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Ms. Suzanne Q. Bielstein Director of Major Projects and Technical Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Exposure Draft: Proposed FASB Interpretation, Accounting for Uncertain Tax Positions (File No. 1215-001)

Dear Ms. Bielstein:

Intel Corporation wishes to share our views on the Financial Accounting Standards Board's proposed interpretation, Accounting for Uncertain Tax Positions – an Interpretation of FASB Statement No. 109.

We have significant concerns about the proposed recognition threshold and effective date that are discussed below. Our comments on the issues posed in the Notice for Recipients to the Exposure Draft are reflected in the attachment.

## **Recognition Threshold**

The primary objective of the proposed guidance appears to be to improve financial reporting by increasing the comparability and consistency of the accounting for uncertain tax positions. We believe that it is questionable whether the proposed guidance would achieve that objective due to differences in interpreting the meaning of "probable," and complexities associated with interpreting and applying paragraph 9 of the proposed Interpretation. With respect to paragraph 9, the examples of the specific facts and circumstances that may demonstrate a probable level of confidence raise concerns about whether a taxpayer must demonstrate a level of confidence that is significantly higher than probable. In addition to issues regarding consistency and comparability, we believe that the proposed threshold *would* result in liabilities and expenses that are not relevant and do not faithfully represent the economic phenomena they purport to represent.

The probable threshold criteria is biased toward systematically recognizing expenses in the current period and gains in future periods and, as a result, would create volatility that

reflects accounting conventions as opposed to economic phenomena. Consider a situation in which the tax regulations provide taxpayers with an incentive to conduct certain activities. Further, assume that the tax regulations identify certain associated activities that disqualify taxpayers from receiving the benefit, unless such associated activities are "minor." Assume that an entity (a) conducts the qualifying activities, (b) determines that the associated activities are minor, (c) expects to prevail if the tax position is challenged in an audit, and (d) receives a should prevail tax opinion that is qualified because minor cannot be objectively verified. While the entity's confidence in prevailing in an audit may exceed 70%, the application of the examples in paragraph 9 of the proposed Interpretation would raise significant doubt about whether the position should be recognized since:

- a. Minor is not unambiguous,
- b. While the entity received a should prevail tax opinion, it is qualified because minor cannot be *objectively verifiable*,
- c. It may be questionable whether a similar position in the prior year's tax return was obviously presented, and
- d. While there may be legal precedent from positions taken by other taxpayers, it may be questionable whether the position is *similar* and, therefore, an *analogy is appropriate*.

In this situation, differences in opinion as to whether the position is "probable of being sustained on audit" will likely arise. Furthermore, recognition of a liability and expense in the period in which the entity conducts the qualifying activity does not provide decision useful information to financial statement users because the information about the entity's liabilities is neither relevant (it does not help financial statement users evaluate the effect of past and present events on future net cash flows) nor representationally faithful (the measurement of the entity's liabilities is inconsistent with the entity's expectations). Therefore, we question whether concerns about comparability or consistency should preclude reporting information that is of greater relevance, or that more faithfully represents the economic phenomena it purports to represent.

We encourage the FASB to reevaluate whether alternative approaches, such as lowering the recognition threshold to more likely than not, provide relevant and representationally faithful information. We believe that the guidance should produce accounting results that come closest to management's expected outcome. To that end, we find the Board's analysis of the measurement of a deferred tax asset in paragraphs 95 and 96 of Statement 109 to be a useful approach in evaluating whether particular accounting conventions are representationally faithful. In contrast, we do not understand the Board's reasoning in paragraph B16 of the proposed Interpretation, which states "when fair value, which reflects uncertainty, is not used as the measurement attribute, then uncertainty must be taken into account by applying a recognition threshold that is high enough to indicate that the tax position represents economic benefits an entity is entitled to receive."

[Emphasis added.] Further, this notion seems to contradict the Board's reasoning in paragraph B23 of the proposed Interpretation, which states "the more likely than not criterion represents the lowest level of confidence for continued financial statement

recognition, which fair value is not available." A more likely than not recognition threshold should be sufficient for initial recognition since it is sufficient for continued recognition.

