

Board Meeting Handout Definition of a Nonpublic Entity July 10, 2013

PURPOSE OF THIS MEETING

1. The purpose of this meeting is to seek the Board's views about consequential amendments in the development of a proposed Accounting Standards Update (ASU) about the definition of a public business entity.

BACKGROUND

- 2. Currently, the Codification includes five definitions of a nonpublic entity, three definitions of a public entity, and two definitions of a publicly traded company (included in Appendix A). Some of these definitions are the same resulting in seven unique definitions of a nonpublic entity. These definitions have been used in various parts of accounting literature when differences were made between nonpublic entities and public entities.
- 3. The objectives of this project include:
 - a. Simplify the definition of a nonpublic entity
 - b. Address a few known practice issues, and
 - c. Identify the types of entities that would be included in the scope of the private company decision-making framework (PCDMF) and would be considered in future deliberations about potential accounting and reporting alternatives in U.S. generally accepted accounting principles (GAAP) by the Board and the PCC.

TENTATIVE DECISIONS REACHED TO DATE

4. Based on the Board's tentative decisions reached to date, a business entity meeting any one of the following criteria would be considered public:

¹ For purposes of this handout, the terms *nonpublic entity* and *public entity* are used as antonyms. A nonpublic entity is any entity that is not a public entity.

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- a. It is required to file or furnish financial statements with the Securities and Exchange Commission (including entities whose financial statements are included in a filing).
- b. 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.
- c. It has issued (or is a conduit bond obligor) for unrestricted securities that can be traded on an exchange or an over-the-counter market.
- d. 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.
- 5. A public or nonpublic distinction would not be made among not-for-profit entities (NFPs) for financial reporting purposes. Instead, the Board would consider whether all or certain NFPs should be permitted to apply accounting and reporting alternatives under U.S. GAAP.

ISSUE 1: CONSEQUENTIAL AMENDMENTS

- 6. The tentative decisions reached by the Board are largely consistent with the existing definitions of a nonpublic entity in the Codification. However, there are a few differences. This paragraph identifies the significant differences between the Board's tentative decisions reached and the existing definitions of a nonpublic entity in the Codification.
 - a. Securities and Exchange Commission: Definitions 1, 5, and 6 are the only definitions that include the criterion that an entity that is not required to file or furnish financial statements with the SEC is a nonpublic entity which is consistent with the Board's tentative decisions reached to date.
 - b. **Controlled Entities:** Definitions 1, 2, and 3 include the criterion that an entity that is controlled by a public entity is considered a public entity (the remaining definitions consider an entity that is controlled by a public entity as a nonpublic entity). In the Board's tentative decisions

- reached, a consolidated subsidiary of a public company would not be considered a public business entity for purposes of its stand-alone financial statements other than those included in an SEC filing by its parent.
- c. **Type of Organization:** The majority of the existing definitions of a nonpublic entity in the Codification include any entity including both NFP's and business entities (definitions 6 and 7 exclude NFPs). The Board has tentatively defined a public company, excluding NFPs.
- 7. The staff has identified the following alternatives for the Board's consideration about potential consequential amendments:
 - a. **Alternative 1:** Do not amend the existing definitions of a nonpublic entity.
 - b. **Alternative 2:** Amend the existing definitions of a nonpublic entity to be replaced with a new definition.
 - c. **Alternative 3:** Amend existing definitions of a nonpublic entity to be replaced with a new definition and make transition adjustments by adding or subtracting criteria in order to achieve the original intended scope of the guidance.

Question 1 for the Board: Consequential Amendments

Which Alternative does the Board prefer?

ISSUE 2: NEXT STEPS

8. The question for the Board is whether the tentative decisions reached by the Board and basis for conclusions about the definition of a public business entity should be exposed for public comment in a proposed Accounting Standards Update.

Question 2 for the Board: Issuance of a Proposed ASU

Does the Board agree to proceed to a draft of a proposed ASU about the definition of a public business entity with a 45-day comment period? If yes, what level of outreach would the Board like the staff to perform during the exposure period?

Appendix A: Codification Definitions of a Nonpublic Entity

Definition 1: Nonpublic Entity

Any entity that does not meet any of the following conditions:

- (a) Its debt or equity securities trade in a public market either on a stock exchange (domestic or foreign) or in an over-the-counter market, including securities quoted only locally or regionally.
- (b) It is a conduit bond obligor for *conduit debt securities* that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets).
- (c) It files with a regulatory agency in preparation for the sale of any class of debt or equity securities in a public market.
- (d) It is required to file or furnish financial statements with the Securities and Exchange Commission.
- (e) It is controlled by an entity covered by criteria (a) through (d).

Definition 2: Nonpublic Entity/Public Entity

Any entity other than one that meets any of the following criteria:

- (a) Has equity securities that trade in a public market either on a stock exchange (domestic or foreign) or in an over-the-counter market, including securities quoted only locally or regionally
- (b) Makes a filing with a regulatory agency in preparation for the sale of any class of equity securities in a public market
- (c) Is controlled by an entity covered by the preceding criteria. That is, a subsidiary of a public entity is itself a public entity.

An entity that has only debt securities trading in a public market (or that has made a filing with a regulatory agency in preparation to trade only debt securities) is a nonpublic entity.

Definition 3: Nonpublic Entity

Any entity other than one with any of the following characteristics:

- (a) Whose debt or equity securities trade in a public market either on a stock exchange (domestic or foreign) or in the over-the-counter market, including securities quoted only locally or regionally
- (b) That is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets)
- (c) That makes a filing with a regulatory agency in preparation for the sale of any class of debt or equity securities in a public market
- (d) That is controlled by an entity covered by (a), (b), or (c).

Definition 4: Nonpublic Entity/Public Entity

An entity that does not meet any of the following criteria:

- (a) Its debt or equity securities are traded in a public market, including those traded on a stock exchange or in the over-the-counter market (including securities quoted only locally or regionally).
- (b) It is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets).
- (c) Its financial statements are filed with a regulatory agency in preparation for the sale of any class of securities.

Definition 5: Public Entity

A business entity or a not-for-profit entity that meets any of the following conditions:

- (a) It has issued debt or equity securities or is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets).
- (b) It is required to file financial statements with the Securities and Exchange Commission (SEC).
- (c) It provides financial statements for the purpose of issuing any class of securities in a public market.

Definition 6: Publicly Traded Company

A publicly traded company includes any company whose securities trade in a public market on either of the following:

- (a) A stock exchange (domestic or foreign)
- (b) In the over-the-counter market (including securities quoted only locally or regionally), or any company that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets).

Additionally, when a company is required to file or furnish financial statements with the SEC or makes a filing with a regulatory agency in preparation for sale of its securities in a public market it is considered a publicly traded company for this purpose.

Definition 7: Publicly Traded Company

A business entity that has any of the following characteristics:

- (a) Whose securities are traded in a public market on a domestic stock exchange or in the domestic over-the-counter market (including securities quoted only locally or regionally)
- (b) That is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets)
- (c) Whose financial statements are filed with a regulatory agency in preparation for the sale of any class of securities in a domestic market.