

November 19, 2013

Via email: financials_comments@sasb.org

Sustainability Accounting Standards Board
75 Broadway, Suite 202,
San Francisco, CA 94111

Re: Financials Public Comment

I appreciate the opportunity to comment on the Sustainability Accounting Standards Board's Financial Public Comment re-exposure. Below is a suggestion of a disclosure topic which the Standards have not included that may be material to a reasonable investor, along with evidence supporting my assertion.

Industry Standard	Commercial Banking	Investment Banking & Brokerage
Disclosure Topic	Systemic Risk Management	Systemic Risk Management
Accounting metric code	FN0101-17	FN0102-17
Suggested Standard	FN0101-17B Notional amounts of written credit derivatives FN0101-17C Purchased written derivatives with the same underlying notionals FN0101-17D Written credit derivatives not offset by purchased credit derivatives with identical underlying notionals	FN0102-17B Notional amounts of written credit derivatives FN0102-17C Purchased written derivatives with the same underlying notionals FN0102-17D Written credit derivatives not offset by purchased credit derivatives with identical underlying notionals

The Standards require disclosure of notional values of OTC derivatives but do not address credit derivatives. GAAP currently requires the disclosure of maximum notional payout of written credit derivatives (in italics). However, Basel III proposals will also require the disclosure of (in bold):¹

¹ Basel Committee on Bank Supervision, *Consultative Document: Revised Basel III leverage ratio framework and disclosure requirements* (Basel: Bank for International Settlements, June 2013).
<http://www.bis.org/publ/bcbs251.pdf>

Paragraph 31: In order to capture the credit exposure to the reference entity... the full effective notional value referenced by a written credit derivative is to be incorporated into the Exposure Measure. The effective notional amount of a written credit derivative may be reduced by the effective notional amount of a purchased credit derivative on the same reference name and level of seniority if the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the written credit derivative.

<i>Maximum Notional Payout of Written Credit Derivatives</i>
Less: Purchased Credit Derivatives with identical underlying notionals
Equal: net exposure to written credit derivatives

My recommendation is that Standards include the bolded items above.

Five of the six largest U.S. banks currently provide the items in bold, but one bank does not. The following represent exposures to derivatives, as of December 2012:

Exposure to Written Credit Derivatives, 2012						
	Wells Fargo	Citigrou p	Goldma n Sachs	Bank of Americ a	JPMorga n	Morgan Stanley
	in billions					
Gross notional exposure to written credit derivatives	27	1,347	1,761	1,600	3,021	1,893
Less: Credit derivatives purchased with identical notionals	15	Not Disclosed	1,619	1,100	2,885	1,500
Net exposure to credit derivatives	12	Not Disclosed	142	500	136	393

Source: Annual Reports

Thank you for the opportunity to present these comments.

Sincerely,

Dov Fischer, Ph.D. CPA
Brooklyn, NY, USA

P.S. I also attach a recent article I wrote in *CPA Journal* on the topic of credit derivatives.²

² Fischer, D., "The Hidden Effects of Derivatives on Bank Balance Sheets," *CPA Journal* 83 No.9 (September 2013), 67-69.



Sustainability Accounting Standards Board: Comments on Exposure Draft for Financial Services Sector

1. Disclosure Topics	
Disclosure topics in the Standards that may not be material to a reasonable investor, including an explanation	Disclosure topics not included in the Standards that may be material to a reasonable investor, including evidence supporting your assertion
None identified	FNO102-06
	<ol style="list-style-type: none"> 1. Performance measurement per employee category and their contribution to profitability 2. HR has a crucial role to transform organisations and driving the strategy, hence impact on sustainability and Success of the organisation: inclusion of assessment of the HR function could be considered as a material issue - processes, governance structure of the function and performance measurement criteria
	FNO101
	<ol style="list-style-type: none"> 1. Brand management and reputation risk: consider inclusion of processes and measurement criteria as a material issue
	FNO103-15
	<ol style="list-style-type: none"> 1.Regulator Compliance and Quality Control: consider including issues arising from regulatory compliance and quality control audits and how the mechanism in place to address them
	Governance