## **Effective Date**

We believe that the proposed effective date of December 31, 2005 is unrealistic. We need additional time to (a) assess the final requirements, (b) identify uncertain tax positions, and the most appropriate unit of account, in all relevant tax jurisdictions, (c) review the impact with management and our external auditors, and (d) implement any necessary changes to our internal controls over financial reporting. Furthermore, significant changes in tax accounting coupled with material changes in tax law and compliance requirements are already stretching the resources of both corporate tax and accounting groups. The most challenging issues include:

- a. Statement 123R. There are still several technical questions that need to be resolved. Unfortunately this drastically compresses the time available to construct the internal processes and controls to properly execute the deferred tax asset requirements of Statement 123R.
- b. Homeland Investment Act. The Homeland Investment Act enacted two major pieces of tax law: Sec 965 repatriation and the Manufacturer's Deduction. These are complex provisions for which we do not expect complete regulatory guidance to be issued until the second half of 2005. Again, the timeline to properly comply with these provisions is narrowing as each day passes.
- c. New Compliance Requirements. The IRS has introduced two new compliance requirements for corporate taxpayers that, on a very fundamental level, change how federal returns are prepared and filed. The newly required M3 form introduces a significantly more complex reporting requirement that is being phased in for 2004 returns filed in 2005, and with full compliance being required for 2005 returns filed in 2006. The IRS has also introduced an electronic filing requirement that is mandatory for 2005 returns filed in 2006 for corporate taxpayers. This is an enormous technical challenge.

We appreciate the opportunity to comment on this project. If you have any questions regarding our responses, please do not hesitate to contact Leslie Culbertson at 408-765-5545, Nanci Palmintere at 408-765-1190 or Kevin McBride at 503-696-1299.

Sincerely,

Leslie Culbertson Corp. VP, Director of Corporate Finance Nanci Palmintere VP, Tax Licensing and Customs

## Scope

Issue 1: This proposed Interpretation would broadly apply to all tax positions accounted for in accordance with Statement 109, including tax positions that pertain to assets and liabilities acquired in business combinations. It would apply to tax positions taken in tax returns previously filed as well as positions anticipated to be taken in future tax returns. Do you agree with the scope of the proposed Interpretation? If not, why not?

We agree that the proposed Interpretation should broadly apply to all tax positions accounted for in accordance with Statement 109.

## **Initial Recognition**

Issue 2: The Board concluded that the recognition threshold should presume a taxing authority will, during an audit, evaluate a tax position taken or expected to be taken when assessing recognition of an uncertain tax position. (Refer to paragraphs B12–B15 in the basis for conclusions.) Do you agree? If not, why not?

We agree that the recognition threshold should presume a taxing authority will, during an audit, evaluate a position taken or expected to be taken when assessing recognition of an uncertain tax position.

Issue 3: The Board decided on a dual threshold approach that would require one threshold for recognition and another threshold for derecognition. The Board concluded that a tax position must meet a probable (as that term is used in Statement 5) threshold for a benefit to be recognized in the financial statements. (Refer to paragraphs B16–B21 in the basis for conclusions.) Do you agree with the dual threshold approach? Do you agree with the selection of probable as the recognition threshold? If not, what alternative approach or threshold should the Board consider?

We believe that the probable threshold criteria is biased toward systematically recognizing expenses in the current period and gains in future periods and, as a result, would create volatility that reflects accounting conventions as opposed to economic phenomena. We believe that the recognition and measurement guidance should produce accounting results that come closest to the expected outcome.

### **Subsequent Recognition**

Issue 4: The Board concluded that a tax position that did not previously meet the probable recognition threshold should be recognized in any later period in which the enterprise subsequently concludes that the probable recognition threshold has been met. (Refer to paragraph B22 in the basis for conclusions.) Do you agree? If not, why not?

We agree that a position that did not satisfy the initial recognition threshold in a prior period should be recognized in a subsequent period in which the enterprise concludes that the recognition threshold has been met. Again, we believe that the recognition and measurement guidance should produce accounting results that come closest to the expected outcome.

## Derecognition

Issue 5: The Board concluded that a previously recognized tax position that no longer meets the probable recognition threshold should be derecognized by recording an income tax liability or reducing a deferred tax asset in the period in which the enterprise concludes that it is more likely than not that the position will not be sustained on audit. A valuation allowance as described in Statement 109 or a valuation account as described in FASB Concepts Statement No. 6, Elements of Financial Statements, should not be used as a substitute for derecognition of the benefit of a tax position. (Refer to paragraphs B23–B25 in the basis for conclusions.) Do you agree with the Board's conclusions on derecognition of previously recognized tax positions? If not, why not?

