

Private Company Financial Reporting Committee

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JUDITH H. O'DELL
Chair

February 1, 2008

Mr. Russell Golden
Director of Technical Application & Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856

Re: Definition of a Private Company

Dear Russ:

In response to the FASB staff's request for input on the definition of a private company, the Private Company Financial Reporting Committee ("PCFRC") conducted an outreach effort among its Resource Group and deliberated the issue at its meetings. The PCFRC focused on two definitions. One was the definition of an "issuer" as defined in the United States Code. The second was the definition of a "small- and medium-sized entity" ("SME"), as contained in the International Accounting Standards Board's exposure draft of a proposed International Financial Reporting Standard for SMEs.

The PCFRC believes the most appropriate terminology to distinguish public companies and private companies are the terms "issuer" and "nonissuer", respectively. The term "issuer" is already set in the United States Code. The Sarbanes-Oxley Act of 2002 contains the following definition of an issuer:

The term "issuer" means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C.78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

The Securities Exchange Act of 1934 states:

The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of

interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term “issuer” means the person by whom the equipment or property is, or is to be, used.

As described above, the United States Code defines an “issuer.” Therefore an entity that does not meet that definition is a “non-issuer.”

In addition, the AICPA’s Auditing Standards Board has used these terms for a number of years and the Public Company Accounting Oversight Board utilizes the term “issuer”, as defined in the United States Code, in its literature. Furthermore, the term “issuer” is also consistent with Statement on Standards for Accounting and Review Services No. 17, *Omnibus Statement on Standards for Accounting and Review Services – 2008*, which will be issued in February 2008. SSARS No. 17 replaces the term “nonpublic entity” with “nonissuer” throughout the SSARS literature.

Clearly, the use of the terms “issuer” and “nonissuer” are established in the United States Code and in the professional literature. These terms enjoy a growing general acceptance and to utilize different terms for the FASB’s purposes would create unnecessary confusion.

The PCFRC recognizes that changing the definition of “public” and “non public” will require the scope sections of many standards to be revised. However, this should be less of an issue now that the codification is out for verification. The consistent use of the terms “issuer” and “non issuer” will simplify the use of the standards.

Please feel free to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith H. O'Dell". The signature is fluid and cursive, with the first name being the most prominent.

Judith H. O’Dell
Chair
Private Company Financial Reporting Committee