December 8, 2015

Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116


Dear Sir or Madam:

Better Markets\footnote{Better Markets, Inc. is a nonprofit organization that promotes the public interest in the domestic and global capital and commodity markets. It advocates for transparency, oversight, and accountability in the financial markets.} appreciates the opportunity to comment on the Financial Accounting Standards Board’s (“FASB” or “the Board”) recent draft proposals that would substantially and unjustifiably narrow the scope of the “material” information that companies must disclose in their financial statements. Better Markets strongly opposes the proposal.

INTRODUCTION AND SUMMARY

Disclosure is the foundation of the regulatory regime governing our capital markets. Robust corporate disclosure requirements are absolutely essential for protecting investors and preserving the integrity of those markets. Unfortunately, the Board’s proposals unavoidably represent a major dilution of the materiality standard for corporate disclosure.

If implemented, the proposal would substantially shrink the amount of “material” information that issuers must disclose and describe in the notes to their financial statements. The practical effect of these proposals will be to grant companies substantially wider discretion to conceal important information about their operations and finances from shareholders and the investing public. FASB is advancing this change without any convincing justification and in the face of unprecedented evidence that stronger, not weaker, regulation and oversight of our capital markets is essential.

The Board’s redefinition of disclosure requirements would be accomplished by inappropriately attempting to import the U.S. Supreme Court’s definition of materiality from...
the securities fraud context into the accounting standards that govern disclosure in the ordinary course of business. But shareholders expect and deserve to know more about the companies in which they invest than the bare legal minimum required to avoid a fraud conviction.

In short, by every measure, this change is unwarranted and unwise.

1. The Board’s proposal would substantially reduce the flow of information in the marketplace in violation of the core purposes of the securities laws: investor protection and disclosure. The Board’s proposed language effects a major dilution of the definition of materiality while needlessly complicating the materiality analysis that issuers and preparers must undertake. Ultimately, the Board’s proposal will hurt investors and undermine the integrity and utility of our capital markets.

2. The Board offers no convincing rationale for narrowing the materiality standard. Contrary to the Board’s claim, attempting to align the materiality standard for accounting purposes with the legal test for fraud is not a valid justification. Furthermore, while the Board also suggests that investors are overwhelmed with information and will benefit from less accounting disclosure, this claim is simply untrue, and the Board fails to substantiate it.

3. The proposal will inhibit disclosure by increasing the influence of management over accounting matters. The Board should not transfer discretion away from independent auditors and to company management—those who are most tempted to conceal accounting mistakes.

4. The Board’s cost-benefit analysis is inappropriate, unnecessary, and counterproductive. It neglects to account for the single most important cost factor that FASB should consider: the potential harmful impact on investors. The Board is under no obligation to conduct such an analysis in the first place, as Congress, the courts, and administrative agencies have recognized that cost-benefit analysis is time-consuming, resource-intensive, and inherently unreliable, especially with respect to evaluating the benefits of a financial regulation.

5. The Board should not adopt a more lax disclosure regime in light of the series of historic disclosure-related scandals over the past two decades and strong evidence of ongoing accounting malfeasance. Watering down the materiality threshold will only exacerbate the problem of corporate accounting fraud.

6. Given that these accounting rules are intended to protect and inform investors, the Board should heed the investor advocate community’s strong and unanimous opposition to its materiality proposal.
Accordingly, Better Markets strongly objects to the Board’s proposal, and we urge the Board to abandon it. Better Markets looks forward to continuing to engage with the Board in this process in the future.

BACKGROUND

The foundation of the modern American securities regulatory regime is disclosure. As late as the 1920s, many publicly listed corporations kept sales figures secret, declined to depreciate assets, and generally exercised wide discretion over what information they chose to reveal to their shareholders. Brokers sold stock to investors with promises of large profits but little disclosure of relevant information about the company; in many cases, these promises had little basis or were entirely fraudulent.

