

PCC-13-02 Comment Letter No. 30 Plante & Moran, PLLC

> 27400 Northwestern Highway P.O. Box 307 Southfield, MI 48037-0307 Tel: 248.352.2500 Fax: 248.352.0018

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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. PCC-13-02. Proposed Accounting Standards Update: Consolidation (Topic 810): Applying Variable Interest Entity Guidance to Common Control Leasing Arrangements – a Proposal of the Private Company Council

We appreciate the opportunity to provide comments on the above referenced Exposure Draft. Plante & Moran, PLLC (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 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.

As evidenced by the feedback received by the PCC related to consolidation of variable interest entities in common control leasing arrangements, which is supported by our experience working with thousands of private companies, many users of private company financial statements do not find financial statements that include consolidation of variable interest entities to be relevant to them. We believe this is primarily due to a lack of education in the marketplace regarding the current consolidation guidance, including common control leasing relationships. circumstances, such as when the lessor entity's financial condition has deteriorated, excluding this entity from the operating company's financial statements would not provide users with an accurate picture of the operations of the group as a whole. The current guidance is written in a manner that allows for significant variability in the application between preparers with similar leasing situations, which only serves to create additional confusion. We believe the best approach would be to make improvements to the current guidance, along with providing additional education to financial statement preparers, users, auditors and others on application of the guidance. However, given the significant number of entities that avoid consolidation of variable interest entities for common control leasing arrangements by preparing financial statements that depart from U.S. GAAP or using a special purpose framework, we believe that the accounting alternative in the proposed Update is an appropriate solution to this issue.

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, public accountant or, if other, please specify.
- b) If you are a preparer of financial statements, please indicate whether your entity is 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 that the accounting alternative in the proposed Update should apply to all entities except public business entities, not-for-profit entities, or employee benefit plans within the scope of Topics 960 through 965 on plan accounting? If not, what type of entities should not be included in the scope of this accounting alternative?

Response 2: We agree in concept that the accounting alternative in the proposed Update should not apply to public business entities. However, given that the Board's project on the Definition of a Public Business Entity is not complete, we would like to qualify our response to this question. As detailed in our comment letter on the Exposure Draft for the Definition of a Public Business Entity (File Reference No. 2013-310), we do not agree with the definition of a public business entity included in the FASB's proposed Update. 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.

For example, the proposed definition of a public business entity would result in certain 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. In our experience, the marketplace generally considers entities that do not make their financial statements publicly available to be private companies. As such, should the Board ultimately conclude to include these types of entities in the definition of a public business entity, we believe the scope of this proposed Update should be modified to permit



conduit debt obligors and other entities that do not make their financial statements publicly available to elect the accounting alternative.

With respect to not-for-profit entities, we understand that these entities are substantially excluded from the current guidance on consolidation of variable interest entities and, as such, there would not be a need to include these entities in the scope of the proposed Update. However, there are certain not-for-profit entities that have for-profit subsidiaries that are subject to the current guidance on consolidation of variable interest entities. It is unclear to us whether these for-profit subsidiaries would be considered private companies based on the proposed definition of a public business entity. Our recommendation is to either include not-for-profit entities within the scope of the proposed Update or clarify how the proposed guidance would apply to for-profit subsidiaries of not-for-profit entities.

Finally, we agree that employee benefit plans should be excluded from the scope of the accounting alternative.

Question 3: Do you agree that the proposed Update does not apply to public business entities and employee benefit plans because they lack the arrangements that the accounting alternative addresses? If not, please describe the arrangements that exist for those types of entities that the Board should consider in determining whether any public business entities or employee benefit plans should be included in the scope of the proposed accounting alternative.

Response 3: Yes, we agree that employee benefit plans lack the arrangements that the accounting alternative addresses. However, please note our comments above regarding including only those entities that provide, or are required to provide U.S. GAAP financial statements to be made publicly available and whose debt or equity securities trade in a public market in the definition of a public business entity. Conduit bond obligors and similar entities that do not make their financial statements publicly available frequently have the types of arrangements that the accounting alternative addresses and should be included within the scope of the proposed Update.

Question 4: Do you agree with the required criteria for applying the proposed accounting alternative? If not, please explain why.

Response 4: Yes; however, the PCC may want to provide additional guidance regarding to the definition of common control as there may be circumstances where application of the criteria for the proposed accounting alternative could be unclear. For example:

- An operating entity may be owned by an individual while the lessor entity is a trust. If the
 owner of the operating entity is also the beneficiary and trustee of the trust, it may be clear
 that the entities are under common control. However, if another individual (who may or
 may not be related to the owner of the operating entity) is trustee of the trust, there may be
 differences of opinion as to whether the entities are under common control.
- An operating entity may be owned equally by two unrelated individuals; however, the lessor entity may be owned by only one of the two individuals. On the surface, it may



appear that common control does not exist; however, if these two individuals have numerous business ventures that are collectively managed and operated as if they were owned by a single entity, a conclusion that common control exists may be appropriate.

Question 5: Do you agree that paragraph 810-10-55-9, which describes the effects of guarantees and joint and several liability arrangements related to a mortgage on the lessor's assets, provides sufficient guidance to clarify what constitutes a supporting leasing activity for applying paragraph 810-10-15-17A(c)? If not, please explain why.

