February 2, 2017

Ms. Susan Cosper
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

RE: Proposed Accounting Standards Update: Distinguishing Liabilities from Equity (Topic 480) I. Accounting for Certain Financial Instruments with Down Round Features and II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception (File Reference No. 2016-370)

Dear Ms. Cosper:

We appreciate the opportunity to respond to the Financial Accounting Standards Board’s proposed Accounting Standards Update (the proposed ASU) regarding certain financial instruments with “down round” features. Groupon, Inc. supports the Board’s efforts to reduce the complexity associated with the accounting for financial instruments with characteristics of equity. The accounting guidance for determining the classification of such instruments is overly complex, often inconsistent, and frequently results in circumstances in which non-substantive or remote features dictate an instrument’s accounting treatment. We believe that there are a number of actions that can be easily taken by the Board that would result in a meaningful reduction in complexity while improving relevance and representational faithfulness. As such, this comment letter addresses both: (1) our views regarding the proposed ASU and (2) our recommendations for short-term improvements in the accounting for financial instruments with characteristics of equity.

Views Regarding Proposed ASU

We do not object to the issuance of guidance that would permit an instrument with a down round feature to be classified in equity and would support the Board providing similar relief for warrants to purchase redeemable equity shares, which are currently classified as liabilities based on the guidance in ASC 480-10-25-13. However, we do not support the proposed accounting treatment that would apply when a down round feature is triggered. That subsequent measurement guidance would constitute an entirely new accounting model that would significantly increase complexity, which is contrary to the Board’s stated objective regarding the proposed ASU.

Classification of Financial Instruments with Down Round Features

When EITF 07-5 was originally issued, there was significant discussion by the working group and the Task Force regarding the the application of that guidance to financial instruments with down round features. Some believed that a down round provision would preclude an instrument from being considered indexed to a company’s own stock because a shareholder typically would not be protected from declines in the value of its investment in a similar manner. Others believed that such a provision would not preclude an instrument from being considered indexed to a company’s own stock because the event triggering a strike price adjustment is equity-related (i.e., the issuance of either equity shares or an equity-linked instrument) and the amount of the resulting strike price adjustment is determined based on the equity-related transaction. Proponents of the latter view observe that puttable shares are classified in equity (or temporary equity for SEC registrants), despite having another form of downside protection.
The view ultimately supported at the time was that down round provisions adjust the holder’s payoff in a manner that differs significantly from the payoff that would be received by a holder of an outstanding equity share and therefore should preclude equity classification. The example in ASC 815-40-55-33 through 55-34 on warrants with a down round provision was written to reflect that conclusion. However, we believe that either view could be an acceptable interpretation absent the explicit example and we would not object to an amendment that updates the Codification to reflect the Board’s current view that down round provisions should not preclude equity classification.

Although we do not object to the outcome of the proposed ASU regarding an instrument’s classification, we believe that the Board should reconsider the proposed method of effectuating that change. While we recognize that a similar approach was previously applied to registration payment arrangements for purposes of evaluating the related instrument’s classification, we nonetheless believe that a rule requiring that specific contractual features be disregarded from a particular analysis ultimately increases complexity in applying the accounting literature for financial instruments with characteristics of equity. As such, we recommend simply updating the guidance in ASC 815-40-55-34 as follows to achieve the same objective:

**815-40-55-34** The warrants are not considered indexed to Entity A’s own stock based on the following evaluation:

a. Step 1. The instruments do not contain an exercise contingency. Proceed to Step 2.

b. Step 2. The settlement amount would not equal the difference between the fair value of a fixed number of the entity’s equity shares and a fixed strike price. The strike price would be adjusted if Entity A sells shares of its common stock for an amount less than $10 per share or if Entity A issues an equity-linked financial instrument with a strike price below $10 per share. Consequently, the settlement amount of the warrants can be affected by future equity offerings undertaken by Entity A at the then-current market price of the related shares or by the contractual terms of other equity-linked financial instruments issued in a subsequent period. The occurrence of a sale of common stock by the entity at market causes an adjustment of the strike price to align with the entity’s current stock price, which is not an input to the fair value of a fixed-for-fixed option on equity shares. Similarly, the occurrence of a sale of an equity-linked financial instrument causes an adjustment of the strike price to align with the strike price set forth in the recent transaction and the strike price is not an input to the fair value of a fixed-for-fixed option on equity shares, if the transaction was priced at market.