As a result, the securities markets were opaque, fragile, and frequently roiled by crisis—the most notorious of which was the spectacular market crash of 1929. The human tragedy of the Great Depression is etched indelibly into the American memory, and many of the key reforms that emanated from this era focused on giving investors access to information about the securities they buy and the companies that issue those securities.

The requirement that public companies disclose all important, or “material,” information about their operations and financial condition is the cornerstone of the first round of national securities laws. That same premise underlies the entire architecture of securities laws that have been enacted since.

The American disclosure regime reflects the basic notion that investors can only monitor the markets and make informed and timely investing decisions if they have access to robust and trustworthy information about public companies. Indeed, markets and market discipline can only work if that is the case. For example, insufficient disclosure impedes the basic ability of markets to allocate resources efficiently and even increases the cost of capital. Weak disclosure requirements also help conceal incompetence and fraud, facilitate unethical corporate behavior, and erode the integrity of the markets—diminishing investor confidence and damaging the economy as a whole.

COMMENTS

On September 24, 2015, the Board issued an exposure draft entitled “Conceptual Framework for Financial Reporting” that contains proposed amendments to FASB Concepts Statement No. 8 (“proposed amendments”) and a Proposed Accounting Standards Update (“proposed ASU”) that amends the FASB Accounting Standards Codification. Taken together, these draft proposals redefine and substantially weaken the concept of “materiality” and expressly provide that the omission of “immaterial” information from financial statements is not an accounting error that triggers reporting obligations.
I. The Board’s proposal would substantially inhibit the flow of information in the marketplace in violation of the core purposes of the securities laws: investor protection and disclosure.

The proposed materiality standard is very different than the current materiality standard and would inevitably result in a dramatic decrease in information to the investing public and the markets. Under the current definition of “materiality” in chapter 3 of FASB Concepts Statement 8,

“[i]nformation is material if omitting it or misstating it could influence decisions that users make on the basis of the financial information of a specific reporting entity.”

The proposed ASU would change this definition and state that information is material if:

“there is a substantial likelihood that the omitted or misstated disclosure would have been viewed . . . as having significantly altered the total mix of information available in making a decision.”

Juxtaposing these two standards reveals how dramatically different they are and how the proposed standard would result in much less disclosure of information. While the shift from “could” to “would” and the addition of elements like “total mix of information,” “substantial likelihood,” and “significantly altered” might aid in setting an appropriately high bar for securities fraud, they are wholly inappropriate in a disclosure standard that governs the ordinary course of business for investors.

A. The Board’s proposed language changes would effect a wholesale revamping and major dilution of the definition of materiality.

There are at least five new and significant linguistic elements in the Board’s proposed definition: Information will be deemed material only where there is a

(1) substantial
(2) likelihood that the information
(3) would
(4) significantly alter the
(5) total mix of information.

The addition of all of these words will result in a much narrower concept of materiality.

For example, the importance of changing the word “could” to word “would” cannot be overstated. The similarity of the language itself tends to mask the degree of divergence in the meaning of these two words and the enormous difference in the amount of information that the two standards encompass.
There is a considerable gulf between the concepts of possibility and probability, and there is no doubt that the standards of conduct pegged to one or the other diverge in significant respects. According to the Cambridge English Dictionary, the word “could” is “used to express possibility, especially slight or uncertain possibility.” By contrast, the word “would” is “used to refer to a possibility or likelihood.” Accordingly, standards of conduct that employ “could” as an operative word encompass a full array of possibilities, “especially slight or uncertain” possibilities. Standards of conduct that employ “would” as an operative word demand a complex assessment of “likelihood” and, as a result, must necessarily encompass a considerably smaller set of possibilities.

The Board’s proposed definition also inserts a complex and multi-layered series of probabilistic elements (above and beyond the change from “could” to “would”) into the materiality standard. These additional elements—for example, a “substantial likelihood” that information would “significantly alter” the “total mix” of information—would also operate to increase companies’ license to withhold important information from shareholders and the public at large under the new materiality standard.

