Standards Board (FASB or Board).

We support the FASB's disclosure framework project and its objective to improve the effectiveness of income tax related disclosures in the notes to the financial statements. We also support the FASB's proposal to incorporate income tax disclosures required by the Securities and Exchange Commission (SEC) into US GAAP. We encourage the FASB staff to work with the SEC staff to remove the disclosure requirements in (Regulation S-X 4.08 (h)) once this project if finalized.

We note that most of the recommendations to expand disclosures are based on input from users. Given the extensive user outreach the FASB has performed, we think it would be helpful to constituents to provide added insight into those users' views. We would find it particularly helpful if that input included the following (excluding disclosures already required by SEC regulations):

- The user type
- How the information would be used by each type of user
- Why the information is not available elsewhere
- How the information would change user behavior

We believe that information would provide constituents with better insight into the FASB's extensive outreach process, and enable constituents to provide more constructive input into a cost-benefit analysis.

As detailed in the attached responses, we do have particular concerns regarding the disclosure of agreements with a government and the future effects of tax law changes. In the case of disclosures of agreements with a government, we are suggesting the FASB provide further insight into the information sought by users and an understanding as to why the information already provided as it relates to the effective tax rate reconciliation and the disclosure of tax uncertainties is not sufficient for their purposes. As it relates to the disclosure of the future effects of tax law changes, we are concerned that it would be a fundamental expansion of the purpose of the financial statements as well as a significant undertaking for preparers. In addition, we recommend that the Board clarify certain aspects of the proposed requirements to promote consistency and make the disclosures as useful as possible.

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Our responses to the questions posed in the Proposed Standard are set out in Appendix A of this letter, and our additional comments on certain specific proposed disclosures are included in Appendix B.

We would be pleased to discuss our comments with the Board or its staff at your convenience.

Very truly yours,

Ernst + Young LLP

Appendix A — Responses to questions raised in the Proposed Accounting Standards Update, *Income Taxes (Topic 740): Disclosure Framework — Changes to the Disclosure Requirements for Income Taxes*

> **Question 1:** Would the proposed amendments result in more effective, decision-useful information about income taxes? Please explain why or why not. Would the proposed amendments result in the elimination of decision-useful information about income taxes? If yes, please explain why.

As noted in our cover letter, while we recognize the FASB has obtained significant user input on this project, we believe a more detailed articulation of that input would help other constituents' understand how the proposal meets user needs. Ideally this input would be disaggregated by individual disclosure and include the user type, how the information would be used by each type of user, why the information is not available elsewhere, and how the information would change user behavior.

> **Question 2:** Are the proposed disclosure requirements operable and auditable? If not, which aspects pose operability or auditability issues and why?

We believe that many entities are likely to have the systems, processes and controls in place to capture the data required to comply with many of the proposed requirements, particularly those that would be consistent with existing SEC disclosure requirements. However, we are concerned about the operability and auditability of certain of the proposed requirements.

Enacted changes in tax laws — We believe that preparing and auditing the proposed disclosures on the future effects of changes in tax laws would be very challenging. See our response to Question 3 for details.

Foreign versus domestic — We believe that the proposal describes foreign operations (i.e., relating to any country outside of the reporting entity's home country) and the disclosure requirements to disaggregate pretax income and income tax expense in a manner consistent with SEC Regulation S-X 4.08 (h)(1). However, we believe companies apply judgment in defining their foreign operations when disclosing pretax income and income tax expense from foreign operations, resulting in diversity in practice. For example, a foreign legal entity that is consolidated in a US reporting entity may be subject to tax in both the US and in a foreign jurisdiction. That would be the case for a branch that is incorporated in a foreign jurisdiction but included in the US federal tax return, a foreign entity that is disregarded for US federal tax purposes or a foreign entity that generates subpart F[1] income taxes. Additionally, a subsidiary's operations, where indefinite reinvestment has not been asserted, could be subject to taxation in both its local jurisdiction and the reporting entity's home country. Also, there may be diversity in how intercompany transactions between foreign and domestic entities are considered for purposes of the disclosure. It is also unclear whether there is an expectation that foreign and domestic income aggregate to the total of pretax income presented in the financial statements. We believe that questions will arise in determining the appropriate presentation of foreign

[1] Subpart F of the Internal Revenue Code (with regards to controlled foreign corporations) requires a US company to include in income certain foreign subsidiary earnings, regardless of whether the associated earnings are actually repatriated to the US. Subpart F income generally consists of certain insurance income, passive income (e.g., interest, dividends, royalties) and certain operating income from transactions that are subject to lower foreign tax rates than US tax rates.

and domestic taxation and recommend the Board provide additional guidance if it wants to achieve consistency in disclosures. We also recommend that the FASB consider defining the term "foreign subsidiary" for purposes of making the proposed disclosures, which we discuss further in Appendix B.