	<p>1. Most corporate failures have been due to poor governance: consider disclosures of governance structure/mechanism, evaluating performance for instance compliance with governance codes, and how non-compliance is dealt with</p>
	<p>FNO201 Security breaches</p> <p>1. Consider disclosure for existence of Know Your Customer (KYC) programs and how monitored</p>
	<p>FNO202 - Responsible Lending</p> <p>1. Consider extending to include responsible lending and social responsibility: disclosure for mechanisms in place to ensure mortgaged projects financed comply with technical standards (architectural/structural engineering requirements etc) before funds are approved to ensure safety of users and general public</p>
<p>2. Accounting Metrics</p>	
<p>Provide comments to correct, improve, or add to accounting metrics in the standards.</p>	<p>Suggest additional or alternate accounting metrics to measure performance with respect to a disclosure topic</p>
<p>FNO 202-05 Variable compensation for loan originators</p> <p>Consider including in the compensation for loan officers the performance of loans they originate as an incentive in their variable compensation</p>	



FNO103 – 04	
1. Measurement of employee level of engagement: consider extending to include level of engagement and contribution to growth and profitability	
3. Cost Effectiveness	
How costly would it be for companies to collect, analyze, and report information required for the proposed accounting metrics?	Do you anticipate this cost to be a barrier to reporting, adoption, or usage of the proposed accounting metrics?
In the first year non-financial information is difficult to collect, analyze and report but in subsequent years would become easier. How costly depends on the current status of information available and systems in use	Yes it would be a barrier in the initial stage, but can be perfected over time, possibly encourage reporting in phases for first time reporters so that they are able to fix their systems where necessary and make subsequent reporting smoother
What aspects of reporting, if any, would you foresee being most costly for reporting organizations?	
Measurement of performance of HR and other functions not directly contributing to profitability including executives	

Note: Most of these issues are applicable for the various financial services

Prepared by: CPA Felicitas Therero Irungu

Felikar and Associates

(FKA)

Member of Institute of Certified Public Accountants in Kenya (ICPAK)

Date: 30 December 2013



30 December 2013

Jean Rogers
Founder and Executive Director
The Sustainability Accounting Standards Board
75 Broadway, Suite 202
San Francisco, CA 94111

Document filed electronically via financials_comments@sasb.org

Re: Financial Sector Exposure Draft, Security & Commodity Exchanges

Dear Ms. Rogers:

The NASDAQ OMX Group, Inc. ("NASDAQ OMX") closely follows the work of your organization and carefully examined the Sustainability Accounting Standards Board ("SASB") Conceptual Framework Exposure Draft (the "Draft") as it pertains to the Financials sector for Security & Commodity Exchanges.

As you know, NASDAQ OMX is a leading provider of trading, exchange technology, information, and public company services across six continents. Through a diverse portfolio of solutions, NASDAQ OMX enables our customers to plan, optimize, and execute their business vision with confidence, using proven technologies that provide transparency and insight for navigating today's global capital markets. As the creator of the world's first electronic stock market, our technology powers more than 80 marketplaces in 50 countries, and approximately 1 in 10 of the world's securities transactions. In addition, we are home to more than 3,300 listed companies with a market value of over \$7 trillion, as well as 10,000 corporate clients.

NASDAQ OMX is also a believer in the virtues of sustainability. We were practicing corporate sustainability—in many different places and in many different ways—long before the term became so prevalent and fashionable. Efficiency and transparency formed the foundation of our brand 40 years ago, and they still drive our decision-making every day. We accept our role as both a thought leader and a market self-regulator, leveraging our enterprise to educate investors, market

professionals, and the general public about responsible investment strategy and sustainable capital formation. You can learn more about our efforts at nasdaqomx.com/sustainability.

NASDAQ OMX has an essential role to play in the continuing evolution and acceptance of corporate sustainability. Exchanges are uniquely positioned to promote greater adoption of realistic, material, and actionable business practices. Thus we are pleased to offer our comments on the SASB exposure draft as it pertains to Security & Commodity Exchanges.