As a result, the current standard subjects much more information to required disclosure than the proposed standard. Indeed, these changes represent a major dilution of the materiality standard.

**B. The Board’s proposal introduces significant and unnecessary complexity into the definition of materiality.**

The current materiality standard has the virtues of simplicity and clarity. It is also tightly and directly tied to the goals and intended beneficiaries of the standard. It succinctly provides that information is material if it could influence decisions that users make. The proposed standard is markedly more subjective, complex, and indistinct. It requires a substantial likelihood that information would significantly alter the mix of information available to investors. Yet it is unclear precisely what constitutes a “substantial likelihood” that information would “significantly alter” the “total mix” of information available to investors.

These questions require the exercise of considerably more professional judgment than a standard that encompasses “information that could influence [investor] decisions.” Grafting a set of complex elements onto the materiality standard undermines the Board’s assertion that their proposal would “alleviate” confusion.
C. The Board’s proposal will ultimately hurt investors and undermine the integrity and utility of our capital markets.

Simply put, the Board’s proposal grants companies considerably greater discretion to conceal important information from shareholders and the public at large. And because the proposed standard is narrower, it will create a de facto safe harbor against adverse SEC staff comments, investigations, and shareholder litigation relating to improper omissions or misstatements in corporate reports.

These proposed changes will make the markets less transparent, less accountable, and less able to provide important information to investors who expect and deserve full and accurate disclosure. Best intentions notwithstanding, a proposal that reduces this flow of information in this fashion will assuredly increase the likelihood of more damaging accounting abuses and may even help incubate another financial crisis. In short, it will undermine the core goal of the securities laws, which the Supreme Court has repeatedly described as “implementing a philosophy of ‘full disclosure.’”

II. The Board offers no convincing rationale for the narrower materiality standard.

A. Attempting to align the materiality standard for accounting purposes with the legal threshold for fraud is not a valid justification.

Russell B. Golden, the FASB Chairman, has explained that: “the current discussion of materiality in our Conceptual Framework is inconsistent with the legal concept of materiality as established by the U.S. Supreme Court.” This appears to be one of two primary justifications for the Board’s proposed changes to the definition of materiality.

Attempting to harmonize these two disparate standards is misguided. The Board’s current definition of materiality pertains to a company’s positive obligation to disclose information to its shareholders, while the Supreme Court definition that the Board proposes to adopt defines when a failure to disclose information rises to the level of securities fraud.

In TSC Indus., Inc. v. Northway, Inc., the Supreme Court outlined a definition of materiality in the securities fraud context, writing: “there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” Twelve years later, in Basic Inc. v. Levinson, the Court held: “We now expressly adopt the TSC Industries standard of materiality for the § 10(b) and Rule 10b–5 context.” (emphasis added). Rule 10b-5 targets securities fraud, and the SEC promulgated it pursuant to its authority under §

6 Id.
The Board’s attempt to adopt the materiality definition from the fraud context as the standard for corporate disclosure in the ordinary course of business is as misguided as it is imprudent. Shareholders expect and deserve to know more information about the companies they invest in than the legal minimum required for a securities fraud conviction. In addition, the Board’s proposal subjects what should be a stable standard to the vagaries of the common law.

The SEC’s regulatory accounting regime and the statutory antifraud regime are plainly distinct in terms of structure and purpose. Rule 10b-5 is a principles-based regulation that encompasses only a few sentences and exists to deter outright dishonesty, distortions, and fraud. By contrast, Rule S-X and Rule S-K, for example, span hundreds of pages and are part of an expansive regulatory edifice that serves the public policy goal of facilitating robust corporate disclosure and substantial information flow in the capital markets.

Accordingly, it is entirely appropriate that “materiality” should have two different definitions, one in the world of antifraud jurisprudence and another in the world of regulatory accounting standards. Attempting to equate those standards while ignoring their attendant goals, purposes, and histories is plainly an invalid approach.