Agreements with a government — As discussed in Appendix B, we recommend that the FASB evaluate the scope of the proposed disclosures on agreements with a government and have provided alternatives for the Board to consider.

Other — While we found the proposed expansion of examples in Accounting Standards Codification (ASC) 740-10-55-217 through 55-220A helpful, we believe that preparers and auditors would benefit from additional disclosure examples for certain other disclosures that more clearly illustrate the disclosures the FASB would expect. For example, we believe that without more guidance or examples, there could be diversity in practice in the presentation and depth of disclosures entities provide to explain the year-to-year changes in reconciling items, enacted changes in tax law and agreements with a government. For example, one preparer may conclude that no explanation for changes in reconciling items is necessary because the labels used in the reconciliation are sufficient while another may decide to separately disclose specific items that led to the change.

In Appendix B, we also suggest some wording changes to clarify the examples in ASC 740-10-55-217 through 55-220A.

Question 3: Would any of the proposed disclosures impose significant incremental costs? If so, please describe the nature and extent of the additional costs.

We believe that SEC registrants would not incur added cost to provide the proposed disclosures that are consistent with existing SEC requirements. However, we believe that implementing certain of the proposed requirements, including disaggregating existing disclosures, could require significant effort. Preparers that incur costs to comply with the new disclosure requirements would also incur incremental costs for effort expended by their auditors to evaluate the new disclosures and related controls. We encourage the Board to weigh such preparer concerns in evaluating the costs and benefits of the proposal.

Enacted changes in tax law

We believe that the proposed requirement to disclose information about enacted changes in tax law if it is probable that the changes will affect the entity in a future period (proposed paragraph 740-10-50-22) could create a significant process and internal control burden for multinational entities due to the potentially large volume of tax law changes. For example, in the 12 months ended 30 June 2016, tax legislation was enacted in at least 64 jurisdictions in the US (i.e., at the federal and state level) and other countries. We believe the cost of implementing the processes and controls to make this disclosure would be significant. We also believe that the cost of auditing the completeness of an entity's analysis, specifically its evaluation of whether and when it is probable that a tax law change will have an effect on the entity's future financial statements, would be significant.

Evaluating the effects of changes in tax law is often a challenging and time-consuming process, and companies make changes in operations and structures to address these matters. While companies are currently required to account for and disclose the effects of tax law changes (including the effect on existing deferred taxes) in the period they occur, having to track and evaluate the potential effects in future periods of tax law changes that do not have a current period accounting effect (or in addition to that effect) is a significant expansion of both what is included in the financial statements and the underlying internal control environment. In addition, we believe it will result in information that is more appropriately conveyed in Management's Discussion & Analysis of Financial Condition and Results of Operations (MD&A) in connection with an entity discussion of known trends and other items. If the Board decides to move forward with this expansion, we believe that the disclosure requirement should be narrowed and aligned with ASC 275, *Risks and Uncertainties*. That is, we believe the disclosure requirement should be limited to tax law changes that are material, and for which it is reasonably possible that there will be a significant effect in the near term. In addition, any disclosure requirement should acknowledge that the disclosures will evolve over time as entities gain an understanding of the complex tax law and adjust their operations and structures to address such changes. Adding guidance consistent with that in ASC 275-10-50-23 would be helpful.

Agreements with a government

We believe that many entities likely do not have the systems, processes and controls to capture the data required to comply with the proposed requirements related to agreements with a government. This may be particularly true for multinational companies that have agreements in many jurisdictions. These companies also would need to develop processes and controls to capture and potentially measure matters that are not separately recorded in the financial statements. In addition, it is unclear how entities are expected to comply with these requirements if legal or confidentiality provisions prohibit their disclosure. Furthermore, given that such agreements are already covered by the accounting and disclosure guidance related to uncertain tax positions (when uncertainty is present) and the effective tax rate reconciliation, it is unclear how the details of such agreements will be used by financial statement users and in turn how it will influence their behavior.