Additionally, we believe that the Board should consider expanding the proposed guidance to address options and forward contracts to acquire redeemable shares. While redeemable shares are classified in equity (or temporary equity for SEC registrants), warrants to acquire those shares are required to be liability classified and measured at fair value through earnings under ASC 480-10-25-13. Many of the same types of entities that issue warrants with down round features also issue warrants to acquire redeemable shares. Accordingly, if the Board’s objective is to provide relief for those entities from the difficulties of applying mark-to-market accounting to commonly issued instruments with characteristics of equity, we believe that it should also amend ASC 480-10-25-13 and ASC 480-10-55-32 and 55-33 to specify that option or forward contracts to acquire redeemable shares are not within the scope of ASC 480-10-25-8 provided that (1) the option or forward contract itself is not redeemable and (2) the underlying redeemable shares will be classified within equity (or temporary equity) when issued.

**Recognition and Measurement When a Down Round Feature is Triggered**

We do not agree with the proposed accounting treatment that would apply when a down round provision is triggered. While the proposed ASU purports to reduce complexity for financial instruments with characteristics
of equity, the proposed accounting treatment when a down round provision is triggered would constitute the establishment of a complex new accounting model that will likely lead to significant issues in practice.

For equity-classified instruments such as warrants, an issuer would not typically record an economic loss on the instrument as a dividend. For example, when an equity-classified warrant is exercised, the excess of its intrinsic value over the premium received at issuance is not recorded as a dividend. Given that the economic loss related to an equity-classified warrant with a fixed strike price is not recorded, regardless of its magnitude, we are not clear why an instrument with a variable strike price would be subject to a remeasurement requirement that is isolated to strike price adjustments, nor are we clear as to what the prescribed remeasurement purports to represent. The remeasurement does not represent the overall transfer of economic value from shareholders to a warrant holder, as this would be measured based on the cumulative increase in the warrant’s overall fair value. Additionally, as down round features adjust the strike price of an existing warrant based on the pricing of a current market transaction, we typically would not expect that a warrant would be in-the-money following the strike price adjustment, so the other equity holders would likely be neutral or slightly positive from an economic perspective relative to the warrant overall, even after a down round feature is triggered. Said another way, an adjustment to the strike price of a warrant resulting from a down round feature effectively negates the economic gain from declines in the fair value of the warrant that would have otherwise occurred. Because the gain from decreases in the fair value of a warrant would not be recorded if it is equity-classified under the proposed ASU, neither should the reversal of such unrecognized gain when a strike price adjustment occurs. Also, the proposed guidance does not take into account the fact that the holder actually paid fair value for the down round feature as part of the pricing of the instrument at issuance. If the Board’s objective is to reduce complexity in financial reporting as it relates to instruments with characteristics of equity, we believe that the new guidance should be consistent with current requirements that equity-classified financial instruments are not remeasured as long as they are classified in equity, rather than creating a completely new accounting model for one particular type of feature. If the Board ultimately decides to move forward with the proposed guidance, we believe that it should clarify whether the dividend recorded in connection with a down round feature being triggered should adjust the numerator in earnings per share calculations.

For a convertible debt instrument, it is not clear why the Board is proposing to adjust the liability carrying amount with an offsetting charge to earnings when an adjustment to the conversion option is triggered, which would be followed by that charge being reversed back through income in subsequent periods as premium amortization. This is an entirely new accounting model that has some similarities to contingent beneficial conversion feature accounting, except that (1) the measurement is more complex (i.e., “before and after” fair values of a hypothetical instrument that does not contain a substantive feature that is present in the actual instrument) and (2) the liability basis adjustment is an increase, rather than a decrease, that is immediately recognized in earnings, rather than in equity. We note that the complexity of the beneficial conversion feature model subsequently necessitated significant interpretive guidance (EITF 98-5, 00-27, 08-4, etc.) and it would appear that many of the very same interpretive questions will need to be addressed by preparers under this new down round accounting model. Given that the proposed guidance permits a conversion option with a down round feature to qualify for the “equity” scope exception in ASC 815-10-15-74(a), we believe that the instrument should not be remeasured when a conversion price adjustment from a down round provision is triggered. We do not believe that recording a charge that is subsequently reversed in future periods through premium amortization provides a meaningful representation of the issuer’s financing costs. However, if the Board ultimately decides to move forward with the remeasurement requirement, we believe that it should be recognized by recording a debt discount and an increase to equity, with the debt discount subsequently amortized to interest expense.