B. Investors are not overwhelmed with information.

The Board makes only one other argument in favor of its proposal—that investors and businesses alike are suffering from “disclosure overload.” This too lacks merit. A major dilution of the materiality standard simply cannot be justified by a naked invocation of disclosure overload—especially in today’s world, where expert analysts with sophisticated technological tools (e.g., online “searchable” text) at their disposal can readily sift through extensive corporate disclosures to pinpoint important information. The Board does not adequately support its contention that disclosure overload is a problem, nor does the Board purport to claim that investors are clamoring for less information. Indeed, the opposite is true, as indicated by investor advocates’ united front in firm opposition to this proposal.10

The Board’s effort to import the Levinson fraud definition of materiality into the accounting standards used in the ordinary course of business must also reckon with the Supreme Court’s rejection of investor confusion as a rationale for limiting disclosure. As the Court wrote in Levinson, “disclosure and not paternalistic withholding of accurate information is the policy chosen.”11 The Board’s selective attempt to draw on a legal rule while simultaneously ignoring the rule’s underlying rationale highlights the lack of a basis for any change.

9 15 U.S.C. § 78j,
10 See Section V.
11 Levinson, 485 U.S. at 232.
Finally, it is inherently far worse to deprive the marketplace of information than to overload it. Information overload is unlikely to lead to market failure, but a wealth of economic literature supports the notion that markets suffering from information asymmetries are fragile and inequitable. Ill-defined fears of disclosure overload cannot justify such a far-reaching measure that would substantially reduce the flow of information in the marketplace, ultimately harming investors and degrading the transparency, accountability, and integrity of our capital markets.

III. The proposal will inhibit disclosure by increasing the influence of management over accounting matters, at the expense of the independent auditors.

Currently, companies must report all errors that they make in public filings unless their auditors conclude that those errors were immaterial. The Board’s proposed ASU provides that: “because excluding immaterial disclosures can improve the effectiveness of the financial statements, omitting an immaterial disclosure should not constitute an error.” This effectively vitiates the presumption that auditors get to decide what errors are immaterial. The only actors left to make that materiality judgment are company managers.

As a result, the practical effect of this proposal is to eliminate the critical prerequisite step of independent auditor approval that accounting errors are immaterial before company management can decide not to report errors in future disclosures. Put another way, the Board is effectively proposing to vest the ultimate judgment of whether an accounting error must be reported with management, and not their auditors. This reverses the burden of proof by requiring auditors to persuade management that any accounting error is "material" before disclosure obligations are triggered, rather than treating accounting errors as presumptively material unless auditors conclude otherwise.

This transfers a tremendous amount of discretion away from independent auditors and to company management—those who are most tempted to conceal accounting mistakes. Auditors will undoubtedly be hard-pressed to convince their clients to disclose embarrassing errors if there is any colorable argument that such errors are not material. As a result, the practical effect of this proposal will be empowering management over auditors and reducing the amount of information that the public will ultimately have at their disposal to monitor markets and inform their investment decisions.

Further, while certain accounting errors may not be material when considered individually and in turn, an accumulation of relatively small errors may well be material and of great concern to shareholders when considered collectively. The current standard presumptively allows shareholders to examine the full array of accounting errors (unless they are immaterial in the judgment of auditors) and assess the cumulative effects of any such errors for themselves. By removing a presumption that favors disclosure and transferring discretion to actors that are naturally disposed to hem in disclosure, the Board’s proposal makes it considerably more likely that shareholders will never see the complete picture of accounting errors.
Finally, this proposal will have especially undesirable effects with respect to large firms. A Fortune 500 company with billions of dollars in market capitalization and sprawling global operations can make multimillion dollar accounting mistakes that will not have an outsized effect on their quarterly reporting. But shareholders will rightly want to know about accounting mistakes of such consequence, even if they may seem relatively small when compared to the vast scale of the firm’s operations. Of course, this phenomenon will persist regardless of whether the Board’s proposal takes effect. Still, the Board’s proposal will exacerbate this problem by giving larger companies yet another tool with which to argue that accounting errors are immaterial and ultimately conceal such mistakes from the investing public.