Public business entity (PBE)

We are concerned that the application of disclosure requirements for public entities within the disclosure framework remains disjointed, with selective application to certain new proposals. We are also concerned that the FASB's proposal to use the term PBE for income tax disclosures would make implementation more complex and challenging. We believe that the proposal to replace the term "public entity" with the broad term "public business entity" would not only include community banks (as indicated in proposed paragraphs BC14 and BC15), but also include many entities that previously have not been treated as public entities under other existing definitions in US GAAP or SEC rules. They include:

- Entities whose financial statements are included in a registrant's SEC filing because they are significant acquirees under Rule 3-05 of Regulation S-X
- Equity method investees under Rule 3-09 of Regulation S-X
- Equity method investees whose summarized financial information is included in a registrant's SEC filing under Rule 4-08(g) of Regulation S-X

- Certain financial institutions that are required by the Exchange Act to file financial statements with the Federal Deposit Insurance Corporation, the Federal Reserve or the Office of the Comptroller of the Currency but not the SEC

- Certain insurance companies that file financial statements with state insurance regulators, but not the SEC

This proposal would result in an increase in income tax disclosure requirements for PBEs that are currently considered nonpublic. These entities would likely need more time to implement than public entities and would likely incur significant costs.

Question 4: The Board is proposing that reporting entities disclose income taxes paid for any foreign country that is significant to total income taxes paid. The Board also considered requiring disclosure by significant country of income (or loss) from continuing operations before income tax expense (or benefit) and income tax expense (or benefit) from continuing operations but decided that this disclosure would be costly and potentially not beneficial in assessing prospects for cash flows related to income taxes (see paragraph BC22 of this proposed Update). Are there other costs or benefits that the Board should consider regarding these potential disclosures? Are there other country-level disclosures that the Board should consider that may be more cost beneficial?

The requirement to disclose the amount of income taxes paid to a foreign jurisdiction and any individual country that is significant to total income taxes paid will likely require entities to develop processes and controls to aggregate such information in that manner. An entity currently accumulates the total amount of taxes paid to make the disclosures required by ASC 230, *Statement of Cash Flows*. However, the proposal would require a multinational reporting entity to disclose this information by foreign and domestic from the perspective of the reporting entity, which will require incremental effort and analysis.

While the Board indicated in paragraph BC21 that this proposed disclosure was designed to be responsive to financial statement users' desire to have some insight into a reporting entity's country-level tax exposure, the Board has not clearly articulated the type of users that would benefit and how they would use such information to influence their behavior. In addition, income tax accounting and related disclosures are calculated using the liability approach (as articulated by ASC 740) and this approach is not based on cash taxes paid. Thus, the connection between income tax accounting and related disclosures and the disclosure of cash taxes paid is not clear.

Since ASC 230 requires disclosure of income taxes paid, we believe that the FASB should amend those disclosure requirements to address any perceived deficiencies in disclosures. We encourage the Board to further explore why additional disclosures of income taxes paid are necessary.

We are not aware of any alternative country-level disclosures that the Board should consider that may be more cost beneficial.

Question 5: The Board considered several disclosures on indefinitely reinvested foreign earnings (see paragraphs BC27–BC40 of this proposed Update). Is there other information that the Board should consider regarding these potential disclosures? Are there other disclosures about indefinitely reinvested foreign earnings that would be more cost beneficial?

We do not believe any other disclosures regarding indefinitely reinvested foreign earnings disclosures should be added.

Question 6: The proposed amendments would apply to all entities, except for the requirements in paragraphs 740-10-50-6A through 50-6B, 740-10-50-12, and 740-10-50-15A for which entities other than public business entities would be exempt. Do you agree with the exemption for entities other than public business entities? If not, please describe why and which disclosures should be required for entities other than public business entities.

Yes, we agree with the exemption for entities other than public business entities — see prior comment response (File Reference No. 2013-310) regarding the definition of public business enterprises.