GENERAL COMMENTS AND CONCERNS

In our opinion, the Draft addresses a number of current sustainability concerns adequately and provides an actionable roadmap for the future. We agree with the key SASB proposition that *comparable public information encourages companies to compete on key dimensions of sustainability, and helps investors drive capital to the most sustainable outcomes*. This Draft helps us accomplish that shared goal.

NASDAQ OMX can be an efficient venue for the disclosure of material information concerning sustainability, and generally agrees that a reliance upon existing U.S. securities laws for guidance as to materiality is a productive one. We support the SASB approach in developing metrics that satisfy that material definition; your interaction with companies in various industry groups will help determine the real-world sustainability accounting standards of the future.

As an efficient operation, NASDAQ OMX appreciates the use of existing channels to make more information available to investors. SASB guidance on sustainability disclosure via the U.S. Securities and Exchange Commission (“SEC”) Form 10-K will establish a deeper and more comprehensive understanding of *materiality* at the sector, industry, and even individual company level.

The U.S. Supreme Court definition of materiality—information that would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available—is still a viable one. The Draft does not make plain, however, that such material information is already a required disclosure, as part of Regulation FD. We question whether the creation of additional standards adds more value or more confusion for the everyday investor. If we can significantly reorganize our thinking (and enforcement ethos) when it comes to existing securities regulation and enforcement, perhaps there is another way forward.

Companies themselves have a great and terrible burden: They are best suited to determine the materiality of their sustainability metrics, and also most disinclined to disclose potentially negative information. The purposeful vagueness of the Supreme Court standard has already been much

exploited. This Draft, while adding vital nuance to the debate on materiality, does not directly remedy that situation nor does it create an implacable boundary between right and wrong. And one may argue that an overreliance on metrics promotes a quantitative—rather than qualitative—understanding of sustainability performance.

Other concerns, however minor, have been echoed in previous comments. We will not call attention to them here, save one: the expected financial, organizational, and competitive burden of compliance. NASDAQ OMX is the listing home for thousands of public companies, and we vigorously advocate for them. However much we believe in the viability and necessity of sustainability reporting, our commitment to issuer companies remains paramount. The Draft must not place an unfair burden on some (or all) of these companies. Companies with deep pockets must not be empowered to exploit a “sustainability gap” by attracting investors through greenwashing. If this Draft fails to create a level playing field, where *any* company with truly sustainable practices can attract and retain long-term investment, then it is inherently flawed.

NASDAQ OMX and SASB share a healthy respect for cost-benefit analysis. The Draft states explicitly that “any proposed standard fills a significant need on the part of investors and the perceived costs it imposes, compared with possible alternatives, are justified in relation to the overall expected benefits.” We cannot sufficiently identify or assess the costs of compliance at the outset, so the ongoing adoption of the Draft must be evaluated in this context.

PROMOTING TRANSPARENT AND EFFICIENT CAPITAL MARKETS

- + Accounting Metric: Discussion of alert policy regarding timing and nature of public release of information, including description of provisions to—when necessary—pause or halt trading to examine completeness of information. (Code: FN0203-01)
 - NASDAQ OMX Listing Rules already stipulate the criteria and disclosure of material public information. Companies listed on The NASDAQ Stock Market, for example, are subject to regulations regarding the disclosure of material news, or any information that would reasonably be expected to affect the value of a company’s securities or influence investors’ decisions.
 - NASDAQ-listed companies are required to disclose material news promptly to the public through any Regulation FD-compliant method or combination of methods, including: broadly disseminated press releases; furnishing to or filing a Form 8-K or Form 6-K with the SEC (may also include Forms 10-Q and 10-K; conference calls, press conferences, or webcasts (as long as the public is provided adequate notice and granted access); company websites; social media channels; or company announcements (again, only if investors themselves are properly alerted).
 - Our MarketWatch group constantly reviews all material news notifications and may, when appropriate, implement a temporary trading halt to permit the public dissemination of the material news. A complete record of our current and historical trading halts—along with the reasons for the action—is already made available to the public via our trading website ([NasdaqOMXTrader.com](https://www.nasdaqomxtrader.com)).
 - Even if NASDAQ OMX determines that it is appropriate to halt trading in a security, this (in and of itself) may not be an appropriate sustainability performance indicator. A trading halt benefits current and potential shareholders by halting all trading in a security until there has been an opportunity for material information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it properly in their investment decisions; it also alerts the marketplace to the fact that news has been released. Furthermore, the length of a trading halt can vary and there may be no value inferred by merely knowing its duration.
 - While NASDAQ OMX recognizes that a trading halt can disadvantage *existing* investors, our primary regulatory responsibility is to *prospective* investors.
- + Accounting Metric: Number and average duration of (1) halts related to public release of