Replacement of Indefinite Deferral of Certain Mandatorily Redeemable Financial Instruments with a Scope Exception
We agree with the proposed replacement of the indefinite deferrals with a scope exception.
Short-Term Improvements to the Accounting for Financial Instruments with Characteristics of Equity

The liabilities and equity project has been on and off the Board’s agenda for more than 25 years and no unified framework has been established during that period. We believe that the first step in developing such a framework is for the Board to conclude as to whether equity should be narrowly defined (for example, non-puttable shares only) or whether equity should be more broadly defined to include instruments and embedded features for which the payoff to the holder is substantially similar to the payoff received by a shareholder and for which the issuer cannot be compelled to net-cash settle the instrument. We believe that the Board’s efforts to develop a unified framework will have a much greater chance of success if it can first reach a decision on that fundamental threshold question.

While we support the ultimate development of such a framework, we believe that the following short-term improvements would significantly reduce complexity in accounting for financial instruments with characteristics of equity while also improving financial reporting by limiting the circumstances in which similar instruments are subject to significantly different accounting treatments:

1. Amend ASC 815-40-25-9 to specify that equity classification is not precluded as a result of a contractual provision that could potentially result in a net-cash settlement when the circumstances that could potentially result in the cash settlement (for example, the circumstances described in ASC 815-40-25-7 through 25-35) are remote. We believe that nonsubstantive or remote features should not impact the accounting for a financial instrument or other commercial arrangement. Aligning the accounting guidance for financial instruments with characteristics of equity with that principle will reduce complexity and improve comparability between substantially equivalent instruments that are often subject to significantly different accounting treatments (i.e., equity classification versus mark-to-market) under existing U.S. GAAP.

2. Amend ASC 470 to eliminate the entire “beneficial conversion feature” accounting framework. Concepts Statement No. 2, Qualitative Characteristics of Accounting Information, specifies that “the reliability of a measure rests on the faithfulness with which it represents what it purports to represent…” A beneficial conversion feature does not purport to measure any distinct economic right or obligation. Rather, it can only be described by reference to the measurement itself (i.e., it is the difference between the conversion price and the underlying stock price at the commitment date). We agree that when a transaction with an investor involves the issuance of a convertible instrument and other stated or unstated rights or obligations, the consideration should be appropriately attributed between the financing transaction and those other rights and obligations. However, when the negotiated terms of an instrument involve an unconditional or contingent conversion option that is in-the-money, we do not believe that the issuer has incurred an incremental financing cost, provided that it received consideration equal to the fair value of the instrument when it was issued. Not only does the concept of beneficial conversion features have questionable conceptual merit, it is arguably the most complex aspect of accounting for financial instruments with characteristics of equity under current U.S. GAAP.

3. Amend ASC 470 to require that all convertible debt be separated into its liability and equity components using the “liability-first” approach specified in IAS 32 and the cash conversion subsections of ASC 470-20. There are currently numerous models for accounting for convertible debt in U.S. GAAP and financial reporting would be improved by moving to a single model that reflects the existence of the conversion option. We recognize that some constituents may assert that such a change would actually

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1 This recommendation to eliminate beneficial conversion features is applicable to convertible preferred stock even if the Board follows the next recommendation to require that all convertible debt be separated into its liability and equity components using a liability-first approach.
increase complexity because it is more difficult to separate a convertible debt instrument into its components than it is to account for the instrument as if it had no conversion option. However, in our experience as an issuer of convertible debt within the scope of the cash conversion subsections of ASC 470-20, we do not believe that there are significant costs or effort involved with making a one-time estimate of the issuer’s straight-debt borrowing rate at issuance and then amortizing the resulting debt discount over the life of the instrument.