IV. The Board’s cost-benefit analysis is inappropriate, unnecessary, and counterproductive.

As a threshold matter, the Board’s reliance on cost-benefit analysis is inappropriate. The Supreme Court, the D.C. Circuit, and other courts have made abundantly clear that even government agencies such as the SEC are not required to perform cost-benefit analysis—or any form of economic analysis—to justify their rule proposals unless Congress has expressly required the agencies to do so. And Congress imposes that requirement sparingly, since cost-benefit analysis is time-consuming, resource-intensive, and inherently unreliable, especially with respect to evaluating the benefits of a financial regulation.

As a result, cost-benefit analysis can actually impede an agency’s ability to promulgate sound regulation that protects the public interest and fulfills Congress’s policy objectives. Indeed, FASB concedes that the process is flawed by observing that:

"[t]he Board’s judgments on whether costs of providing information is justified by the benefits is necessarily subjective. Costs of providing additional information and benefits of receiving it can seldom, if ever, be objectively measured."  

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In light of these admitted infirmities in the process, and as a non-governmental body that has no statutory duty to conduct cost-benefit analysis, FASB erred by undertaking a foray into cost-benefit analysis.

Moreover, the proposed ASU’s analysis is strikingly superficial and fatally flawed. It spans two paragraphs and includes no assessment whatsoever of the single most important factor that FASB should consider: the harmful impact on investors if they are misled under the new materiality standards and left without recourse. Even a cursory cost-benefit analysis of this proposal should account for the most important cost associated with curtailing the materiality standard. Instead, FASB briefly considers only two factors. First, it observes that the costs imposed on issuers under the new definition would be “moderate,” and second, it begs the question by asserting that “material information would be more apparent if it was not obscured by immaterial disclosures.”

Measured against the enormous damage to investors and the markets more generally that will likely follow under the proposed materiality standard, these baseless assertions should be accorded little if any weight. Though inappropriate, unnecessary, and decidedly ill-advised in the first place, the Board’s analysis simply does not pass muster as a reasonable or adequate consideration of the costs and benefits of its proposal.

V. The Board should not adopt a more lax disclosure regime in light of a series of historic disclosure-related scandals over the past two decades and strong evidence of ongoing accounting malfeasance.

The previous two decades have witnessed a troubling succession of disclosure-related accounting scandals that have harmed countless investors, company employees, and counterparties; these episodes have also undercut our national prosperity and shaken confidence in our financial markets.

It has only been fourteen years since Enron filed for bankruptcy, revealing that it had sustained its financial condition largely through systematic and deeply institutionalized accounting fraud. At that time, Enron was the world’s seventh-largest company, with more than twenty thousand employees and over $100 billion dollars in annual revenue. The fallout from its collapse was dramatic: tens of thousands of people were thrown out of work; untold numbers of investors, including pensioners and many of the company’s own employees, watched their blue-chip shares plummet to penny-stock prices; and Enron’s creditors lost tens of billions of dollars. Revelations of shredded documents and executives pocketing bonuses while turning a blind eye to fraud poured forth in the wake of the bankruptcy—eventually prompting the dissolution of Arthur Andersen, one of the five premier global audit and accountancy partnerships.

15 Id.
16 Id. at 9.
Unfortunately, Enron’s collapse was no isolated incident. Enron’s failure was presaged by an extraordinary accounting scandal at Houston-based Waste Management Inc. in 1998.\(^{17}\) And in the wake of Enron’s collapse, accounting scandals of historic magnitude seemed to proliferate:

- In 2002, WorldCom, the telecommunications giant, revealed more than $11 billion dollars of fraudulently underreported line costs, inflated revenue estimates, and fake accounting entries.\(^{18}\) The WorldCom bankruptcy resulted in thirty thousand lost jobs and over $180 billion in losses for investors.\(^{19}\)