information and (2) pauses related to volatility. (Code: FN0203-02)

- A complete record of our current and historical trading halts— along with the reasons for the action —is already made available to the public via our trading website ([NasdaqOMXTrader.com](https://www.nasdaq.com/trading)).
 - Comments made above in reference to Code: FN0203-01 apply similarly to Code: FN0203-02.
- + Accounting Metric: Discussion of risks and opportunities (short- and long-term) associated with algorithmic or high-frequency trading, and percentage of algorithmic or high frequency trades occurring on exchange(s). (Code: FN0203-03)
- NASDAQ OMX has commented extensively on this issue in other forums, including in testimony before the U.S. Congress—from which much of the content below is adapted. Our estimation of the value (and risk) associated with electronic, algorithmic, and high-frequency trading is part of the public record.
 - Computer trading is a fact of life and has been the default method of trading for billions of trades over the past several years. It has a proven track record of delivering benefits for investors and market participants that specifically address sustainability concerns: Bringing new investors into the markets, equalizing the information advantage that used to be the staple of manual markets, lowering trading costs, and giving the market expanded abilities to handle the kind of trade and message traffic growth that would freeze manual markets.
 - High Frequency Trading (“HFT”) has attracted much of the media attention, but it is not the only “fast” player in the marketplace. Exchanges, dark pools, and broker systems are all connected and all use sophisticated technology. These systems communicate in slices of time that approach the speed of light. Though a great technical achievement, previously minor events may now represent profound risks that can tangibly affect investor confidence. NASDAQ OMX is not immune to this issue, and therefore committed to assisting SASB in its search for an appropriate sustainability metric.
 - NASDAQ OMX believes that technological developments must be implemented in a manner that ensures all investors a fair deal. Average investors must not be placed at a disadvantage to professional traders by rules that permit selective disclosure of information, preferential access to trading interest, or the appearance of a two-tiered market. All markets that trade the same securities should be equally transparent about their operations, including the rules governing their trading systems, the criteria for admission, and the prices of comparable services.

SASB and other concerned parties should regularly examine the application of new trading technologies for signs of regulatory arbitrage.

- We caution SASB against isolating HFT as a business model issue or a core indicator of sustainability performance. HFT tightens spreads and adds valuable liquidity, which are positive market forces. The academic evidence about HFT supports the fact that they generally add value to the market. Although we recognize that all market participants have a profit motive, that fact tends to incentivize innovation and healthy competition among participants. In our industry, no matter the business model, individual players will try to cross the line—and NASDAQ OMX, the other exchanges, FINRA (the Financial Industry Regulatory Authority) and the SEC works diligently to expose them.
- + Accounting Metric: Description of policy to encourage or require listed companies to publicly disclose governance, social, and/or environmental information. (Code: FN0203-04)
 - NASDAQ OMX has been a vocal proponent of this effort for a number of years. Through the World Federation of Exchanges, we have promoted sustainability dialogue and consensus with fellow stock markets and exchanges. Via the UN Sustainable Stock Exchanges Initiative, we entered into a historic agreement with other key exchanges to develop and promote sustainability guidelines—and that list of committed exchanges has grown ever since. We regularly assist listed companies with their ESG and CR disclosures, enabling them to better manage sustainability as an aspect of their own operation. And we also lead by example, reporting our own ESG metrics to various established reporting channels (Carbon Disclosure Project, Global Reporting Initiative, and the UN Global Compact).
 - NASDAQ OMX, in its listing rules, has the authority to request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a company's continued listing. A company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to NASDAQ OMX contains a material misrepresentation or omits material information.
 - Listed companies must provide full and prompt responses to requests by NASDAQ OMX (or by FINRA acting on our behalf) for information related to unusual market activity or to events that may have a material impact on trading of its securities.
 - In addition to annual and quarterly statements filed with the SEC, NASDAQ OMX already requires companies to disclose a great deal of information to us—