Question 7: Are there any other disclosures that should be required by Topic 740 on the basis of the proposed Concepts Statement or for other reasons? Please explain why.

We do not believe any other disclosures should be required.

Question 8: Are there any other disclosure requirements retained following the review of Topic 740 that should be removed on the basis of the proposed Concepts Statement or for other reasons? Please explain why.

We do not believe any other disclosure requirements should be removed.

Question 9: Should the proposed disclosures be required only for the reporting year in which the requirements are effective and thereafter or should prior periods be restated in the year in which the requirements are effective? Please explain why.

We believe that the proposed disclosures should be required prospectively, which would be practical and cost effective.

Question 10: How much time would be needed to implement the proposed amendments? Should the amount of time needed to implement the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities? Should early adoption be permitted? If the answer is "yes" to either question, please explain why.

We believe that preparers are in a better position to respond to this question. We believe SEC registrants would not incur significant costs to implement the proposed disclosures that are consistent with existing SEC disclosure requirements. However, as discussed in Question 3, we believe that the amount of time preparers would have to devote to implementing the new disclosures and the costs they would incur would be significant because many entities likely do not have the systems, processes and controls to capture the required data.

Further, we are concerned about adding these operational challenges when reporting entities will be working on implementing other challenging standards such as the new standards on revenue recognition and leases. If the Board moves forward with the Proposed Standard, we recommend that the Board consider the effective dates of the other new standards when determining the effective date for this Proposed Standard.

We believe that early adoption should be permitted for all entities.

Appendix B — General comments about the Proposed Standard

We believe that certain proposed disclosure requirements (e.g., explanation of the valuation allowance recorded or released during the reporting period, explanation of the year-to-year changes in reconciling items in the rate reconciliation, enacted changes in tax law, aggregate amount of cash, cash equivalents and marketable securities held by foreign subsidiaries) are more consistent with the requirements of MD&A.

The purpose of MD&A is to discuss a company's business as seen through the eyes of management and provide information about the quality of and potential variability of a company's earnings and cash flows so investors can ascertain the likelihood of past performance indicating future performance. Management is generally required to discuss the following information that is not part of the footnotes of the financial statements:

- Specific information about the registrant's liquidity, capital resources, off balance-sheet arrangements, aggregate contractual obligations and results of operations
- Known material trends, events and uncertainties that may make historical financial information not indicative of future operations or financial condition
- The cause of material changes in line items of the consolidated financial statements from prior-period amounts
- Any other information the registrant believes necessary for an investor to understand its financial condition, changes in financial condition and results of operations

Tax carryforwards

The Proposed Standard would require entities to disclose the disaggregated amount of federal, state, and foreign carryforwards (both gross and tax effected), with the amounts further disaggregated by expiration date (paragraph 740-10-50-6A). In paragraph BC82, the Board indicated that "users would like to see a disclosure of pretax carryforwards and the deferred tax asset for carryforwards disaggregated by year of expiration. They explained that both amounts are useful in performing their analysis." However, it is unclear to us why and how this level of detail benefits users, particularly the gross amount of carryforwards information. For example, including both tax effected and non-tax effected amounts for tax credit carryforwards such as foreign tax credit carryforwards could render the proposed tabular disclosure less meaningful. In most cases, the tax effected and gross amounts for tax credit carryforwards would be the same because credits are applied to taxes due and don't affect taxable income.

We note that the carryforwards table in Example 31 (paragraph 740-10-55-220) only provides loss carryforwards. If it is the Board's intent to limit the carryforward disclosure to loss carryforwards, we recommend that the Board revise the wording of paragraph 740-10-50-6A to state that. If it is the Board's intent to include tax credit carryforwards, we recommend that the Board revise the wording in paragraph 740-10-50-6A and Example 31 to state that and to explain how to consider tax credit carryforwards when disclosing non-tax effected amounts and tax effected amounts.