- In 2002, Tyco, the high-tech manufacturing conglomerate, was caught inflating income statements and siphoning money out of the company through unapproved loans and fraudulent sales of stock. The firm overstated its reported financial results by more than one billion dollars and effectively stole hundreds of millions of dollars from its shareholders.\(^{20}\)

- In 2003, HealthSouth, the largest publicly traded health care company in the U.S., narrowly avoided bankruptcy after inflating earnings by $1.4 billion to meet stockholder expectations.\(^{21}\) In certain fiscal years, the company overstated its income by as much as 4700%. HealthSouth’s CEO sold more than $100 million in stock on the day before the company posted a huge loss.\(^{22}\)

- In 2005, AIG, the multinational insurance corporation, was alleged to have defrauded its shareholders to the tune of $4.3 billion by reporting loans as revenue, misclassifying losses, reporting transactions with supposedly independent shell corporations that were actually controlled by AIG, and numerous other improper accounting practices. As a result, AIG paid a total of several billion dollars in various fines and settlement agreements.\(^{23}\)


\(^{22}\) Letter from Billy Tauzin, House Energy and Commerce Committee Chairman, to Joel Gordon, Acting Chairman of the Board, Health South Corporation, and Ernst and Young Chairman James Turley (Apr. 22, 2003).

Despite the Sarbanes-Oxley reforms of 2002, deceptive accounting practices also played a central role in the 2008 financial crisis. This was apparent nowhere more than the collapse of Lehman Brothers. Numerous commentators have observed that Lehman’s accounting was especially opaque; a scathing report by a U.S. bankruptcy-court examiner that investigated the bank’s collapse noted that Lehman chose to "disregard or overrule the firm’s risk controls on a regular basis." The examiner noted that Lehman employed accounting gimmicks to characterize loans as assets and move significant debt-related information off its balance sheet. Lehman’s own global financial controller told the bankruptcy examiner that "there was no substance to the transactions" and "the only purpose or motive for the transactions was reduction in balance sheet." As a result, the bank appeared to have less debt on its books than it actually did, thus enabling it to preserve its favorable credit rating. In an April 2008 email, Lehman’s chief operating officer called such accounting maneuvers "another drug we’re on." The big four accounting firms also attracted heavy criticism in the years after the financial crisis due to their failure to highlight problems in the financial sector.

These historic scandals differ in many important respects, but they share two key similarities. First, they are in large part attributable to the failure of firms to disclose material information about their operations and financial condition to the public. And second, they unleashed a cascade of devastating economic consequences in the lives of ordinary people.

Unfortunately, concerns about improper accounting practices persist today. For example, in September of 2015, Walmart reported that it had found material control weaknesses in the way that the company was accounting for leases:

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24 In 2002, Congress passed the Sarbanes-Oxley Act to protect shareholders and the general public from fraudulent accounting practices. While Sarbanes-Oxley represents a significant milestone in the law of corporate governance, it ultimately had only a modest bearing on the standards that govern what information companies deem material enough for disclosure to the public in the first instance. The Act focuses more on promoting independence in audit firms and audit committee members, enhancing standards for the preparation of audit reports, and severely penalizing the destruction of financial documents relating to SEC investigations.


26 Id.

27 Id.

28 Id.


“Based upon that discovery, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are not effective at a level that provides reasonable assurance.”

Fortune Magazine recently observed that the lease accounting problem “isn’t the only major outstanding accounting issue at Walmart” and that “serious questions continue to be raised about Walmart’s accounting operations.” A detailed analysis of Walmart’s accounting travails over the past decade is outside the scope of this letter, but it is significant and illustrative that the world’s largest company by revenue has signally failed to disclose key information to the public over an extended span of time. As a result, Walmart’s shareholders and other observers lack complete and accurate information about significant aspects of its business operations.

