



KPMG LLP
345 Park Avenue
New York, N.Y. 10154-0102

Telephone +1 212 758 9700
Fax +1 212 758 9819
Internet www.us.kpmg.com

September 23, 2013

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

RE: Proposed Accounting Standards Update, “Definition of a Public Business Entity: An Amendment to the Master Glossary” (File Reference No. 2013-310)

Dear Technical Director:

We appreciate the opportunity to respond to the Board’s Proposed Accounting Standards Update, *Definition of a Public Business Entity: An Amendment to the Master Glossary*. We agree that it is necessary to provide clarity on which entities qualify for alternative accounting and reporting guidance to be issued by the FASB and the Private Company Council (PCC), however we are concerned that the proposed definition may exclude some entities that the Board may not intend to exclude. Additionally, we believe it is necessary to address the current inconsistencies and complexity of retaining multiple definitions of a nonpublic entity and public entity within U.S generally accepted accounting principles.

We also believe it is important for the Board to provide further clarification on criterion (e) in the proposed definition of a public business entity. Specifically, the Proposed ASU does not provide a sufficient description of unrestricted securities and how broadly the Board intends that to be applied. As a consequence, as discussed in more detail in Appendix A, we believe that there may be circumstances when an entity would be defined as a public business entity under criterion (e) when none of the other criteria are met.

In addition, there are a number of requirements for the financial statements of nonpublic companies to be filed or furnished with the SEC. We question whether it is appropriate for an otherwise nonpublic company to be considered a public business entity in certain circumstances as discussed in more detail in Appendix A. For example, in situations where a nonpublic company is acquired by a public company and the acquirer has to file the target’s financial statements with the SEC in accordance with Rule 3-05 of Regulation S-X, it appears that the nonpublic company would be considered a public business entity even in situations when that is the only time that its financial statements will be filed with the SEC. If the nonpublic company had applied accounting alternatives available only to private companies, it appears that it would

Technical Director
Financial Accounting Standards Board
September 23, 2013
Page 2

then be required to retrospectively adjust its financial statements to eliminate the effects of those alternatives. This conclusion appears inconsistent with the SEC's view that the financial statements of a nonpublic entity whose financial statements are filed in accordance with Rule 3-05 can be prepared in accordance with private company GAAP requirements (e.g., use of intrinsic value for liability-classified share-based payments) and audited in accordance with private company standards, i.e., U.S. GAAS versus PCAOB standards.

We also question the appropriateness of allowing a consolidated subsidiary of a public company to apply private company recognition and measurement alternatives in its standalone financial statements. Use of those alternatives may actually increase costs and complexity for those companies when their financial statements are consolidated with the parent's financial statements. However, we agree that subsidiaries of public companies should be considered for potential reduced disclosures allowed for private companies.

Appendix A to this letter provides our responses to the specific questions raised in the Exposure Draft. Appendix B provides other items for the Board's consideration.

If you have any questions about our comments or wish to discuss any of the matters addressed herein, please contact Mark Bielstein at (212) 909-5419 or mbielstein@kpmg.com or Paul Munter at (212) 909-5567 or pmunter@kpmg.com.

Sincerely,

KPMG LLP

Appendix A: Responses to the Questions for Respondents

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

As discussed further in our response to question 3, the Proposed ASU does not discuss what the Board means by an unrestricted security, the determination of when U.S. GAAP financial statements are made publicly available, and when U.S. GAAP financial statements are required to be provided pursuant to legal or regulatory requirements. As a consequence, it is unclear how broadly or narrowly the Board intends for the criteria—especially criterion (e)—to be applied. Without clear guidance by the Board on the application of these terms, financial statement preparers of some entities may be uncertain about whether they are permitted to apply private company alternatives in the preparation of their financial statements.

There are a number of instances when the financial statements of an otherwise nonpublic company are furnished to or filed with the SEC. Examples include financial statements of businesses acquired or to be acquired filed in accordance with Rule 3-05 of Regulation S-X; separate financial statements of investees not consolidated and 50 percent or less owned persons under Rule 3-09 of Regulation S-X; financial statements of recently acquired subsidiary issuers or subsidiary guarantors under Rule 3-10(g) of Regulation S-X; financial statements of real estate operations acquired or to be acquired filed in accordance with Rule 3-14 of Regulation S-X; financial statements of entities whose securities collateralize a public company's securities filed under Rule 3-16 of Regulation S-X; financial statements for target companies in Form S-4 and merger proxy statements; and financial statements of brokers and dealers in securities pursuant to SEC Rule 17a-5. The proposed definition would appear to prohibit these entities from applying alternatives available to nonpublic entities. The Board should consider whether it is appropriate for an otherwise nonpublic company to be considered a public business entity in these circumstances.

Further, we note that under Rules 3-05 and 3-09, it is the registrant's obligation to file the financial statements of those entities that fall under those regulations. It is not technically the responsibility of the nonpublic acquiree company to furnish or file its financial statements with the SEC in accordance with Rule 3-05 when a public company acquires or plans on acquiring it. That responsibility resides with the acquirer public company. We understand that SEC rules do not currently require the acquiree to apply public company GAAP requirements in its financial statements in these circumstances and that such financial statements can be audited in accordance with U.S. GAAS.