information that may not be appropriately made public. Thus the focus on *public* disclosure, rather than on regulator transparency, might undermine market stability. Such disclosures may include:

- Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or guidance
- Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships
- New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order)
- Senior management changes of a material nature or a change in control
- Resignation or termination of independent auditors, or withdrawal of a previously issued audit report; events regarding the listed company's securities (defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities)
- Significant legal or regulatory developments
- Any event requiring the filing of a Form 8-K

MANAGING CONFLICTS OF INTEREST

- + Accounting Metric: Description of process to identify and assess conflicts of interest between the exchange's regulatory obligations and the interests of its members, its market operations, its listed issuers, and, in the case of a demutualized self-regulatory organization (SRO), its shareholders. (Code: FN0203-05)
- + Accounting Metric: Number of actual and apparent conflict of interest incidents that were identified and mitigated, percentage of staff in compliance with a conflict of interest training and/or certification program. (Code: FN0203-06)
 - The exchange has no comment on these two metrics at this time, and refers you to the SEC or FINRA website for more information.
- + Accounting Metric: Dollar amount of legal and regulatory fines and settlements associated with fraud, anti-trust, anti-competitive, market manipulation, malpractice or other business ethics violations. Description of fines and settlements and corrective actions implemented in response to events. (Code: FN0203-07)
 - NASDAQ OMX enforces integrity and ethical business practices in order to enhance investor confidence, and it already has a mechanism in place to deal with potential ethical violations at listed companies. Listed companies, from new public companies to companies of international stature, are subject to our broad discretionary authority in order to maintain the quality of (and public confidence in) our market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.
 - NASDAQ OMX may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted, even if the securities meet all enumerated criteria for initial or continued listing on the market.
 - Exchanges should be allowed some latitude in the analysis and enforcement of this standard, as they are subject to the needs of various geographic, cultural, and regulatory imperatives. An attempt by SASB to overprescribe disclosure guidance related to this metric may be met with resistance.

MANAGING BUSINESS CONTINUITY AND TECHNOLOGY RISKS

- + Accounting Metric: Description of efforts to prevent errors, security breaches, and market disruptions related to use of trading technology, IT infrastructure, services for issuers and members, websites, and information held by third parties. (Code: FN0203-08)
 - Our business continuity plans are robust and take into consideration real time failovers of our market trading platforms, and protect us against intentional or malicious attempts to disrupt our businesses. Information assurance at NASDAQ OMX addresses information security-designed life cycle practices and controls necessary to secure our systems. Although some of our security measures are discussed in public, many are not—nor should they be, for a potential attacker might gain an unfair advantage.
 - This SASB metric must take into account an exchange operator’s absolute need to protect its critical systems from public view.
- + Accounting Metric: Number of significant market disruptions related to member actions, technology, power losses, or high-risk, low probability incidents, including: (1) type and extent of disruption, (2) duration of downtime, and (3) root cause and corrective actions (Code: FN0203-09)
 - NASDAQ OMX CEO Bob Greifeld recently addressed many of these issues in an open letter to customers, clients, and other stakeholders. The comments below are adapted from that letter.
 - As market leaders, we view our experiences as opportunities to learn and improve. Through our years of focus on continuous improvement, NASDAQ OMX has compiled a consistent track record, maintaining open, reliable markets with 99.999 percent uptime. Fostering a culture that rewards excellence and promotes taking all necessary steps to keep the markets fair, orderly, and well-functioning, we have contributed to the resiliency of our global capital markets during some of the most challenging circumstances.
 - Additionally, we have put in place innovative safeguards and taken a number of steps to help ensure that NASDAQ OMX continues to deliver the world’s best trading technology, including:
 - Within technology, we created dedicated positions for Chief Information Officer and Global Head of Market Systems, and filled those important