Response 5: We have two recommendations for the guidance on what constitutes a supporting leasing activity. First, we recommend that a term other than "mortgage" be used to refer to indebtedness that is secured by the leased assets. The term mortgage is typically associated with real property and we do not believe the intention of the guidance was to restrict it only to common control leasing arrangements involving real property. Second, it is not uncommon for the lessor entity to be financed by direct loans from the private company. We believe that direct loans can often times be similar in substance to joint and several borrowing arrangements and thus should be included as an allowable supporting leasing activity.

Question 6: Do you agree that the following additional disclosures about lessor entities should be provided if a private company elects the proposed accounting alternative? If not, please explain why:

- a. The key terms of the leasing arrangements.
- b. The amount of debt and/or significant liabilities of the lessor entity under common control.
- c. The key terms of existing debt agreements of the lessor entity under common control (for example, amount of debt, interest rate, maturity, pledged collateral, and guarantees).
- d. The key terms of any other explicit interest related to the lessor entity under common control

Should other disclosures be required as a result of applying this alternative?

Response 6: We agree with the disclosures in the proposed Update; however, we recommend that the PCC replace the phrase "significant liabilities" with "liabilities" and allow financial statement preparers to apply materiality guidelines to determine which liabilities of the lessor entity should be disclosed.

Question 7: Do you agree that, generally, the primary purpose of establishing a separate lessor entity is for tax and estate planning purposes and not to structure off-balance-sheet debt arrangements? If not, please explain why.

Response 7: Yes. In addition to the reasons listed above, we believe that another primary purpose of establishing a separate lessor entity is to protect the owner or the lessee from potential legal liability matters associated with the leased assets.

Question 8: Would the proposed accounting alternative, including the required disclosures, address private company stakeholder concerns about relevance of consolidated information



without causing a proliferation of the use of lessor entities to avoid reporting assets and liabilities for which the reporting entity is responsible? If not, why?

Response 8: Yes. As noted in Question 7, in general, the use of lessor entities is not to obfuscate financial reporting; rather, this structuring has been done to protect assets of the stakeholders. Also, the due diligence performed by user lenders, for instance, generally encompasses an analysis of the arrangements with entities involved in a reporting entity's business that result in cash outflows. In our experience, because these types of arrangements were in place prior to the issuance of the current consolidation guidance and considering the typical information obtained by user lenders in their due diligence, we would not expect that there will be a significant change in practice of operating entities using lessor entities to avoid reporting assets and liabilities for which they are responsible.

Question 9: Do you agree that the proposed accounting alternative, when elected, is an accounting policy election that should be applied by an entity to all current and future lessor entities under common control that meet the criteria for applying this approach?

Response 9: No. We believe that the standard should allow for flexibility to be applied on a lessor by lessor basis. We recognize that one of the objectives is to avoid situations where entities could "cherry pick" and apply the accounting alternative only when consolidation would have a negative impact on its financial statements; however, given the different purposes for which separate leasing entities are created, we believe that financial statement preparers and users should be allowed to use judgment in determining when consolidation of common control leasing entities is appropriate. However, we believe it would be appropriate to add a requirement that if the reporting entity elects to apply the accounting alternative to less than all of the eligible lessor entities, that the reporting entity should have an economic or business justification for the decision. An example of such a justification would be a lender user's requirement for only certain lessor entities to be included, such as when another lender is involved in the lending arrangements of excluded lessor entities.

Question 10: Do you agree that the proposed accounting alternative should be applied using a full retrospective approach in which financial statements for each individual prior period presented and the opening balances of the earliest period presented would be adjusted to reflect the period-specific effects of applying the proposed amendments?

Response 10: Yes.

Question 11: When should the alternative accounting method be effective? Should early application be permitted?

Response 11: We believe the alternative accounting method should be effective immediately upon issuance of the standard.

Question 12: Do you agree that the example that is codified in paragraphs 810-10-55-87 through 55-89 (described in paragraphs BC19 through BC20 of this proposed Update) should be



removed? Do you agree that the removal of the example would not significantly affect public business entity stakeholders? If not, please explain why.

Response 12: No, we do not agree with elimination of the example in paragraphs 810-10-55-87 through 55-89. While we agree that removal of the example will not affect entities that do not have the types of arrangements addressed in the example, removal of the example seems to presume that most, if not all, private companies will elect to use the accounting alternative. We believe that certain private companies will not use the accounting alternative and the example would still be relevant. We would also recommend that improvements be made to this example to provide guidance on where an implicit variable interest exists and how that implicit variable interest may affect the primary beneficiary conclusion. We believe it would be helpful to provide several brief examples that show circumstances where implicit variable interests exist and do not exist, along with multiple examples where the primary beneficiary conclusion does and does not result in consolidation of a variable interest entity.

Question 13: The PCC considered two other alternatives (as described in paragraphs BC15 through BC18 of this proposed Update) to clarify the application of VIE guidance to common control leasing arrangements.

- a. Would either of those alternatives better address the concerns raised by private company stakeholders?
- Should the PCC and the Board consider either of those alternatives in conjunction with the guidance in this proposed Update to better address the concerns raised by private company stakeholders

Response 13: As described in our opening comments, we believe the best approach would be to make improvements to the current guidance, along with providing additional education to financial statement preparers, users, auditors and others on application of the guidance. However, we understand that this information is not always relevant to users of financial statements, and we believe that the proposed accounting alternative, with the recommended clarifications noted above, is preferable to the two alternatives described in paragraphs BC15 through BC 18.

Thank you again for the opportunity to comment on this Exposure Draft. We would be pleased to respond to any questions the PCC, 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, or Joan Waggoner at joan.waggoner@plantemoran.com or 312-980-2945.

Very truly yours,

PLANTE & MORAN, PLLC