Further, Example 30 in paragraph 740-10-55-217 indicates that balances of unrecognized tax benefits as of December 31, 20X7 and 20X8 were presented in the "taxes payable" and "deferred tax liability" line items in the statement of financial position. However, ASC 740-10-45-12 requires that "[a]n unrecognized tax benefit presented as a liability shall not be classified as a deferred tax liability unless it arises from a taxable temporary difference." We also note that entities generally record the unrecognized tax benefits (expenses) as a separate other liability (asset) on the balance sheet (i.e., separate from an income taxes payable or a deferred tax liability) if the unrecognized tax benefit (expense) is not included as a reduction to a deferred tax asset for a net operating loss carryforward, a similar tax loss or a tax credit carryforward. It seems that the presentation of unrecognized tax benefits in this example would be inconsistent with the guidance in ASC 740-10-45-12. We suggest that the Board revise the example to eliminate the inconsistency and avoid confusion.

In addition, Example 31 in paragraph 740-10-55-219 indicates that Entity A has an aggregate loss carryforward of $12 million. However, the aggregate loss carryforwards (not tax effected) in paragraph 740-10-55-220 (summing the amount in Federal, State, and Foreign Loss Carryforwards columns in the table) and in paragraph 740-10-55-220A are $17.4 million. It seems that there is inconsistency in the example. We are also unsure whether the unrecognized tax benefits included in the tabular example are limited to amounts presented in accordance with ASC 740-10-45-10A. We suggest that the Board revise the example to eliminate the inconsistency and clarify the disclosure to avoid confusion.

Valuation allowance

An entity is currently required to reconcile the income tax expense (benefit) from continuing operations with the amount that would result from applying the domestic federal statutory rate to pretax income (loss) from continuing operations (i.e., a rate reconciliation). In the rate reconciliation, the effect of valuation allowances on deferred tax assets, if significant, is generally presented as a separate reconciling item (paragraph 740-10-50-12). In addition, entities are required to disclose the total valuation allowance recognized and the net change (i.e., the net amount of valuation allowance recognized or released) during the year (paragraph 740-10-50-2). Based on these requirements, it is unclear to us whether the intent of the proposed requirement is for entities to disclose the amount of the valuation allowance recognized or released during the reporting period (paragraph 740-10-50-6B) or to disclose a rollforward of valuation allowances. If the Board's intent is for entities to disclose the amount of valuation allowance recognized or released during the period, we believe that disclosure would be redundant. Further, we believe that the proposed requirement to explain the valuation allowance recorded or released during the reporting period (paragraph 740-10-50-6B) is more consistent with MD&A requirements than the financial statement footnotes.

If the Board moves forward with this proposed disclosure, we suggest the Board articulate the depth of the explanation required under this proposed disclosure and whether the explanation should be provided for:

- Any changes in the recorded valuation allowances (i.e., the amounts of valuation allowances recorded or released) during the reporting period, or

- Any changes in the recorded valuation allowance that result in a change in the net recognized deferred tax asset after consideration of the valuation allowance

For example, consider a company that has experienced losses in recent years and has recognized a gross deferred tax asset of $80 and a valuation allowance of $80 at the beginning of the year. At the end of the year, the company has incurred further losses and now has a gross deferred tax asset of $100 and a valuation allowance of $100. Would the Board expect the company to disclose that an additional valuation allowance of $20 was recorded and the reason for the additional valuation allowance is additional losses?

Alternatively, the same company could conclude that there is no valuation allowance recorded in the current period because there is no change in the net deferred tax asset. Absent any further guidance or clarification, we believe the Board should acknowledge that varying interpretations could lead to diversity in practice in providing this proposed disclosure (e.g., level of detail for the explanation, amounts presented as valuation allowances recorded or released could be net or gross) and consider whether such diversity would be acceptable or useful to financial statement users.

Income tax expense compared to statutory expectations

As part of the rate reconciliation disclosure requirement, the Proposed Standard would require entities to explain the year-to-year changes in reconciling items (paragraph 740-10-50-12). We believe that this proposed requirement is more consistent with MD&A disclosure requirements.

If the Board moves forward with this proposed disclosure, we suggest that the Board clarify how this disclosure would improve the usability of financial reporting for the financial statement users. It is not clear to us how this disclosure would be meaningful to the financial statement users, given the proposed threshold for the rate reconciliation would provide the nature of the reconciling items that caused the annual effective tax rate to be different from the applicable statutory federal income tax rate. In some cases, minor changes in ordinary income can have a significant effect on the annual effective tax rate. A common example is when a company has operating results that are at or about breakeven or when a company has experienced significant fluctuations in earnings (e.g., profitable in one year and at loss position in another year). In these cases, while there may be year-over-year changes in the reconciling items, the explanation for these changes would be the change in earnings. This raises the question whether this disclosure would provide relevant and decision-useful information to financial statement users.

