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2013-310  
Comment Letter No. 19  
330 North Wabash, Suite 3200  
Chicago, IL 60611

September 20, 2013

Via email to [director@fasb.org](mailto:director@fasb.org)

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

RE: Proposed Accounting Standards Update, *Definition of a Public Business Entity* (File Reference No. 2013-310)

Dear Ms. Cospers:

We are pleased to provide comments on the exposure draft related to the definition of a public business entity ("the ED"). We support the Board's primary objective to define which nonpublic entities are considered for the alternative accounting and reporting guidance proposed by the Private Company Council (PCC). We believe it is critical that the definition establish clear and objective criteria for determining whether an entity meets the definition of a public business entity.

In this regard, we believe the proposed definition is ambiguous and that the Board's intention with respect to certain phrases is not apparent in the basis for conclusions. For example, it is unclear if both contractual and legal restrictions imply that a security is considered "restricted." Further, the meaning of phrases such as "financial information" and "publicly available" is not entirely plain. Our thoughts on these criteria and additional responses to the questions posed in the ED are included in the appendix.

As indicated in our letters in response to the recent proposals of the PCC, introducing accounting alternatives for private companies creates new practice issues for public companies such as in the application of equity method accounting. Public entities will need guidance about how to address the conflict that private company GAAP creates at the investor level. Furthermore, the Board should provide guidance for private companies who initially elect one or more accounting alternatives developed by the PCC and subsequently change to public company GAAP, whether they elect to or are required to do so. As retrospective adoption of public company GAAP may require significant time, effort and hindsight, it is important for the Board to develop a comprehensive approach so that entities understand the ramifications of electing the private company accounting alternatives. This would include specifying whether or not an elective change back to public company GAAP is assumed to be preferable under Topic 250.

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We would be pleased to discuss our comments with the FASB staff. Please direct questions to Lee Graul, National Director of Accounting at (312) 616-4667 or Adam Brown, Partner in the National Accounting Department at (214) 665-0673.

Very truly yours,

A handwritten signature in black ink that reads "BDO USA, LLP". The letters are written in a cursive, slightly slanted style.

BDO USA, LLP

## Appendix - Questions for Respondents

**Question 1: Please describe the entity or individual responding to this request. For example:**

- a. Please indicate whether you primarily are a preparer, user, or public accountant. If other, please specify.
- b. If you are a preparer of financial statements, please indicate whether your entity today is considered privately held or publicly held and describe your primary business and its size (in terms of annual revenue, the number of employees, or other relevant metric).
- c. If you are a public accountant, please describe the size of your firm (in terms of number of partners or other relevant metric) and indicate whether your practice focuses primarily on public entities, private entities, or both.
- d. If you are a user of financial statements, please indicate in what capacity (for example, lender, investor, analyst, or rating agency) and whether you primarily use financial statements of private entities or those of both private entities and public entities.

BDO is the brand name for the BDO network and for each of the BDO member firms. The BDO network of independent member firms serves multinational clients through a global network of 1,118 offices in 135 countries, comprising the fifth largest accounting and consulting network in the world. BDO USA, LLP serves an array of public and private clients through more than 40 offices and more than 400 independent alliance firm locations nationwide.

**Question 2: Do you agree with the definition of a public business entity included in this proposed Update? Please explain why.**

We agree with the intention to establish a broad definition of a public business entity. However, we believe that certain criteria need to be clarified before finalizing the definition.

First, paragraph (a) includes entities whose financial statements and financial information are required to be or are included in an SEC filing. It is not clear what level of financial information is required to be provided before an entity is considered a public business entity. For example, if a public equity method investor calculates and records its share of a private company's earnings but the investment is not considered significant enough to require summarized financial information in a footnote pursuant to Rule 4-08(g) of Regulation S-X or audited financial statements pursuant to Rule 3-09 of Regulation S-X, would the private company investee be considered a public entity? Similarly, if an equity method investee is significant enough to require summarized financial information which may be reported either individually or together with other equity method investments of similar size in a footnote to the financial statements, would the investee be considered a public entity? If the Board views all equity method investees of an SEC registrant similar to a consolidated subsidiary of a public entity (in that they can report private company GAAP on a stand-alone basis, but must retroactively apply public company U.S. GAAP for purposes of the parent/investor), we recommend clarifying this point within the definition. As the reporting requirements for an equity method investee can vary each reporting period depending on its level of significance, i.e., investment and income/loss relative to the SEC registrant, it may be difficult to continually reassess and apply the appropriate GAAP.