Rule 4-08(g) of Regulation S-X requires summarized financial information, but not full financial statements, for entities that do not meet the Rule 3-09 requirements for a registrant to file financial statements for the equity method investee. We believe the Board should specifically clarify if an entity that has summarized financial information included in a filing of a public company meets the definition of a public business entity.

We also question why it would be appropriate to allow a consolidated subsidiary of a public company to apply recognition and measurement alternatives available to nonpublic entities in its standalone financial statements. The election of any recognition and measurement accounting

alternatives provided for under standards issued by the Board for private companies by a subsidiary of a public company will increase both the cost and complexity for the preparers of those financial statements because those elections will need to be reversed when the subsidiary's financial statements are consolidated into the parent's financial statements. However, we agree that subsidiaries of public companies should be considered for potential reduced disclosures allowed for private companies.

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?

Paragraph BC18 of the Proposed ASU does not provide sufficient guidance for constituents to determine what the Board means by unrestricted securities. We understand that many closely-held businesses issue securities which are not necessarily contractually-restricted but those securities have not been registered for sale in the public markets. Would the entity's securities be considered unrestricted or does the Board intend that the securities be registered for sale in the public markets for them to be considered unrestricted?

Because of this lack of clarity, criterion (e) potentially could affect a number of entities that do not meet criteria (a) – (d).

- Banks and thrifts with over \$1 billion in assets are required to file annual reports which include U.S. GAAP financial statements under Federal Deposit Insurance Corporation (FDIC) Part 363. The annual reports filed under FDIC Part 363 are publicly available.

It appears that a bank or thrift with unrestricted securities that are not publicly traded that are required to file an annual report under FDIC Part 363 meets the definition of a public business entity. However, a bank or thrift with less than \$1 billion in assets would not meet the definition as it is not required to file its financial statements under FDIC Part 363.

- Utility companies are required to file financial statements with the Federal Energy Regulatory Commission and the financial statements are or may be available to the public.
- Utilities and other rate-regulated entities in many cases have to file financial statements with public utility commissions for rate-making purposes. These financial statements are not usually made available to the public unless there is a "rate" case. We are unsure if the fact the financial statements may be made available to the public would qualify these utilities as public business entities if they have unrestricted securities that were not publicly traded.

- Captive insurance companies may be either permitted or required to file U.S. GAAP (rather than statutory) financial statements with the state insurance regulator in some states and these financial statements are publicly available. We are unsure if a captive insurance company with unrestricted securities that are not publicly traded that files U.S. GAAP financial statements with a state insurance regulator would be defined as a public business entity.
- Franchise Rule CFR 436 requires franchise sellers to provide to prospective purchasers a Franchise Disclosure Document (FDD). The FDD requires the inclusion of U.S. GAAP financial statements. Numerous states keep franchise offering circulars on file. Many states provide public access to these documents. We are unsure if a franchisor with unrestricted securities that are not publicly traded would meet the definition of a public business entity given the fact the states provide public access to the franchisor's FDD.

We are uncertain whether under these and similar circumstances the Board's intent is to exclude these entities from electing to apply accounting and reporting alternatives for private companies. In many of these situations, similar entities may not be public business entities depending on what the local regulations require (e.g., an insurance company whose state requires statutory financial statements rather than GAAP).

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.

We agree that NFPs should be excluded from the definition of a public business entity and no public/nonpublic distinction should be made between NFPs for financial reporting purposes. The NFP industry includes entities with various levels of financial reporting complexities and types of users (e.g., small foundations, universities and not-for-profit business-oriented healthcare entities). Therefore we agree with the Board's proposal to consider whether all, none or some NFPs should be permitted to apply accounting and reporting alternatives available to nonpublic companies in future standard setting. We also encourage the Board to review existing standards where a distinction has been made between public and nonpublic NFPs using the same criteria for which the Board will evaluate the applicability of future standards.

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.

The Board should address the current inconsistencies and complexities of having multiple definitions of nonpublic and public entities within U.S. GAAP. We encourage the Board to

undertake a project to establish a single definition of nonpublic and public entities under U.S. GAAP.

However, if the Board were to replace the multiple definitions used within current U.S. GAAP with the definition of a public business entity in the proposed ASU, we believe that the FASB should coordinate with the SEC and other regulators on the potential changes to existing disclosure requirements and their interaction with other financial reporting requirements of the SEC and other regulators.

Appendix B: Other Items for the Board to Consider

1. ASC 855-10-25 requires an entity that is an SEC filer or is a conduit bond obligor for conduit debt securities that are traded on a public market to evaluate subsequent events through the date the financial statements are issued. All other entities are required to evaluate subsequent events through the date the financial statements are available to be issued. We believe the Board should clarify through which date the subsequent event evaluation for entities that meet the definition of a public business entity is required.
2. A public company that has an equity-method investment in a nonpublic entity is required to record its share of the investee's income or loss. The Board should clarify whether a public entity investor would need to adjust the earnings of its nonpublic investee to eliminate any private company elections before computing its share of the investee's earnings. We believe it would be appropriate to make those adjustments so that the equity method pick-up would be based on U.S. GAAP for public companies, just as would be the case if the investee prepares its financial statements in accordance with IFRS.