

September 13, 2013

Russell G. Golden
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Via email: director@fasb.org

RE: File Reference No. 2013-310: *Definition of a Public Business Entity*

Dear Chairman Golden:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Exposure Draft, *Definition of a Public Business Entity (ED)*. As FASB sometimes proposes different provisions within standards related to disclosure, presentation, and transition for public entities (as opposed to non-public entities), the objective of the ED is essentially to clarify the difference between the two. Five criteria are being proposed for determining whether a company is considered to be a “public business entity” (PBE) for the purpose of the FASB’s accounting standards. A company is a PBE if it meets any of the following criteria:

1. 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 or are included in a filing).
2. 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.
3. 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.
4. 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.
5. 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.

¹ ABA represents banks of all sizes and charters and is the voice for our nation’s \$14 trillion banking industry and its two million employees.

This is an important issue to bankers in the U.S, as banks in the U.S. operate within various ownership and tax models, including:

- Publicly-held, SEC registrants
- Privately-held entities that are organized as “C corporations”, some of which are relatively widely-held entities, but do not meet the ownership thresholds required to register with the SEC
- Privately-held entities that are organized as “S corporations”
- Mutual banks, which are technically owned by depositors
- Privately-held entities that, nevertheless, issue securities to the public

Based upon our understanding of the proposed criteria, ABA agrees with the ED’s definition of a PBE. Our understanding is that, unless they issue publicly-held securities, privately-held and mutual banks will not be considered PBEs. This is based on the fact that although banks are required to file quarterly, publicly-available Call Reports, which are based on GAAP for recognition and measurement purposes, Call Reports are not based on GAAP for presentation and disclosure purposes and banking regulations have different definitions of capital. Thus, regulatorily-required Call Reports, since they are not based on GAAP, do not satisfy the fifth criteria. This is an important clarification, because the International Accounting Standards Board (IASB), in its International Financial Reporting Standards for Small and Medium-sized Entities (IFRS/SME), indicates that the IFRS/SME is not intended for banking organizations and other regulated financial institutions because of its “public accountability”.²

Call Reports require a plethora of information related to bank financial performance and risk, and are subject to active and ongoing review and change by banking regulators. We agree with FASB that “public accountability” should not be a factor in determining whether an entity is a PBE.³ Indeed, public accountability within the banking industry causes overall bank financial reporting (both publicly and privately-held) practices to far exceed those required under GAAP.⁴

Users of most bank private company financial statements have relatively easy access to information when compared with users of PBE financial statements. One of the biggest users of

² The IFRS/SME is not intended for entities with public accountability, which is defined as being if the entity files, or is in the process of filing, its financial statements with a securities commission or other regulatory organization for the purpose of issuing any class of instruments in a public market; or, if it holds assets in a fiduciary capacity for a broad group of outsiders. Examples of entities that hold assets in a fiduciary capacity include banks, insurance companies, brokers and dealers in securities, pension funds and mutual funds.

³ We are not advocating that banking institutions should follow IFRS/SME. We are merely disagreeing with the notion that “public accountability” should disqualify them from adopting it.

⁴ It also should be noted that worldwide, banking regulators and banking institutions actively address disclosure concerns outside GAAP-based financial statements. The Pillar 3 disclosures and recommendations from the Enhanced Disclosures Task Force are examples of this. While these efforts are currently meant to address only large, international banks, we believe the process to address investor concerns may inevitably affect banks of all sizes and ownership structures, as the related constituents determine whether such disclosures are useful, relevant, and cost-effective for other institutions.

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private company financial statements is a banking regulator, who has virtually total and timely access to all books and records and, as such, does not necessarily need the level of granularity that GAAP requires related to presentation and disclosure. Therefore, privately-held banks should enjoy the same relief that privately-held entities from other industries have in applying GAAP.

Thank you for your attention to these matters. Please feel free to contact me (mgullette@aba.com; 202-663-4986) if you would like to discuss our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Gullette". The signature is written in a cursive style with some loops and flourishes.

Michael L. Gullette