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We also recommend clarifying whether financial statements of historically private entities that are provided in merger proxy statements, registration statements or other filings pursuant to Rule 3-05 of Regulation S-X would be considered public.

Separately, entities that offer securities under Regulation A are required to present financial statements in an offering circular that must be qualified by the SEC, but those offerings are exempt from registration under the Securities Act of 1933. It appears the Board intends to include those entities in paragraph (c) of the public business entity definition because the Regulation A offering document that is filed with the SEC must include financial statements. While there is no ongoing (i.e., post-offering) requirement to provide financial statements, the initial requirement to do so would include companies that are otherwise privately-held that have no intention of conducting a public offering in the future. The population of entities captured by this criterion will likely increase subsequent to the enactment of the JOBS Act, which requires the SEC to establish a new offering process by which a private company can publicly offer up to \$50 million of securities if it complies with reporting requirements that are substantially less than those applicable to registered public offerings. (The process may be similar to the one established via Regulation A, under which a private company can publicly offer up to \$5 million of securities in any twelve-month period and remain a private company.) If our understanding is correct, we recommend confirming this aspect of paragraph (c) in the final amendments.

We also believe certain aspects of paragraphs (d) and (e) are not clear. Paragraph (d) scopes in entities with unrestricted securities that are or "can be traded" on an exchange or over-the-counter market. We are confused by the phrase "can be traded" and it is not clear what entities the Board is attempting to capture by including those who may have the ability to trade on an exchange or market, but do not. Furthermore, and as described in our response to Question 3, it is not clear whether the "unrestricted securities" referred to in paragraph (e) is intended to exclude contractually restricted securities, legally restricted securities, or both.

We also note paragraph (e) refers to entities that are required to provide U.S. GAAP financial statements. This may present difficulties for investees that are not domiciled in the U.S., which may lack a "requirement" to prepare U.S. GAAP financial statements. Therefore, we recommend rephrasing this sentence to capture entities "that are required or elect to provide U.S. GAAP financial statements...."

In addition to clarifying the criteria above, Paragraph BC12 highlights that broker-dealers who file or furnish financial information with the SEC are included within the scope of paragraph (a) of the definition. Paragraph (a) also appears to include entities that may voluntarily elect to file or furnish financial information with the SEC. We recommend that the Board specifically reference both types of entities (i.e., broker dealers and voluntary filers) in the final amendments rather than the basis for conclusions to remove any ambiguity about the inclusion of such entities in the final definition.

Aside from our concerns about the clarity of certain criteria, we believe there will be practical problems associated with the Board's definition of a public business entity. For example, as noted previously, financial statements of historically private entities may be provided in merger proxy statements, registration statements or other filings pursuant to Rule 3-05 of Regulation S-X. Subject to the Board's clarification in the final amendments, it appears these entities will be required to retroactively apply public company U.S. GAAP when their financial statements are included in a filing. In addition, the same issue arises in connection when any "new" registrant financial statements that are provided, such as in reverse mergers, predecessor situations and

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initial public offerings. In those circumstances, private entities may not have the records available to apply public company U.S. GAAP; and in connection with an acquisition, such information may not be made available to the public company acquirer for purposes of the public filing. For example, if a private entity did not separately recognize certain intangible assets for a business acquired five years ago and elected to amortize the corresponding goodwill, is the entity required to conduct a purchase price allocation as of the acquisition date and perform impairment tests at each historical reporting date for purposes of its public company financial statements? Aside from the apparent difficulty of performing historical fair value assessments in circumstances such as these, which will inevitably introduce hindsight, we question whether the costs associated with retroactive application of public company GAAP for historical acquiree financial statements will outweigh the perceived benefits. While similar issues have existed in the past, such as retroactively calculating earnings per share and applying ASR 268 with respect to temporary equity, the magnitude of differences between public and private GAAP will increase significantly as a result of PCC alternatives. We recommend that the FASB staff discuss matters such as these with the SEC staff to develop an approach that appropriately considers the costs and benefits.

