October 9, 2013

Ms. Susan M. Cosper
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

By e-mail: director@fasb.org

Re: Proposed Accounting Standards Update –
***Consolidation (Topic 810): Applying Variable Interest Entity Guidance to Common Control Leasing Arrangements*, a proposal of the Private Company Council**

File Reference No. PCC-13-02

Dear Ms. Cosper:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 29,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned exposure draft.

The NYSSCPA's Financial Accounting Standards Committee deliberated the proposed accounting standards update and prepared the attached comments. If you would like additional discussion with us, please contact Robert M. Rollmann, Chair of the Financial Accounting Standards Committee at (914) 421-5605, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

J. Michael Kirkland
President

Attachment

NEW YORK STATE SOCIETY OF

CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON

PROPOSED ACCOUNTING STANDARDS UPDATE –
***CONSOLIDATION (TOPIC 810): APPLYING VARIABLE INTEREST ENTITY GUIDANCE TO COMMON CONTROL LEASING ARRANGEMENTS* A PROPOSAL OF THE PRIVATE COMPANY COUNCIL**

FILE REFERENCE NO. PCC-13-02

October 9, 2013

<u>Principal Drafters</u>

J. Roger Donohue
Deepak Doshi
Craig T. Goodman
Abraham E. Haspel
Robert M. Rollmann

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NYSSCPA Staff

Ernest J. Markezin
William R. Lalli

New York State Society of Certified Public Accountants

Comments on

Re: 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 welcome the opportunity to respond to the invitation to comment of the Financial Accounting Standards Board (FASB or the Board) on the proposed Accounting Standards Update – *Consolidation (Topic 810) Applying Variable Interest Entity Guidance to Common Control Leasing Arrangements,* a proposal of the Private Company Council (the "Update").

General Comments

We are pleased to see that the Private Company Council ("PCC") is making progress in reducing the complexity, cost, and time necessary for private companies to comply with accounting principles. We believe that the proposals included in the Update will reduce costs for private companies in complying with variable interest accounting guidance. Generally, we are supportive of the proposed Update, although we do have comments on certain of the specific issues identified by the PCC as noted below.

The alternative accounting option in the Update represents an improved method of accounting for common control variable interest leasing ("Lease VIEs") arrangements at private companies. In our experience consolidation of Lease VIEs frequently is not desired by lending institutions and, in the majority of situations is triggered by the existence of loan guarantees made by shareholders or lessee operating entities that lease the space. We believe that the bright line trigger that forces consolidation is based on arbitrary guidance and ignores the fact that essentially all business transacted among entities under common control are dictated by common shareholders who have the ability to control the economic resources of such entities with or without the existence of a guarantee. Consequently, the existence of the guarantee is irrelevant. Furthermore, some shareholders and lessors may be better at negotiating loan agreements than others and are able to avoid making such guarantees and the requirement to consolidate under current GAAP despite that the economics of the Lease VIE arrangement is similar to those Lease VIEs with guarantees which result in the latter having to consolidate such Lease VIE.

We believe that the guidance provided in paragraphs 810-10-25-52 and 810-10-25-54 regarding an implicit guaranty by a commonly owned lessee does not apply to individuals who have directly or indirectly made a guaranty of a commonly owned lessor's debt if the accounting alternative has been elected. Consideration of an implicit variable interest guarantee under these circumstances would not apply if the alternative described in 810-10-15-17A has been elected. We believe inclusion of implicit variable interest guidance in the aforementioned paragraphs

may not meet the PCC objective and may not be clear to the individuals attempting to apply the guidance.

We agree with the PCC guidance in BC15 of the proposal which states that "…by clarifying that a variable interest, such as an implied guarantee of the lessor entity's debt does not exist…because, an implied guarantee on the lessor entity's debt primarily absorbs the risk created by the lessee entity itself not making its required lease payments and therefore, does not represent variability that is created by the legal entity and is passed through to the interest of the lessee entity." We believe directly identifying that paragraphs 810-10-25-52 and 54 do not apply to commonly owned lessees that have elected the first alternative directly expressed in paragraph 810-10-15-17A is preferable.