- jobs with widely respected and experienced executives;
- We changed our IPO and opening and closing crosses;
 - We deployed new global processes for changing our technology; and
 - We established a dedicated engineering team to monitor and analyze daily system performance, and a new quality assurance organization focused on testing our trading systems.
- By the end of 2013, after a thorough review by our Board of Directors and executives, we will certify our compliance with each of the commitments we made to the SEC, many of which we have already completed as outlined above.
- + Accounting Metric: Number of data security breaches, including: (1) Percentage that resulted in a business process deviating from the expected outcomes with respect to confidentiality, integrity, and availability; and (2) Description of corrective actions (Code: FN0203-10)
- NASDAQ OMX CIO Mark Graff testified before the U.S. Congress on cybersecurity and data breach issues. Our comments in relation to this metric are adapted from that testimony.
 - NASDAQ OMX is committed to a vigorous defense of our infrastructure. We dedicate substantial capital and human resources, both internal and external, to ensure our systems are protected against a wide variety of attacks. While many of the services we deliver to customers worldwide are housed on Internet-facing web servers, our trading and market systems are safely tucked away behind several layers of carefully arranged barriers, such as firewalls and network isolation zones.
 - It may occasionally prove difficult to reach one of our outward-facing websites for a few minutes as a result of electronic vandalism, such as a denial-of-service attack, but our core trading and market systems remain protected. Thus, the SASB standard is insufficiently vague as to the nature and scope of a “data security breach.”
 - We encourage SASB to make a sustainability performance distinction between security breaches that compromise critical (market operations, customer financial data storage, material non-public information) and non-critical functions (informational websites).
 - This metric does not properly value the positive aspect of a preventative effort, but rather seems to focus on negative outcomes.

If you have any questions about the comments above, or if you require anything further, please do not hesitate to contact me. We wish SASB the best of luck with its continued promotion of good sustainability standards and pledge our continued support to its mission.

Regards,

A handwritten signature in black ink, appearing to read "EHarvey", is centered within a light gray rectangular box.

Evan Harvey

Director of Corporate Sustainability
NASDAQ OMX

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Comment on Commercial Banking

Yoshihiro Fujii

1. <On mortgage loan>

FN0101-05 .30, it said [The scope of disclosure excludes residential and commercial mortgage activities]

But in FN0101-06 .32 and FN0101-07 .36, both said [The LTD shall be calculated and disclosed for the registrant's lending to underserved and/or underbanked business segment]

Compared with both phrases, it seems to be complicated how to disclose mortgage loan as a whole. Or do you want to intend to classify between quantified amounts of mortgage lending and lending activities? If so, I think it is necessary to make difference clear.

2. <On non-US domiciled institutions>

In FN0101-06 .32 and FN0101-07 .35, you ask non-US domicile registrants to include all lending within the registrant's country of domicile. If so, their activities for underserved and underbanked business should be included in their activities. But their domestic needs and requests for those activities might be different with US ones. I think this points should be also classified in FN0101-05.

3. <Employee Development and Inclusion>

FN01001-09 .43. In case of global financial institutions, is this format of the Race and Ethnicity category limited only US activities or whole of their global activities? Especially for non-US domiciled registrants, their composition of race and ethnicity are quite different with US domiciled ones.

Comment on Insurance

1<Management of Legal and Regulatory Environment>

Or <Systemic Risk Management>

In Europe and Japan, major insurance companies have already adopted with Solvency 2 regulation for insurance companies and ERM (Enterprise risk management) as their new risk management methods. Especially, ERM provides a framework of balanced risk management for insurance companies both financial and non-financial factors. Therefore

I think you should also mention how insurance companies deal with their ESG factors in ERM calculations and disclosures.