August 10, 2015

Submitted via email (director@fasb.org)

Technical Director
File Reference No. 2015-270
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 2015-270, Exposure Draft: Compensation—Stock Compensation (Topic 718), Improvements to Employee Share-Based Payment Accounting

Apple Inc. and its wholly-owned subsidiaries (collectively "Apple") designs, manufactures and markets mobile communication and media devices, personal computers and portable digital music players, and sells a variety of related software, services, accessories, networking solutions and third-party digital content and applications. Apple is pleased to have the opportunity to comment on the Financial Accounting Standards Board's ("FASB" or the "Board") June 8, 2015 exposure draft of proposed changes to accounting for employee share-based payments prescribed at Accounting Standards Codification ("ASC") 718, *Compensation—Stock Compensation* ("Topic 718"), (the "ED"). Specifically, we concur with the following proposed changes:

- *Modifying the current exception to liability classification to permit an entity to withhold shares for tax withholdings up to the maximum statutory tax rate in the employee's jurisdiction.* This proposed change eliminates complexities in calculating employee-specific withholding rates and provides entities a means to assist employees in meeting their income tax obligations, while still preventing abuse of the exception by maintaining a withholding limit. However, we believe the proposed standard should be clarified to prescribe that the exception:
    - Permits withholding up to the maximum statutory tax rate of the employee's jurisdiction as opposed to the maximum statutory tax rate of the specific employee (ASC 718-10-25-18), consistent with the Board's intent described in the ED's Basis for Conclusions that the an entity would be required to determine only one maximum rate in each jurisdiction rather than determining a rate for each employee (BC16).
    - Includes the employee's share of payroll taxes applicable to such income (ASC 718-10-25-19, which was eliminated in the proposed changes). We do not believe it was the Board's intent to remove payroll taxes from the exception.

Apple
1 Infinite Loop
Cupertino, CA 95014

T 408 996-1010
F 408 996-0275
www.apple.com

- *Clarifying that cash paid to a taxing authority, when withholding shares for tax-withholding purposes, should be classified as a financing activity.* This proposed change eliminates ambiguity in the current standard and provides for consistency and comparability without significant implementation cost.

However, we respectfully request the Board to reconsider certain of the ED's other proposed changes related to the accounting for, and presentation of, excess tax benefits and tax deficiencies. Specifically, we believe the Board should maintain the current standard's provisions that require:

- *Recording excess tax benefits and certain tax deficiencies in equity.* We continue to support the Board's previous conceptual basis, B209 in FASB Statement No. 123, *Share-Based Payment (revised 2004)*, that an entity's total tax deduction pertains to two separate transactions: (i) a compensation transaction in which an employee renders services in exchange for a share-based payment and (ii) an equity transaction such as the exercise of share options or the vesting of shares, where changes in the fair value of the award after the grant date affect the amount of the equity transaction. We believe Topic 718 appropriately reflects the nature of these two separate transactions by reflecting excess tax benefits and certain tax deficiencies as an equity transaction recorded as additional paid-in capital ("APIC"). Accordingly, we believe the Board should reconsider the proposed change to require all excess tax benefits and tax deficiencies to be recognized as income tax expense or benefit in the income statement, as such accounting would inappropriately suggest that the entire value received by the employee, and therefore the total tax deduction, relates solely to a compensation transaction.

  Further, while we acknowledge that the proposed changes would reduce the operational burden of tracking an APIC pool, we believe any such benefits would be outweighed by the introduction of increased volatility in earnings and the effective tax rate. This increased volatility would cause confusion amongst financial statement users. An entity's ability to accurately forecast such volatility would be challenged by inherent complexities in estimating future changes in an award's valuation (e.g., changes in an entity's share price) and the timing of the tax benefit realization (e.g., when a share option will be exercised).

- *Presenting excess tax benefits within financing activities on the statement of cash flows.* Consistent with our aforementioned view regarding the most representative accounting for excess tax benefits, presentation as a financing activity appropriately reflects the nature of the equity transaction giving rise to the excess tax benefits.

- *Including excess tax benefits in assumed proceeds when calculating earnings per share ("EPS").* Consistent with our aforementioned view regarding the exclusion of excess tax benefits from the income statement, inclusion of excess tax benefits in assumed proceeds when using the treasury stock method appropriately adjusts EPS for their exclusion from net income or loss.

If the Board decides to finalize the proposed changes to recognize all tax effects of share-based payments as income tax expense or benefit in the income statement, we believe that in order to facilitate consistent application between entities with interim reporting requirements, the Board should clarify whether the income tax expense or benefit should be recognized discretely or through an estimated annual effective tax rate ("AETR"). ASC 740-270, *Income Taxes—Interim Reporting,* requires the estimated AETR to include the tax effect of items in ordinary income or loss. Ordinary income or loss excludes significant unusual or infrequently occurring items. For an entity with a historical, current and expected future practice of compensating employees with share-based payments, we believe the underlying share-based payment transactions should be included in ordinary income because the transactions are normal, directly related to the ordinary and typical activities of the entity, and reasonably expected to recur in the foreseeable future. Accordingly, we believe the Board should clarify that the income tax expense or benefit should be included in the estimated AETR in such circumstances.

* * *

Please contact me at (408) 862-4776 if you have questions regarding our response or other aspects of the ED.

Very truly yours,

Chris Kondo
Senior Director, Corporate Accounting
and Principal Accounting Officer