

William E. Jackson
55 Beattie Place, Suite 1510
Greenville, South Carolina 29601

September 19, 2013

Ms. Susan M. Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116
File Reference No. 2013-310
Director@FASB.ORG

Comments on Exposure Draft on Definition of a Public Business Entity

Dear Ms. Cospers:

My comments are those of a certified public accountant employed by an entity that is directly impacted by the proposed definition. I also have 10 years public accounting experience with an international accounting firm and over 30 years total experience. The entity is a former SEC registrant that provides annual financial statement releases but is not required to do so. The stock is very thinly traded in the “over-the-counter” market. The comments are solely in my individual capacity.

First, I support the effort to arrive at what would otherwise appear to be a fundamental definition. While I see a number of issues in application, I limit my comments primarily to the following provision. The proposed amendment to the Master Glossary (the “Definition”) provides that a business entity would be considered a public business entity if “[i]t 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** [emphasis added]”.

I believe inclusion of all possible securities that ‘can be traded’ results in a public universe so large that either there is no workable definition or that many clearly non-public entities would now be considered public. Also, the inclusion of stocks that are traded to any extent as public, would not appear to further the purpose of the Definition. Other criteria in the Definition appear to be based primarily on whether an entity is a ‘public reporting entity’ whether by securities law requirements or other legal or regulatory requirements. However, the “traded or can be traded” criteria, does not consider the applicability of such a public reporting requirement or even voluntary reporting practice. I base my concerns on the following.

The FASB has not given an indication that it has viewed the requirements for trading on the “over-the-counter market” (“OTC”), it has not otherwise defined OTC and therefore ‘traded or can be traded’ is not defined. In the broadest definition any stock that is traded other than on an

exchange is traded over-the-counter.¹ This broad OTC definition includes direct negotiation trades. All securities, other than exchange traded securities are thus over-the-counter securities .

The Definition then only requires that the security be unrestricted and ‘can be traded’ on a market. I realize the problems in an all encompassing definition of restricted. I thus focus on what constitutes to trade on a ‘market’. (The Definition does not require a market maker which is defined in SEC and other regulatory guidance.) It should be noted that a stock may be traded and thus become public through no choice or action of the entity² as the market is a broker controlled market.³ While there are certain requirements for a broker to apply on FINRA Form 211 to list a security on the market, specifically those in SEC Rule 15c2-11, there also appear to be a number of exceptions to the broad requirements as well as reporting of “grey market” trades where there is no market maker and no Form 211 is presumably filed⁴.

The Definition is thus so broad as to include an entity as public that while not trading, or otherwise deemed public through required filings, could be deemed public as it “can be traded” even though the entity has no such desire and reports no public information. The Definition also presumably includes entities as public that have trades reported, although there is no market makers as well as entities that have shares traded infrequently but otherwise report limited or no information.⁵

Finally, inclusion of entities based on ‘traded or can be traded’ ignores that “public” due to trading is not indicative of public reporting. OTC Market Groups, which operates “marketplaces” for OTC stocks specifically indicates that there are entities in its “markets” that provide no information to regulators, an exchange or OTC Market Groups⁶.

In summary, the fact that the Definition encompasses any entity that “can be traded” is so broad as to result in the presumably unintentional inclusion of a number of entities that are in no way “public” in a reporting sense. The Definition is of limited use to many users who must now

¹ American Heritage defines over-the-counter as “not listed or available on an officially recognized stock exchange but traded in direct negotiation between buyers and sellers: over-the-counter stocks”. Collins provides that “over-the-counter includes a. (of securities) not listed or quoted on a stock exchange b. (of a security market) dealing in such securities c. (of security transactions) conducted through a broker's office directly between purchaser and seller and not on a stock exchange.” Collins also defines over-the-counter market as a “(stock exchange) a security market that deals in securities that are not listed or quoted on a stock exchange.”

² In some cases, there may be an exemption available that permits a broker-dealer to begin quoting a stock without filing a [Form 211](#). Generally, this happens when the broker-dealer is already quoting the stock on another platform **or if the broker-dealer is only representing an unsolicited customer order, not making a market [emphasis added]**. (See paragraph 1 - <http://www.otcmarkets.com/learn/otc-trading>).

³ **OTC Pink:** There are no qualifications, disclosure or financial requirements for the OTC Pink marketplace. OTC Pink is a broker-driven marketplace and only requires a broker to file Form 211 to quote a security. (See <http://www.otcmarkets.com/learn/otc-trading>).

⁴ Grey Market -There are no broker-dealers quoting this security. It is not listed, traded or quoted on any U.S. stock exchange or on any of the OTCQX, OTCQB or OTC Pink marketplaces. Trades in grey market stocks are reported by broker-dealers to their Self Regulatory Organization (SRO) and the SRO distributes the trade data to market data vendors and financial websites so investors can track price and volume. Since grey market securities are not traded or quoted on an exchange or inter-dealer quotation system, investor's bids and offers are not collected in a central spot so market transparency is diminished and Best Execution of orders is difficult. <http://www.otcmarkets.com/learn/otc-market-tiers>.

⁵ There are legitimate reasons for a small entity to not want to provide information typically provided by large public entities. One example is segment information where a small entity operating in one or more niche businesses may disclose proprietary information if segment information is detailed while such detail is “lost” in a larger entity that may include the same information in a more encompassing segment.

⁶ See OTC PINK - The Open Marketplace with Variable Reporting Companies – No Information. <http://www.otcmarkets.com/learn/otc-market-tiers>

determine, if possible, what exceptions may or may not apply to “can be traded”⁷. As someone who has posed this “are we public” question to skilled legal and accounting professionals for years, I am not comfortable that the Definition is going to add any clarity or will only do so at a great cost.

I request that the FASB thus consider the deletion of the phrase “or can be traded” from section (d) of the criteria. Including this hypothetical does not add to the Definition. Finally, I request that the FASB consider a quantitative measure so that a listing by a broker pursuant to some exception or a single or relatively few trades over a limited period does not result in the inadvertent reclassification of an entity. The definition could also provide that an entity may “elect” public or non public status if trading is infrequent and the entity does not otherwise meet the Public definition. I will not attempt to suggest specifics in these limited comments.

Separately, I assume it is the intention of the FASB to present a broad definition as related to entities required to periodically present statements in public legal and regulatory filings. While I have not attempted to catalog the entities that this may encompass, I presume the FASB has made such a determination.

I appreciate the effort in this matter and the opportunity to comment and trust that those that are certainly more involved with and knowledgeable of eligibility to trade on a market can correct or dismiss my comments.

Very truly yours,

s/Wm. E. Jackson

William E Jackson

⁷ Can one avoid “public status” by not having an outside transfer agent? But if so, does merely having a transfer agent result in “can be traded”? And what if there are non-business reasons for having such agent even if no intention of being public?