4. Work with the staff of the Securities and Exchange Commission (SEC) to evaluate whether the concept of “temporary equity” presentation should either be eliminated altogether or limited to circumstances in which redemption is assessed as more than remote. When ASR 268 was issued in 1979, the guidance was characterized as an interim measure until the related conceptual matters are addressed by the FASB. That interim measure has now been in effect for 37 years and it has grown significantly in terms of scope and complexity as a result of the issuance of EITF Issue No. D-98, “Classification and Measurement of Redeemable Securities,” and its subsequent amendments and interpretations. We agree that equity shares with redemption features are sufficiently different from nonredeemable equity shares to warrant disclosure in the notes to the financial statements and separate presentation within the equity section of the balance sheet. We also agree that such instruments should continue to be subject to subsequent measurement guidance and that remeasurements of redeemable preferred stock should be treated in the same manner as preferred stock dividends. However, we do not believe that the existence of a redemption feature, particularly when it is based on a remote contingency, justifies the complexity associated with maintaining a separate financial statement element on the balance sheet that is neither a liability nor a component of shareholders’ equity. If the concept of temporary equity presentation is retained, we believe that the Board should work with the SEC staff to determine whether instruments subject to that classification should exclude those with redemption features that are exercisable upon a deemed liquidation event, such as a change in control of the issuer, or the occurrence of a remote contingency.

Appendix A to this letter provides our responses to the specific questions raised in the Exposure Draft.

If you have any questions about our comments or wish to discuss any of the matters addressed throughout, please contact me at 312-334-1579.

Respectfully submitted,

Brian C. Stevens
Chief Accounting Officer and Treasurer
Groupon, Inc.
Appendix A: Responses to the questions set out in the Exposure Drafts

Question 1: Do you agree that when classifying certain financial instruments with down round features, the down round feature should be excluded from the assessment of whether an instrument is indexed to an entity's own stock (in accordance with the guidance in Subtopic 815-40)? If not, please explain why and suggest alternatives.

We do not object to the issuance of guidance that would permit an instrument (or embedded feature) with a down round provision to be classified in equity (or qualify for the scope exception in ASC 815-10-15-74(a)). As discussed in the body of this letter, we believe that the most appropriate mechanism for making that change would be to amend the guidance in ASC 815-40-55-34 on how to evaluate a down round feature, rather than establishing a rule that a down round feature should not be considered at all. Additionally, we would support the Board providing similar relief for warrants to purchase redeemable equity shares, which are currently classified as liabilities under ASC 480-10-25-13.

Question 2: Do you agree that for certain financial instruments with down round features, the effect of the down round feature should be recognized when it is triggered and that the approach for recognition should follow the classification (liability or equity) of the instrument? If not, please explain why and suggest alternatives.

We do not agree with the proposed accounting treatment that would apply when a down round provision is triggered. Please refer to the body of this letter for our views on this point.

Question 3: The proposed amendments in paragraphs 480-20-30-1 through 30-2 describe how to measure the effect of the down round trigger. Do you agree with that approach? If not, please explain why and suggest alternatives.

We do not agree with the proposed accounting treatment that would apply when a down round provision is triggered. Please refer to the body of this letter for our views on this point.

Question 4: Do you agree that for certain financial instruments with down round features that have been triggered during the reporting period, an entity should disclose the fact that the feature has been triggered, the value of the effect of the down round being triggered, and the financial statement line item in which that effect has been recorded? If not, please explain why and suggest alternatives.

We agree that an entity should disclose when a down round adjustment has been triggered. We do not believe that the “value of the effect of the down round” is meaningful or relevant. Additionally, while we do not agree that an adjustment should be recorded when a down round feature is triggered, if the Board decides to move forward with that requirement we agree that the issuer should disclose the financial statement line item in which the effect has been recorded.

Question 5: Do you agree that entities should apply the proposed guidance to outstanding instruments as of the effective date of the change, with no adjustments to prior periods presented, with the cumulative effect of the change recognized as an adjustment of the opening balance of retained earnings in the fiscal year or interim period of adoption? If not, please explain why and suggest alternatives.

We agree that the proposed guidance on classification should be reflected as of the effective date of the change with no adjustments to prior periods. However, for warrants and other instruments that will reclassified from
mark-to-market liabilities to equity under the new guidance, we believe that the instrument’s then-current carrying amount at the date of adoption (i.e., its fair value) should be reclassified to equity, rather than reporting a cumulative effect adjustment to retained earnings. Additionally, if the Board decides to move forward with its proposed guidance on remeasurements when down round features are triggered, we believe that such guidance should be applied prospectively.

**Question 6:** How much time would be necessary to adopt the amendments in this proposed Update? Should early adoption be permitted? Would the amount of time needed to apply the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities?

We believe that a one-year period to adopt the proposed guidance is sufficient and would support providing entities with the ability to early adopt the guidance.