Further, absent any further guidance or clarification, we believe the Board should acknowledge that varying interpretations could lead to diversity in practice in providing this proposed disclosure (e.g., level of detail for the explanation) and consider whether such diversity would be acceptable or useful to financial statements users.

Enacted changes in tax law

We believe that the proposed requirement to disclose information about an enacted change in tax law if it is probable that the change will affect the entity in a future period (paragraph 740-10-50-22) is more appropriately addressed for public business entities as a risk factor or MD&A disclosure.

See our response to question 3 for further details.

Agreements with a government

We understand that the proposed disclosure in paragraph 740-10-50-23 is related to a separate FASB project on government assistance (Proposed ASU, *Disclosures by Business Entities about Government Assistance*). We are not aware of any feedback that the Board has received that would suggest that ASC 740 should be amended to incorporate the proposed disclosure requirements in the government assistance proposal. Further, the reports issued by the Financial Accounting Foundation on post-implementation reviews of FASB Statement No. 109, *Accounting for Income Taxes*, and FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, do not highlight concerns that would suggest that ASC 740 should be amended to incorporate disclosure requirements like those included in the government assistance proposal. Therefore, we question the benefits of requiring similar disclosures related to the accounting for income taxes.

We believe the scope of the proposed disclosure for agreements with a government (paragraph 740-10-50-23) (i.e., a legally enforceable agreement with a government) is ambiguous and that preparers, auditors and regulators will potentially reach different conclusions about what is in and out of scope. As a result, we believe this definition needs to be narrower and fully developed to be operational. Further, this proposed disclosure would represent a fundamental expansion of the existing disclosure regarding government grants subject to ASC 740 (paragraph 740-10-50-9(d)) that should not be undertaken without a more comprehensive assessment. To illustrate, consider the following examples that we believe could be considered to be within the scope of the current proposal:

- An entity that is audited by a taxing authority and reaches a compromise on its income tax obligation that is formalized in a legally enforceable settlement agreement.

- An entity enters into a tax agreement with a governmental taxing authority (e.g., a state in the US, a country in the European Union) that addresses the apportionment of income between jurisdictions and the valuation of certain transactions.

- An entity obtains a private letter ruling from a taxing authority to document the interpretations of existing law.

In each case, we wonder whether the Board believes that the arrangements are within the scope of the proposed disclosure. It is also not clear why the Board believes that the existing disclosure requirements regarding government grants subject to income tax accounting are deficient.

If the Board moves forward with this proposed requirement, we believe that preparers and auditors would benefit from examples, which would more clearly illustrate the presentation and depth of disclosures the Board is seeking. Example disclosures also could be used to clarify the application of the Board's materiality concepts. For example, it appears that an entity would evaluate whether individual agreements are material for purposes of complying with paragraph 740-10-50-23. An entity also would be required to aggregate its agreements with governments to assess whether those agreements are material in the aggregate. Based on the information required by this paragraph, it's unclear how an entity could provide meaningful disclosure for agreements in the aggregate given that agreements often have dissimilar terms and conditions (e.g., tax rates, interest rates). We believe that these concepts should be clarified. It would be helpful if the Board provided clarifications in the Basis for Conclusions if this Proposed Standard is finalized before the Proposed ASU, A*ssessing Whether Disclosures Are Material*, is finalized.

Further, we believe that the proposed disclosure should be amended to make clear that the legally enforceable agreement with a government is related to income taxes and clarify the meaning of "income tax burden" as this term is not defined in the Proposed Standard or existing guidance. We propose the following changes:

> 740-10-50-23: An entity shall disclose the description of a legally enforceable agreement with a government **related to taxes or benefits based on income and subject to ASC 740**, including the duration of the agreement and the commitments made with the government under that agreement and the amount of ~~benefit that reduces, or may reduce, its income tax burden~~ **tax benefits that are or may be available to reduce an entity's income tax liability**.

