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October 14, 2013

Technical Director  
Financial Accounting Standards Board  
401 Merritt 7, PO Box 5116  
Norwalk, CT 06856-5116

Via email to [director@fasb.org](mailto:director@fasb.org)

Re: File Reference No. PCC-13-02

Dear Technical Director:

We are pleased to comment on the Proposed Accounting Standards Update (ASU) - *Consolidation (Topic 810), Applying Variable Interest Entity Guidance to Common Control Leasing Arrangements – a proposal of the Private Company Council.*

We appreciate the efforts being made by the Financial Accounting Standards Board (FASB or Board) and the Private Company Council (PCC) to develop alternatives to U. S. generally accepted accounting principles for certain nonpublic entities. We believe there is a strong desire for private company reporting entities to have alternatives to existing U.S. GAAP in certain areas and are supportive of the general approach outlined in the proposed ASU.

Although we are supportive of the accounting alternative proposed, the PCC accounting alternatives are being proposed at, what appears to be, a very expeditious pace. We encourage the FASB and the PCC to consider conducting additional research and outreach to determine if there could be any unintended accounting consequences as a result of applying the broad reaching alternative contained in the proposed ASU.

We continue to recommend that the Board address the assessment of preferability in the context of the adoption of PCC accounting alternatives. It continues to be unclear if there is a conceptual basis for the PCC alternatives to be preferable to existing GAAP. Further, it is unclear whether adoption of a PCC alternative must be done upon issuance of the related ASU, or could be adopted one, two or several years after issuance, again given whether preferability would be able to be demonstrated. As previously communicated to the Board, we believe one option to address this matter could include proposing an amendment to Accounting Standards Codification (ASC) Topic 250 that would provide that the issuance of private company alternatives, initiated by the PCC and subsequently issued as Codification updates by the FASB, are excluded from the scope of ASC Topic 250 for purposes of preferability assessment.

Finally, the proposed ASU includes a definition of Public Business Entity that is consistent with the definition included in the proposed Accounting Standards Update *Definition of a Public Business Entity – An Amendment to the Master Glossary.* We strongly suggest the Board finalize the definition of a public business entity prior to the issuance of this ASU, or any other PCC accounting alternative.

Our comments to specific questions in the Exposure Draft are included in Attachment 1. Should you have any questions, please contact Scott G. Lehman at (630)574-1605 or [scott.lehman@crowehorwath.com](mailto:scott.lehman@crowehorwath.com)

Sincerely,

A handwritten signature in black ink that reads "Crowe Horwath LLP".

Crowe Horwath LLP

## Attachment 1

**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.

Crowe Horwath LLP is one of the largest public accounting and consulting firms in the U. S. serving both private and public companies. We have approximately 2,600 personnel and over 250 partners. We are one of the nine U. S. firms currently inspected annually by the Public Company Accounting Oversight Board, and are an independent member of Crowe Horwath International which includes more than 150 independent accounting and management consulting firms with offices in more than 100 countries around the world. Our audit practice focuses on both private and public 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?**

We agree that the accounting alternative in the proposed update should apply to all entities except public business entities, not-for-profit entities and employee benefit plans within the scope of Topic 960 and 965.

**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.**

We believe that the frequency of which public business entities have leasing arrangements outlined in the ASU would be minimal. Further, in the event that a public business entity has such arrangements, we believe the financial statements should reflect those transactions in accordance with existing guidance contained in the ASC. We are not aware of any situations where an employee benefit plan would have such an arrangement.

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

We agree with the criteria for applying the proposed accounting alternative. Though, we suggest that implementation guidance be included on what is considered common control for purposes of applying the alternative and/or the inclusion of a definition of common control in the ASC Master Glossary. It is not uncommon in estate planning; for example, to use entities that are owned or controlled by third or fourth generation family members to own assets that are leased by the operating company. Clarification of the level of separation from the ownership of the operating entity to be considered under common control would be useful.

In addition, we note that a lessor entity under common control may also provide management services, insurance services, life insurance for key executives or other functions on behalf of the reporting entity and, sometimes, other entities under common control. These entities are frequently structured in this manner for tax, estate or liability reasons similar to the landlord entity that does not include these other functions. We believe that the proposed alternative would be improved if implementation guidance included discussion on when it would be appropriate to include such entities as meeting the substantially all criteria in paragraph 810-10-15-17A.

**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.**

We do not believe that paragraph 810-10-55-9 provides sufficient support of what constitutes a supporting leasing activity. The use of the term "mortgage" in paragraph 810-10-55-9 could be interpreted to indicate the alternative only applies to leases between entities under common control that involve the leasing of real estate. Leases between entities under common control are not only limited to real estate. Such arrangements occur frequently in the construction, trucking, dealership and other industries and could involve machinery and equipment. The proposed alternative could be improved by clarification of this point both in implementation guidance and illustrations and by changing the term "mortgage" to "lien".

**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?**

We agree with the concepts included in the disclosure requirements. We do not believe any additional disclosures should be required as a result of applying this alternative.

**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.**

There could be many reasons why a private entity establishes a separate lessor entity for its leasing activities. We agree that often times the purpose for establishing a lessor entity in a private company setting is for tax and estate-planning purposes, rather than to structure off-balance-sheet debt arrangements, however, we recommend the FASB perform additional outreach to determine if there are any unintended accounting consequences as a result of the broad alternative contained in the proposed ASU.

**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?**

We believe that the proposed accounting alternative, including the required disclosures, addresses private company stakeholder concerns about relevance of consolidated information. We do not expect issuance of the ASU to cause a proliferation of the use of lessor entities in order to avoid reporting assets

and liabilities for which the reporting entity is responsible, however, as noted in our response to Question 7, the FASB should determine if there could be unintended consequences to the issuance of this ASU that were not contemplated in its drafting. We understand that the use of this leasing strategy has been in place for many years in the private company sector.

**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?**

We believe that the accounting alternative, when elected, 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?**

We agree that the full retrospective approach should be used when applying the alternative, though, we believe that the Board should clarify whether this accounting alternative, as well as other PCC accounting alternatives, need to be adopted in the year in which they become effective or if they can be applied at a later date. We envision situations where entities could possibly structure transactions around the decision to apply these accounting alternatives at a later date. It is also unclear if an entity can change their election once adopted or how such a change would be recognized in an entity's financial statements. For example if a company elects the alternative upon issuance, it is not clear whether they can later change back if they so choose.

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

We believe the proposed accounting alternative should be effective for fiscal years ending after December 15, 2014, with early application permitted for financial statements not yet issued. This effective date will allow for further outreach to determine if there are any unintended consequences to the proposed accounting alternative.

**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.**

It is not clear why the Board is proposing to remove the example as the Board is retaining reference to implicit guarantees in ASC 810-10-25 paragraphs 52 and 54. As such, we believe that implicit variable interests would still be required to be considered if an entity, public or nonpublic (not electing the alternative), applies the existing VIE accounting guidance in ASC Topic 810.

**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?**

We do not believe the two other alternatives would better address the concerns raised by private company stakeholders. We do not see a need to consider either of those alternatives in conjunction with the guidance in this proposed Update.