



American Institute of CPAs
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October 18, 2013

Susan M. Cosper, CPA
Technical Director
FASB
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: August 22, 2013 Exposure Draft of a Proposed Accounting Standards Update (ASU), *Consolidation (Topic 810): Applying Variable Interest Entity Guidance to Common Control Leasing Arrangements* [File Reference No. PCC-13-02]

Dear Ms. Cosper:

One of the objectives that the Council of the American Institute of Certified Public Accountants (AICPA) established for the PCPS Executive Committee is to represent the views of local and regional firms on professional issues in keeping with the public interest, primarily through the Technical Issues Committee (TIC). This communication is in accordance with that objective. These comments, however, do not necessarily reflect the positions of the AICPA.

TIC is comprised of 13 practitioners from CPA firms of varying sizes ranging from less than 10 professionals to more than 1,000 professionals. All member firms focus on audits of nonpublic entities; some firms also audit public companies or public employee benefit plans.

TIC appreciated the opportunity to discuss its comments on this ED with the Board and staff at the FASB/TIC Liaison Meeting on September 27, 2013. TIC has re-examined the ED and is providing the following comments for your consideration.

GENERAL COMMENTS

TIC is supportive of the conclusions reached in the ED. TIC noted, however, that the scope of the ED is focused on a narrow subset of common control leasing arrangements and requests that the PCC examine other VIE relationships for possible consideration to receive the same accounting relief in the future. TIC has provided some examples below.

Use of the phrase “common control leasing arrangements” as a criterion in the ED could lead to diversity in practice since the term “common control” is not defined. TIC is recommending some additional guidance regarding the meaning of “common control” in this context, which would assist financial statement preparers to consistently apply the concepts in this ED.

Finally, TIC recommends clarification of the proposed requirement to disclose the amount of debt and/or significant liabilities of the lessor entity under common control. TIC believes the requirement needs to be more specific as to the nature and extent of the obligations to be disclosed and needs to include an option for qualitative disclosures.

SPECIFIC COMMENTS

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?

Yes, TIC agrees.

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.

Yes, TIC agrees.

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

Yes, TIC agrees with the required criteria. However, TIC noted that one criterion for applying the accounting alternative is that the private company and the legal entity need to be under “common control,” a term that is not defined in the *Accounting Standards CodificationTM*. Since there is no authoritative definition, preparers and practitioners may not apply the proposed requirement consistently. Interpretive guidance includes EITF Issue No. 02-5, *Definition of “Common Control” in Relation to FASB Statement No. 141*, for which no consensus was reached, SEC guidance or tax rules. TIC recommends the Board provide some guidance on the concept of “common control” or find a more descriptive term without delaying the issuance of the final ASU.

TIC also believes there are other leasing and non-leasing issues with VIE’s for private companies which should be addressed in order to maintain relevance with financial statement users. Some typical scenarios are:

- For estate planning purposes, Reporting Entity is owned by a husband and wife, and Leasing Entity is owned by their grandchild. The preparer and auditor are following the SEC guidance on common control as a road map. This related party relationship 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 its banker, the above scenario could be indistinguishable from a circumstance where Leasing Company is owned by the child (not the grandchild) of the husband and wife and therefore would qualify for the election.
- A Franchisor is the reporting entity and is owned by three unrelated 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 TIC's experience, most state regulators and financiers are concerned with the financial statements of the Franchisor alone without consolidating other entities.
- 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 not be eligible for the relief provided by the proposed guidance.

Each of the above scenarios represents a common control issue that TIC members have encountered for which consolidated financial statements are not meaningful to financial statement users.

TIC recommends that the PCC continue to look at other possible VIE arrangements in the private company arena that could benefit from accounting alternatives. TIC is not asking those other arrangements to be considered for this proposed ASU. TIC does not want the Board and the PCC to delay issuance of this ED to accommodate other scenarios at this time. However, TIC requests the PCC to explore a more comprehensive approach for private company VIE arrangements at future meetings.

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, we agree.

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?

Yes, TIC agrees. The disclosures required in (a) through (d) are relevant.

However, TIC requests some clarification concerning the proposed requirement to disclose the debt and/or significant liabilities of the lessor under common control. After discussing this issue with FASB staff, TIC understands that the Board intends that the disclosure include any significant obligation (contractual or noncontractual) that would ultimately require a cash payment. Therefore, the disclosures should include any significant asset retirement obligations, environmental contingencies, or legal contingencies, as well as recognized liabilities. TIC recommends that the Board include additional guidance to clarify that all significant obligations need to be disclosed, irrespective of whether or not they are recognized as liabilities on the balance sheet. TIC also requests that private companies be given the option of qualitative disclosure for any significant obligations that are not recognized as liabilities on the balance sheet.

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.

Yes, TIC agrees in principle. For those that have elected these entity structures and leasing arrangements, it is generally 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?

Yes, it does appear to address private company concerns, while also being narrow in its wording to such an extent that loopholes can be avoided by companies seeking such. While narrow for the purposes of avoiding loopholes, there are other VIE relationships

which may need to be addressed that are not within the scope of this Update. (See the examples cited in TIC's response to Question 4 above.)

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?

Yes, TIC agrees.

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?

Yes, TIC agrees. Comparability should be emphasized here and the retrospective approach is needed.

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

The proposed accounting alternative should be effective as soon as practicable; early application should be 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.

Yes, TIC agrees on both accounts.

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.

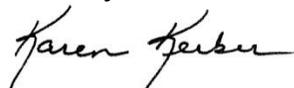
- a. Would either of those alternatives better address the concerns raised by private company stakeholders?*
- b. Should the PCC and the Board consider either of those alternatives in conjunction with the guidance in this proposed Update to better address the concerns raised by private company stakeholders?*

The proposed alternative is better than the two discussed in paragraphs BC15 through BC18 because it accomplishes the desired end result and results in less complexity than the other two alternatives.

The other alternatives should not be given further consideration for inclusion.

TIC appreciates the opportunity to present these comments on behalf of PCPS member firms. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Karen Kerber".

Karen Kerber, Chair
PCPS Technical Issues Committee

cc: PCPS Executive and Technical Issues Committees