In addition, it is unclear how entities are expected to comply with these requirements when legal or confidentiality provisions prohibit their disclosure. Under the Government Assistance Project, the Board tentatively decided that if an entity omits specific information required by the proposed disclosure because the information is legally prohibited from being disclosed, the entity should disclose a description of the general nature of the information omitted and the specific source of the legal prohibition. If the Board decides to require the proposed disclosures, we believe such provision should also be provided under this Proposed Standard.

Aggregate of cash, cash equivalents and marketable securities held by foreign subsidiaries

SEC registrants commonly disclose aggregate foreign liquid assets in MD&A, particularly within discussions of liquidity and capital resources, based on our observations of public company filings. We also observe that the SEC staff frequently asks registrants to disclose the amount of large cash balances held overseas, typically when indefinite reinvestment is asserted. We believe that the proposed requirement to disclose the aggregate cash, cash equivalents and marketable securities held by foreign subsidiaries (paragraph 740-10-50-24) is more consistent with the purpose of MD&A than the scope of ASC 740.

If the Board moves forward with this proposed disclosure, we suggest that the Board define the term "marketable securities" in paragraph 740-10-50-24 or amend the reference to refer to "securities with readily determinable fair values." "Marketable securities" is currently not a defined term in the ASC Master Glossary, but it is used in ASC 320, *Investments — Debt and equity securities*, to generally refer to securities with readily determinable fair values, which include short-term or long-term securities. Further, the term "marketable security" will be replaced with "securities with readily determinable fair values" upon the adoption of ASU 2016-01, *Financial Instruments*. While we acknowledged that similar disclosure is already made by some companies, we are concerned that, without a clearly defined term, there could be diversity in practice.

Further, it is not clear to us what "foreign subsidiary" means in paragraph 740-10-50-24. "Foreign" is not defined in the ASC Master Glossary or in ASC 740. We note that paragraph 740-10-50-1B, the Board states that "For purposes of this Section, foreign income taxes or other foreign tax-related items are those related to any country outside of the reporting entity's home country." It is unclear whether the Board intends the definition of foreign in the term "foreign subsidiary" to be "any country outside of the reporting entity's home country."

In the ASC Master Glossary, "subsidiary" is defined as "an entity, including an unincorporated entity such as a partnership or trust, in which another entity, known as its parent, holds a controlling financial interest (Also, a variable interest entity that is consolidated by a primary beneficiary)." The definition <u>includes</u> pass-through entities that may be disregarded for US federal tax purposes with the underlying activity included in the parent's tax return. Subsidiary, for the purpose of preparing consolidated financial statements, represents an accounting concept. However, the term "subsidiary" in ASC 740 is not linked to the ASC Master Glossary (it was purposely de-linked as part of a technical correction in ASU 2015-10, *Technical Corrections and Improvements*), and it generally follows the tax technical conclusion such as a taxable entity that could remit earnings to the parent entity (i.e., <u>excludes</u> pass-through entities such as those disregarded for US federal tax purposes). If it is the Board's intent to use an accounting concept to define subsidiary for this proposed disclosure, we suggest that the Board link this reference in the proposed disclosure to the ASC Master Glossary and clarify in the Basis for Conclusions that tax status of an entity should not be used for purposes of this disclosure.

When determining whether an investee qualifies as a domestic or foreign subsidiary for applying the exception under ASC 740-10-25-3, the determination is made based on the relationship with the investee's immediate investor under a bottoms-up approach. Applying this concept to this proposed disclosure would indicate that an entity that is located outside of the reporting entity's home country could be a domestic subsidiary if the immediate parent is located in the same country as the entity, which would not be consistent with the definition of "foreign" in paragraph 740-10-50-1B. We believe that confusion could arise unless the term "foreign subsidiary" is clearly defined.

In addition, it is not clear to us whether cash, cash equivalents and marketable securities held by foreign subsidiaries but located in the reporting entity's home country should be in or out of scope of this proposed disclosure. For example, if a US reporting entity has a subsidiary that is located and operates in jurisdiction X (outside the US), but the subsidiary's cash and cash equivalents is held in a US bank account, it is not clear whether the cash and cash equivalents are foreign or domestic for purposes of complying with this disclosure. Additionally, because ASC 740-10-50-1B defines foreign from the perspective of the reporting entity, we believe this may be confusing. We believe the Board should more clearly articulate the meaning of the phrase held by foreign subsidiaries in 740-10-50-24.