



October 7, 2013

Technical Director
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116
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*

The Accounting and Auditing Procedures Committee (the committee) of the Pennsylvania Institute of Certified Public Accountants (PICPA) appreciates the opportunity to comment on the proposed Accounting Standards Update (ASU) on *Consolidation (Topic 810)*. The PICPA is a professional association of more than 20,000 members working to improve the profession and better serve the public interest. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States. Membership includes practitioners in public accounting, education, government, and industry. The committee is composed of practitioners from both regional and small public accounting firms, members serving in financial reporting positions, and accounting educators.

The committee applauds the efforts of the Private Company Council in addressing the guidance for variable interest entities for nonpublic entities. This guidance has been a significant area of concern for privately held entities with common control leasing arrangements, and the committee believes that this proposed alternative will provide significant relief for those situations. Our comments and responses to the specific questions in the exposure document are included below.

Impact of related party guidance in proposed standard on leases – The committee noted that the recent proposed accounting standard update on leases, File Reference No. 2013-270: Proposed Accounting Standards Update, Leases (Topic 842): a revision of the 2010 proposed FASB Accounting Standards Update, Leases (Topic 840) proposed changing the guidance for related party leases such that the standard would only apply to arrangements that have legally enforceable terms and conditions. The committee questions the impact of this approach on the proposed alternative that is subject to this proposal. The committee requests that this matter be clarified in any final standard.

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?

The committee agrees with the scope of the proposed 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.

The committee agrees that the proposed update does not apply to public business entities and employee benefit plans because they lack the arrangements that the alternative addresses.

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

The committee generally agrees with the required criteria. However, the committee believes that the FASB should provide a clear definition of common control. While the SEC conclusions documented in EITF 02-5 are commonly referred to in private company situations to determine common control and the existence of control groups, without a proper definition in US GAAP this definition is open to interpretation and may cause inconsistent application.

Furthermore, the committee believes that the scope of the proposal should be expanded to other circumstances with similar conceptual issues. The following are additional scenarios where the proposed alternative would not “fix” the VIE issue for some private companies:

- A scenario where the reporting entity is following the SEC guidance on common control as a road map and for estate planning purposes the reporting entity is owned by a husband and wife and the leasing entity is owned by their grandchild. This situation would not ordinarily be viewed as meeting the definition of common control and therefore would not fall under the election offered in the proposed guidance. However, from the perspective of the private company and their banker, the situation could be indistinguishable from a circumstance where the leasing company is owned by the child (not grandchild) of the husband and wife and therefore would qualify for the election.
- A scenario where a franchisor is the reporting entity and is owned by three non-related individuals in equal amounts. One of the three owners opens a franchise location. The franchise location does not qualify for the business scope exception because the reporting entity and its related party (principal owner) provide more than half the total equity and

subordinated support. The franchise location would then have to be evaluated under the VIE model for potential consolidation even though in our experience most state regulators and financiers are concerned with the financial statements of the franchisor without consolidating other entities.

- A scenario where a wealthy individual owns multiple companies that are in otherwise unrelated businesses, but for which the individual causes the companies to advance each other funds and loans money directly to the companies personally to “pay themselves rather than a bank.” This situation can often lead to a difficult to evaluate VIE situation depending on the specifics of the circumstances and management structure, and would see no relief based on the proposed guidance.

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.

Yes, the committee agrees that the proposed guidance is sufficient to clarify what constitutes a 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?

The committee agrees with disclosing the significant liabilities that would be applicable to the private company but believes that the scope of the proposal is too broad as it encompasses all of the liabilities of the lessor entity and not just the liabilities for which the lessee could be implicitly accountable. The committee requests that the scope of the required disclosures be narrowed to only apply to those significant debt and/or liabilities that could potentially apply to the lessee.



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.

The committee believes that the purpose of the common control leasing arrangement is not to create off-balance-sheet debt but rather for tax and estate-planning purposes.

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?

The committee does not believe that the proposed alternative would result in the proliferation of these types of arrangements for the purpose of avoiding the balance sheet presentation.

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?

The committee agrees with the requiring an entity to make an accounting alternative that should be applied 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?

The committee agrees with the full retrospective approach.

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

The committee requests an implementation date at the earliest possible time with early implementation 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.

The committee believes that a notation should be added to the example to clarify that it would not apply if the entity applies the option permitted by this alternative.

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?

The committee agrees that providing the alternative is much clearer than revising the conclusions reached directly in the existing guidance, and permits the entities to skip the costly and cumbersome analysis. At the same time, the other two options would result in a consistent answer should an entity go through the variable interest entity analysis. The committee agrees that changing the guidance and providing the expedited alternative is the best solution. However, the committee is mindful that revising the existing guidance could take additional time, and requests that the alternative be approved without additional delays.

We appreciate your consideration of our comments, and we are available to discuss any of these comments with you at your convenience.

Sincerely,



Richard E. Wortmann, CPA
Chairman, PICPA Accounting and Auditing Procedures Committee