A spate of authoritative studies suggest that Walmart’s shoddy accounting practices are no aberration. A June 2015 paper by professors from Emory University, Duke University, and the National Bureau of Economic Research reveals that CFOs believe that, in any given period, twenty percent of firms intentionally distort their earnings—even while adhering to generally accepted accounting principles. The magnitude of the misrepresentation is considerable, averaging roughly ten percent of reported earnings. Further, a study published in the May 2015 edition of The Accounting Review found that only about twenty percent of companies provide investors with any warning about their material control weaknesses. Of the remaining firms, nearly two-thirds reported a material control weakness only after a financial restatement. And finally, researchers from Rutgers University, Nanyang Business School, and Columbia University have recently found that financial restatements themselves can serve as a “handbook of trickery,” prompting peer organizations to imitate misreporting.

32 Eleanor Bloxham, Walmart’s New CFO Has His Work Cut Out For Him, Fortune (Oct. 9, 2015, 1:00 PM), http://fortune.com/2015/10/09/walmart-cfo-biggs/.
36 Id.
No set of accounting rules or disclosure standards can completely stop a firm whose management is bent on misleading its shareholders. But requiring more disclosure instead of less can still be a major fraud deterrent. By contrast, a more lax regime will only exacerbate the already-recurring problem of corporate accounting fraud. The Board should be mindful of this backdrop of historic scandals, evidence of ongoing accounting malfeasance, and the negative implications thereof as they weigh this proposal.

VI. Given that these accounting rules are intended to inform and protect investors, the Board should heed the investor advocate community’s strong and unanimous opposition to its materiality proposal.

Rather than focusing on investors, it appears that the Board has been influenced primarily by industry advocates seeking to reduce their reporting burdens. For example, a section of the Board’s Conceptual Framework draft, entitled “Why is the FASB Issuing These Proposed Amendments?” explains that:

“Respondents [to previous requests for comment] . . . along with other stakeholders, have requested these amendments to eliminate inconsistencies between the framework and the legal concept of materiality.”

Presumably, the Board is referring to comment letters like those submitted in 2012 by James G. Campbell, Intel’s vice president for finance and corporate controller.39 Mr. Campbell’s letter claims there are inconsistent materiality standards, onerous reporting requirements, disclosure overload issues, and entreats the Board to revisit the definition of materiality. A similar 2012 comment letter from the American Gas Association urged the Board to clearly define materiality to limit disclosures in financial statement notes.40

The Board should not yield to such one-sided and self-interested advocacy. Instead, the Board should consider the views of all stakeholders, and in this instance, it should be guided primarily by the interests of those whom the accounting regime was intended to serve: investors.

A survey of the public remarks of investor advocates reveals a resounding chorus of opposition to changing the definition of materiality as the Board has proposed. A few examples follow:

• “FASB says it’s just a clarification. . . This is anything but just a clarification. There’s no way this cannot be seen as an effort to reduce disclosure.” J. Robert Brown, Jr., Secretary of the SEC’s Investor Advisory Committee and Professor of Law at the University of Denver.41

• “The proposed language is very different than what is currently there. Accepting the proposal would be backtracking in the United States on a fuller disclosure approach the rest of the world required.”42 Joseph Carcello, Professor of Accounting, University of Tennessee, and Executive Director of the C. Warren Neel Corporate Governance Center

• ”The reason why this is important is because the definition of what’s material is a foundation of all corporate disclosure . . . It’s quite clear what’s being proposed is in the direction of less disclosure. . . More disclosure is better than less in general.” Damon Silvers, Associate General Counsel, AFL-CIO.43

• “Raising materiality limits would be terrible for investors, giving a pass to management who put out bad, incorrect and misleading numbers . . . This is a very significant issue. It runs to the heart of the credibility of financial statements.” Lynn Turner, former SEC Chief Accountant.44

Better Markets is unaware of any investor advocates who have expressed anything other than strong opposition to the Board’s proposal.

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42 Id.
CONCLUSION

We hope these comments are helpful as the Board assesses its Proposal, and we look forward to participating in the process as it moves forward.

Sincerely,

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