September 20, 2013

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

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RE: File Reference No. 2013-310
FASB Exposure Draft: Definition of a Public Business Entity

Dear Board Members:

Koch Industries, Inc. ("KII"), a privately-held company, is pleased to comment on the accounting proposal issued August 7, 2013 by the Financial Accounting Standards Board ("Board") on Definition of a Public Business Entity: An Amendment to the Master Glossary. KII and its subsidiaries ("the Company") are engaged in operations, trading and investments worldwide and in many industry sectors – including petroleum refining and chemical manufacturing, consumer products, building products, fibers and resins, nitrogen-based fertilizers, industrial combustion and pollution control equipment, commodity and financial trading, and other strategic investments. The Company has operations in over 60 countries and over 60,000 employees worldwide.

Although we understand the Board’s undertaking to lessen the inconsistency and complexities of multiple definitions of both nonpublic and public entities, we believe the Board has added complexity and ambiguity to the definition that will potentially require entities currently considered private to be classified as public. These entities will be required to take on burdensome accounting costs to comply with additional regulations under the proposed definition. To prevent this from occurring, the Board needs to draw a clear line and define a public company as one who registers their securities with the Securities and Exchange Commission ("SEC").
Complexity and Ambiguity
We believe that a public company is one who sells their securities to the general public, allows the market to determine the value of those securities through daily trading, and is subject to the rigorous reporting requirements of the SEC, which are established to protect investors who do not have direct access to management. We feel that criteria one, two and three are clear and concise, and provide no doubt to the characteristics that need to present for a company to be defined as a public company. Criteria four and five, on the other hand, contain terminology that needs further clarification before a company can accurately determine if they are indeed a public entity.

Criteria four under the proposed amendment alludes to the presumption that conduit bond obligors are issuing unrestricted securities. Even though conduit bonds can be actively and publicly traded in a secondary market, these bonds are primarily issued with various restrictions (market access and a specific pool of investors). Several private companies have issued conduit bonds that are only available to qualified institutional investors or sophisticated investors in a secondary market and require investors to reach out to a remarketer or dealer for access to acquire. These investors can request the company's financial statements, but tend to be satisfied with the required financial information; credit ratings, select financial information and financial ratios. Since the sophisticated investors of conduit bonds use other meaningful financial information besides the financial statements, it would be hard to argue that obligors should be subjected to regulatory demands of a public entity, particularly when financial statements are not necessarily provided to investors. Therefore, we believe conduit bond obligors should be removed from the definition, and the Board should focus their efforts and definitions on securities registered with the SEC.

Furthermore, we believe the Board should revise the ambiguous language used in criteria five. Criteria five, as currently written, unclearly determines what constitutes a “legal or regulatory” requirement. Several companies have reporting requirements pursuant to contractual obligations with banks, credit agencies, or other financial institutions generally established because companies intend to attain capital through other avenues, and by accessing the public markets. We believe a “legal or regulatory” requirement would be one that is directed from a regulatory agency or governing body in conjunction with the issuance, trade or sale of unrestricted securities.

From our perspective, the efforts to minimize the inconsistency and complexities of multiple definitions of both nonpublic and public entities would be better served if the Board focuses on the unrestricted securities available to the general public in an active open market. The private company market should be left to determine what financial information is needed to make investment decisions. If banks, insurance companies, rating agencies, regulators, and owners desire more information than what the current private company’s financial statements provide, they have the ability to ask for it, or demand it through contractual language. In our opinion, the Board needs to place their focus on public investors needs and allow the private company financials users through direct access with management determine what they need and how best to gain that information.
We hope you will consider our expressed concerns and suggestions, and continue to review this exposure draft to ensure additional companies are not considered public through unintended consequences. We continue to look forward to actively working with the Board to improve financial reporting and accounting for public and private companies.

Sincerely,

Richard Dinkel
Chief Accounting Officer
Koch Industries, Inc.