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September 20, 2013

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

Via e-mail – director@fasb.org

Re: File Reference No. 2013-310. Proposed Accounting Standards Update: *Definition of a Public Business Entity – An Amendment to the Master Glossary*

Plante & Moran PLLC (Plante Moran) appreciates the opportunity to provide comments on the proposed definition of a Public Business Entity, which will be used to determine which business entities will be within the scope of the draft *Private Company Decision-Making Framework: A Guide for Evaluating Financial Accounting and Reporting for Private Companies* (Guide). Plante Moran is the 13th largest public accounting firm in the United States and serves a wide range of privately held entities in multiple industries. As such the Guide and the activities of the Private Company Council (PCC) and the Financial Accounting Standards Board (Board) related to private companies are of utmost importance to our clients and our firm.

When distinguishing between public and private business entities, we believe the two defining characteristics are whether the entity provides, or is required to provide U.S. GAAP financial statements to be made publicly available and whether an entity's debt or equity securities trade in a public market. That is, an entity should be considered a public business entity if it provides, or is required to provide U.S. GAAP financial statements to be made publicly available, **and** its securities can be traded on an exchange or an over-the-counter market. Use of these two characteristics will allow the Board to create a definition for a public business entity that is principles-based and not tied to any specific law or regulation or to the size of a particular securities offering.

Following, please find our responses to the specific Questions for Respondents in the Exposure Draft.

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.

Response 1: Plante Moran is a public accounting firm with approximately 270 partners and over 2,000 staff. While we serve both public and private entities, a significant portion of our practice is devoted to private entities in numerous industries.

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

Response 2: We do not agree with the definition of a public business entity included in this proposed Update. As described earlier in this letter, we believe the two defining characteristics of a public business entity are whether the entity provides, or is required to provide U.S. GAAP financial statements to be made publicly available and whether an entity's debt or equity securities trade in a public market.

With respect to public availability of financial statements, an entity may be required by law or regulation to make its financial statements publicly available or it may agree to do so in an offering document or other agreement. We do not believe that making financial statements publicly available must be required by law or regulation in order for an entity to be a public business entity. As such, when an entity agrees to makes its financial statements publicly available through an offering document or other agreement, it would be considered a public business entity if its securities trade in a public market.

Following are our comments on each of the criteria in the proposed definition of a public business entity:

a. It is required by the U.S. Securities and Exchange Commission (SEC) to file or furnish financial statements, or does file or furnish financial statements with the SEC (including other entities whose financial statements or financial information are required to be included in a filing).

We believe this criterion should be limited to issuers (as defined in the Sarbanes-Oxley Act of 2002) or otherwise limited to entities whose securities trade in a public market. As proposed, this criterion would result in non-issuer broker-dealers qualifying for exemption from SEC Rule 15c3-3 being classified as public business entities. We do not believe that these entities should be classified as public business entities because their financial statements are not made publicly available (a statement of financial position is filed with the SEC, but the remaining financial statements are confidential and not available to the public).



b. It is required by the Securities Exchange Act of 1934, as amended, or rules or regulations promulgated under the Act, to file or furnish financial statements with a regulatory agency.

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We agree with this criterion as proposed.

c. It is required to file or furnish financial statements with a regulatory agency in preparation for the sale of securities or for purposes of issuing securities.

We agree with this criterion as proposed.

d. It has (or is a conduit bond obligor for) unrestricted securities that are traded or can be traded on an exchange or an over-the-counter market.

We do not agree with this criterion as it could result in conduit bond obligors whose securities are unrestricted and can be traded on an exchange or an over-the-counter market but are otherwise not indirectly subject to SEC Rule 15c2-12 being classified as public business entities without regard to whether the entity makes its financial statements publicly available. Likewise, entities whose stock trades in an over-the-counter market but are not required to file or furnish financial statements to the SEC or another regulator agency would be classified as public business entities without regard to whether the entity makes its financial statements publicly available. We believe this criterion should be amended to include a stipulation that the entity "provides, or is required to provide U.S. GAAP financial statements to be made publicly available on a periodic basis."

One of the arguments against including public availability of financial statements as a distinguishing factor between public and private business entities is that an unregistered entity whose stock trades in an over-the-counter market or a conduit debt obligor not indirectly subject to SEC Rule 15c2-12 is likely to have more financial statement users that have less ability to directly obtain additional financial information from management than a typical private entity (and thus its users are more similar to investors in public company securities). While we acknowledge that this may be true in many situations, an entity that enters a capital market without making its financial statements publicly available has made a conscious decision to do so acknowledging that this could affect its cost of capital. Similarly, investors that purchase securities of entities that do not make financial statements publicly available have made an investment decision based on this fact. We do not believe that an entity should be obligated to prepare its financial statements as if it were a public business entity when the entity and its investors have concluded it is not warranted.

e. Its securities are unrestricted, and it 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.

We do not agree with this criterion as it could result in entities whose securities do not trade in a public market to be classified as public business entities. We believe the criterion should be amended to include a stipulation that the securities be unrestricted and "are traded or can be traded on an exchange or an over-the-counter market."



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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 identity 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 in needed to determine what an unrestricted security is?

Response 3: As discussed in our Response to Question 2, we do not 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. In our opinion, an entity should also have securities that trade on a public market to be considered a public business entity. There are most likely many types of entities, including regulated entities and those that voluntarily make U.S. GAAP financial statements publicly available that would meet this criterion but not any of the others in the proposed definition of a public business entity because their securities could trade on secondary markets, but not necessarily public markets. As such, we believe the criterion should be amended to include a stipulation that the securities be traded in a public market.

We also believe that the Board should provide additional guidance to determine what an unrestricted security is if this will be used as a defining characteristic between public and private business entities. Given the wide variation in the number and types of exchanges, over-the-counter and other private markets, it will be necessary to provide additional guidance as to what constitutes an unrestricted security. This issue has only been compounded by the relaxed security trading provisions of the JOBS Act.

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 NFP's should be permitted to apply accounting and reporting alternatives within U.S. GAAP. Please explain why.

Response 4: We agree that no public or nonpublic distinction should be made between NFPs for financial reporting purposes and that the Board should consider on a standard-by-standard basis whether NFPs should be permitted to applying accounting and reporting alternatives within U.S. GAAP. In general, we would expect that NFPs would be permitted to apply accounting and reporting alternatives available to private business entities, with the exception of those that are not consistent with the NFP reporting framework.

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.

Response 5: Yes, we believe the Board should undertake a second phase to the project to examine whether to amend existing U.S. GAAP with a new definition resulting from this proposed Update. The multiple definitions of "public entity" and "nonpublic entity" in the Accounting



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Standards Codification create unnecessary complexity and could lead to inconsistencies in the application of GAAP. We also agree that these changes should be undertaken in a second phase as each affected area of existing U.S. GAAP will require detailed analysis to understand the potential changes from use of the new definition.

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Thank you again for the opportunity to comment on this exposure draft. We would be pleased to respond to any questions the Board or its staff may have about these comments. Please direct any questions to David Grubb at **david.grubb@plantemoran.com** or 248.223.3745.

Very truly yours,

PLANTE & MORAN, PLLC