**Question 3: Do you agree that a business entity that has securities that are unrestricted and that is required to provide U.S. GAAP financial statements to be made publicly available on a periodic basis pursuant to a legal or regulatory requirement should be considered a public business entity? Please explain why. Can you identify a situation in which an entity would meet this criterion but would not meet any of the other criteria identified in the definition of a public business entity? In addition to what is discussed in paragraph BC18 of this proposed Update, do you think further clarification is needed to determine what an unrestricted security is?**

As indicated in our response to Question 2, it is not clear what types of restrictions would prevent an entity's securities from being considered "unrestricted" in the context of paragraph (e). Securities sold in a private placement will frequently have legal restrictions that are not permanent, e.g., the securities are restricted temporarily following the offering. Is a temporary legal restriction such as this one contemplated in the Board's thinking about the meaning of "unrestricted"? Likewise, is a contractual restriction on a security, e.g., the investor simply agrees not to sell the security for a period of time, sufficient to conclude that the security is not unrestricted?

Additionally, paragraph (e) includes reference to U.S. GAAP financial statements made "publicly available on a periodic basis." It is not apparent from reading the basis for conclusions how "publicly available" should be interpreted and why the criteria is framed only with financial statements provided on a "periodic basis." For example, does "publicly available" include financial statements which are available upon request, e.g., from a state franchise regulator, or only those published to a wide audience, e.g., on a website? Similarly, does "periodic basis" mean anything more than once, such as providing financial statements one time in a Regulation A offering? Or is it intended to encompass quarterly and annual financial statement requirements? We recommend clarifying these points in the final amendments.

**Question 4: Do you agree that no public or nonpublic distinction should be made between NFPs for financial reporting purposes? Instead, the Board would consider whether all, none, or only some NFPs should be permitted to apply accounting and reporting alternatives within U.S. GAAP. Please explain why.**

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We understand that the nature and mission of NFPs is different than other profit-oriented enterprises. Accordingly, we do not object to the Board's initial conclusion that no public or nonpublic distinction should be made for NFPs and that reporting alternatives should be considered for them on a standard-by-standard basis. However, we also note that the accounting for business-oriented NFP healthcare entities contemplated under Topic 954 is similar to the accounting for profit-oriented enterprises (e.g., their financial statements include a performance indicator similar to income from operations). It is not apparent from the basis for conclusions, or otherwise, whether the Board performed research or outreach to determine whether the Topic 954 entities should be viewed similarly to the more traditional Topic 958 NFPs, or if they could be considered "public-type" entities. We believe this point should be clarified in the scope exclusions that follow paragraph (e).

**Question 5: Should the Board consider whether to undertake a second phase of the project at a later stage to examine whether to amend existing U.S. GAAP with a new definition resulting from this proposed Update? In that second phase of the project, the Board would consider whether to (a) preserve the original scope of guidance in the Accounting Standards Codification or (b) change the scope of guidance in the Accounting Standards Codification to align with the new definition. Please explain why.**

We believe that undertaking a second phase of the project is premature given the questions we have about the currently proposed definition and transition. Since four PCC proposals have already been issued, we believe it is important to finalize the scope and transition matters of this ED on a timely basis.

Should the Board undertake a second phase of the project at a later date, we would expect there to be some relatively narrow transition issues that would need to be addressed (e.g., the indefinite deferral granted to non-public entities under Topic 480). We do not perceive that this is an area of practice that is in urgent need of incremental standard setting.