



September 11, 2019

Mr. Shayne Kuhaneck, Acting Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

RE: File Reference No. 2019-750

Dear Mr. Kuhaneck:

Ostrow Reisin Berk & Abrams Ltd. (ORBA or we) appreciates the opportunity to respond to the Financial Accounting Standards Board's (the FASB) *Proposed Accounting Standards Update: Financial Instruments – Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842); Effective Dates* (the Proposed ASU), which was issued on August 15, 2019.

Our response is divided into two sections. The first section responds to the specific questions the FASB has raised in the Summary and Questions for Respondents, while the second will address our general comments on the Proposed ASU.

Specific Responses to Questions

Question 1: *Is the two-bucket approach described and applied in this Update understandable? If not, please explain why.*

Response: Although ORBA believes that the two-bucket approach is understandable on its face, we are confused by the FASB's conclusion that all private companies are akin to smaller reporting companies (SRCs) and two buckets are sufficient.

By including all private companies in the same bucket with SRCs, we believe the FASB fails to appreciate that not all private companies are the same. Private companies such as Cargill, Koch Industries, and Albertsons, would rank among the Fortune 50 companies if they were publically listed. However, these companies bear little resemblance to the majority of private companies in the United States. Most private companies in the United States, do not have the sophisticated accounting systems and personnel available to their large multi-national privately-held brethren. They struggle to account for and implement even minor changes to generally accepted accounting principles (GAAP). While we agree that SRCs are generally less sophisticated than their larger brethren, we fail to understand why the FASB does not recognize that the same is true for private companies. We understand that coming up with a demarcation line between larger and smaller (i.e. middle market) private companies will be a challenge. However, the difficulty of the task should not preclude its implementation.

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ORBA, therefore, strongly urges the FASB to consider their proposal to apply a bucketing method to future major updates carefully. We believe that appropriate buckets include large SEC filers; SRCs and large private companies; and middle market and smaller private companies. The advent of the most recent major updates is already having the effect of driving many middle market entities to look more closely at special purpose financial reporting frameworks as an alternative to GAAP. Unfortunately, there will always be some middle market entities, including most not-for-profit organizations, which, because of lender requirements, external reporting requirements or other reasons, will always be subject to GAAP. As this part of the proposed ASU is prospective in nature and not time sensitive, we believe that the FASB can address the remaining issues and postpone a final decision on this “bucket” system to another date.

Question 2: *Should the population of SEC filers that are afforded a delayed effective date (that is, excluded from bucket one) be entities eligible to be SRCs as defined by the SEC? If not, what definitional threshold, if any, do you suggest and why?*

Response: As discussed above, we believe that SRCs should be afforded some relief in the effective dates of more complex standards. However, we do not believe that SRCs should be afforded the same relief as private companies, especially not middle market private companies. These entities have chosen to seek public investment in their organization and, to a certain degree, should be held to the same reporting requirements as large filers. If the FASB rejects this notion, then the FASB must explain to private companies in clear and precise language why the FASB does not deem an analogous difference between large multi-national private companies and middle market private companies, who similarly tend to have less sophisticated accounting systems and personnel than either SRCs or the large multi-national private companies.

If the FASB does decide to grant effective date relief to SRCs, the SEC definition should be used for the sake of clarity and consistency.

Question 3: *Should the determination of whether an entity is eligible to be an SRC be based on its most recent determination in accordance with SEC regulations as of the date that a final Update is issued? If not, what determination date should be applied?*

Response: We concur with the proposed determination date.

Question 4: *Should Credit Losses be effective for entities eligible to be SRCs, private companies, not-for-profit organizations, and employee benefit plans for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years? If not, please explain why.*

Response: Other than the general objections discussed above, we do not anticipate any issues with the proposed, revised effective date.

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Question 5: *Should Hedging be effective for all entities other than public business entities for fiscal years beginning after December 15, 2020, and interim periods within fiscal years beginning after December 15, 2021? If not, please explain why.*

Response: Other than the general objections discussed above, we do not anticipate any issues with the proposed, revised effective date.

Question 6: *Should Leases be effective for (a) private companies, (b) not-for-profit organizations (excluding those that have issued or are conduit bond obligors for securities that are traded, listed, or quoted on an exchange or an over-the-counter market), and (c) employee benefit plans (excluding those that file or furnish financial statements with or to the SEC) for fiscal years beginning after December 15, 2020, and interim periods within fiscal years beginning after December 15, 2021? If not, please explain why.*

Response: Other than the general objections discussed above, we do not anticipate any issues with the proposed effective date.

However, ORBA strongly objects to the exclusion of not-for-profit organizations that are conduit bond obligors from the proposed extension. Many not-for-profit organizations, including those that are conduit bond obligors, have fiscal year-ends other than December 31. Such organizations are, therefore, just starting the fiscal year in which the Lease standard would be effective. As these fiscal year-end organizations have probably not even reported their fiscal 2019 financial results, it is almost a certainty that they have not yet issued any reports for interim periods in fiscal 2020. We believe the FASB is conflating, inconsistent with the position taken with respect to SRCs, the fact that an organization has public investment and the organization's sophistication. We believe that not-for-profit organizations, even more so than private for-profit entities, need the extension due to the fact that these organizations often have very small accounting staff, as most of the organization's resources are dedicated to the provision of program services. These organizations are not going to spend thousands of dollars on the few resources available in the market to account for leases under Topic 842, because every dollar spent on new accounting software is one less dollar available to carry out the organization's mission. Additionally, they are not going to hire more staff for the same reason.

Because most not-for-profit organizations, including those with conduit debt, do not provide public interim financial reporting information, we believe that effective date relief should be applied to not-for-profit organizations that have issued or are conduit bond obligors if they have not issued interim financial information.

Question 7: *This question is for future major Updates and not the amendments in this proposed Update. Under the revised effective date philosophy, certain public business entities, including SRCs, and nonpublic business entities would have a deferred effective date. Should interim reporting be required in the same year as the annual financial statements or in the subsequent year for these entities when they provide interim financial statements?*

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Response: In the proposed ASU, the FASB does not define what constitutes a “major Update”. From the perspective of most middle market private companies, any changes to GAAP are a major Update, even if the FASB does not concur. We believe that appropriate effective dates should be set for each standard. If the FASB persists with this “bucket” proposal, we suggest they clearly define what constitutes a major Update. As with the bucket proposal, we believe that the extension of the effective dates should not be withheld until this matter is resolved.

General Comments

ORBA believes that the FASB’s proposal to apply effective dates according to a two tier or bucket methodology is interesting but limited and not entirely new. The FASB has been issuing bifurcated effective dates for almost a decade. So the introduction of the two-bucket approach is not new. As we discussed above, we disagree strongly with the exclusion of SRCs from bucket one on the basis of lack of sophistication and resources if the FASB is not going to make a similar exclusion into a third bucket for middle market private companies on the same grounds. We find the two proposed buckets logically inconsistent. The FASB should further consider their decisions on the application of the buckets to major Updates and not hold up the rest of the proposed update with respect to the actual effective dates. In fact, such a prospective proposal should not have been included in this proposed update at all, but should have been issued as a consultation paper as it raises more issues than, perhaps, the FASB appreciates.

In closing, ORBA appreciates the work of the FASB and the efforts of the Private Company Council. Please direct any questions to Victoria L. Pitkin, Director of Quality Control (tpitkin@orba.com).

Sincerely,



Ostrow Reisin Berk & Abrams Ltd.

VLP/smj