Further, additional guidance would be helpful in determining who the primary beneficiary is of commonly owned entities that have not elected alternative 1 or who are not involved in leasing activities. Our experience in attempting to apply this standard has been difficult because, frequently, common owner(s) who are not the reporting entity have the power to direct their commonly owned entities and, in essence, these entities absorb the greatest amount of variability. In a real estate structure, as discussed in the proposal, if a lessor needs additional funds, one of the common owners will provide it from sources that they also control. This is referred to as an "implied" guarantee.

Responses to Questions

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 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 the 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, surety, analyst, or rating agency) and whether you primarily use financial statements of private entities or those of both private entities and public entities.

Response: We are the New York State Society of Certified Public Accountants (the "Society"), representing more than 29,000 CPAs in public practice, industry, government, and education. We represent our entire membership some of whom are auditors, users, and preparers of financial statements of both publicly and privately held companies.

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: Assuming that the definition of public business entities is consistent with the definition of a public business entity in the related FASB exposure draft, on which the Society has issued a comment letter, we agree with the scope of entities included within this Update.

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: We agree; however, we believe that conduit bond obligors should be excluded from the definition of a public business entity and should be permitted to apply the modifications and exceptions guidance issued by the PCC. Certain private companies are parties to conduit bonds issued by state and local government agencies. While tradable, such securities are frequently held by a limited number of institutional and sophisticated investors. These users are typically more interested in available cash flows to service debt. We seriously question the benefit of excluding such conduit bond obligors from applying PCC guidance.

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

Response: We agree with the criteria in paragraph 810-10-15-17A for applying the proposed accounting alternative.

However, we believe that the final Update should include guidance on how to assess common control. In our experience, private companies and Lease VIEs, or Legal Entities as defined in the Update, frequently have disparate ownership interests and the application guidance should be clear in order to ensure that in practice the Update is applied consistently.

Furthermore, the requirement that substantially all of the activities between the private company and the legal entity are related to the leasing activities (including supporting leasing activities of the leasing entity) could be interpreted as meaning that if the Leasing VIE also leases to third parties, the private company would be ineligible for this accounting alternative. If this is FASB's intent, we do <u>not</u> support the criteria and if it is not, we suggest that this criterion be clarified.

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: We agree that paragraph 810-10-55-9 provides sufficient guidance to clarify what constitutes a supporting leasing activity for applying paragraph 810-10-15-17A(c).

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: We believe that the proposed disclosures are relevant and appropriate. However, we call your attention to the fact that they could result in the requirement for separate audited financial statements for the Leasing VIE; otherwise, auditors would be uncomfortable opining on a private company's financial statements which would not result in cost savings for private companies. We believe the FASB should provide guidance on what is considered to be significant liabilities (see c above) and clarify what is intended by "other explicit interest" in d above.

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

Response: We agree that, generally, the primary purpose of establishing a separate lessor entity in a private company setting is for tax and estate-planning purposes and not to structure off-balance-sheet debt arrangements.

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: The proposed disclosures would address adequately situations in which financial statement preparers are attempting to bypass the rules to avoid reporting assets and liabilities of Lease VIEs (see also our response to Question 7).

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: We 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.

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: We 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.

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

Response: Assuming that a final Update is issued in 2013, we believe that the proposed alternative should be effective for years beginning on or after December 15, 2013, with early adoption permitted.

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: We believe that it would be a rare situation in which a public business entity controls a VIE real estate entity. Furthermore, we believe that inclusion of the example in the Accounting Standards Codification ("ASC") will likely add confusion to VIE guidance. Consequently, we support removal of the example in the final Update.

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?
b. 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: With respect to Question 13a. and b., we agree with the proposed approach and do not believe an alternative approach should be considered by the PCC. We believe that the explanations in BC15-BC18 should make it clearer that the conclusions are also based on practical considerations such as preparation costs and implicit and explicit guarantee issues.