We believe that the recognition and derecognition threshold should be consistent in order to avoid anomalous results.

#### Measurement

Issue 6: The Board concluded that once the probable recognition threshold is met, the best estimate of the amount that would be sustained on audit should be recognized. The Board concluded that any subsequent changes in that recognized amount should be made using a best estimate methodology and recognized in the period of the change. (Refer to paragraphs B9–B11 and B26–B29 in the basis for conclusions.) Do you agree with the Board's conclusions on measurement? If not, why not?

We believe that the recognition and measurement guidance should produce accounting results that come closest to the expected outcome.

#### Classification

Issue 7: The Board concluded that the liability arising from the difference between the tax position and the amount recognized and measured pursuant to this proposed Interpretation should be classified as a current liability for amounts that are anticipated to be paid within one year or the operating cycle, if longer. Unless that liability arises from a taxable temporary difference as defined in Statement 109, it should not be classified as a deferred tax liability. (Refer to paragraphs B30–B35 in the basis for conclusions.) Do you agree with the Board's conclusions on classification? If not, why not?

We agree with the Board's conclusions.

## Change in Judgment

Issue 8: The Board concluded that, consistent with the guidance in paragraph 194 of Statement 109, a change in the recognition, derecognition, or measurement of a tax position should be recognized entirely in the interim period in which the change in judgment occurs. (Refer to paragraph B36 in the basis for conclusions.) Do you agree with the Board's conclusions about a change in judgment? If not, why not?

Intel agrees that changes in judgment should be recognized during the interim period in which the change occurs, but believes that the measurement and recognition guidance should produce accounting results that come closest to the expected outcome.

#### **Interest and Penalties**

Issue 9: The Board concluded that if the relevant tax law requires payment of interest on underpayment of income taxes, accrual of interest should be based on the difference between the tax benefit recognized in the financial statements and the tax position in the period the interest is deemed to have been incurred. Similarly, if a statutory penalty would apply to a particular tax position, a liability for that penalty should be recognized in the period the penalty is deemed to have been incurred. Because classification of interest and penalties in the income statement was not considered when Statement 109 was issued, the Board concluded it would not consider that issue in this proposed Interpretation. (Refer to paragraphs B37–B39 in the basis for conclusions.) Do you agree with the Board's conclusions about recognition, measurement, and classification of interest and penalties? If not, why not?

Intel agrees with the Board's conclusion on penalties. With respect to interest, we agree with the Board's conclusion *provided* that the measurement and recognition guidance produce accounting result that come closest to the expected outcome. Otherwise, the Board's approach will result in systematic over accrual of interest.

#### **Disclosures**

Issue 10: The Board concluded that loss contingencies relating to previously recognized tax positions should be disclosed in accordance with the provisions of paragraphs 9–11 of Statement 5. The Board also concluded that liabilities recognized in the financial statements pursuant to this proposed Interpretation for tax positions that do not meet the probable recognition threshold are similar to contingent gains. Therefore, those liabilities should be disclosed in accordance with the provisions of paragraph 17 of Statement 5. (Refer to paragraph B40 in the basis for conclusions.) Do you agree with the disclosure requirements? If not, why not?

Intel agrees with the Board's conclusion.

## **Effective Date and Transition**

Issue 11: The Board concluded that this proposed Interpretation should be effective as of the end of the first fiscal year ending after December 15, 2005. Only tax positions that meet the probable recognition threshold at that date may be recognized. The cumulative effect of initially applying this proposed Interpretation would be recognized as a change in accounting principle as of the end of the period in which this proposed Interpretation is adopted. Restatement of previously issued interim or annual financial statements and pro forma disclosures for prior periods is not permitted. Earlier application is encouraged. (Refer to paragraphs B41–B43 in the basis for conclusions.) Do you agree with the Board's conclusions on effective date? If not, how much time would you anticipate will be necessary to apply the provisions of this proposed Interpretation? Do you agree with the Board's conclusions on transition? If not, why not?

We believe that the Board should reconsider the recognition guidance. If the Board does not change the recognition guidance, Intel does not agree that only tax positions that meet the probable recognition threshold at the transition date should be recognized. Tax positions in the financial statements at the effective date should be subject to derecognition only in accordance with paragraph 10 of the proposed Interpretation if they fail to satisfy the more likely than not threshold. Intel believes that the Interpretation should be effective as of the end of the first fiscal year ending after December 15, 2006.