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September 5, 2017

Via email to director@fasb.org

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

Re: Proposed Accounting Standards Update, Targeted Improvements to Related Party Guidance for Variable Interest Entities (File Reference No. 2017-240)

Dear Ms. Cospers:

We are pleased to provide comments on the proposed improvements to various aspects of the related party guidance for variable interest entities. We support providing an election not to apply the VIE guidance to common control arrangements. We are also open to further consideration of expanding the scope to include public entities, as detailed in the Appendix to this letter.

In addition, we agree with the proposal to consider indirect interests on a proportionate basis in determining whether decision-maker fees are variable interests.

Lastly, we note that the proposed alternative to the current "related party tie-breaker" test will increase the level of subjectivity when determining whether a reporting entity has a controlling financial interest in a VIE. We are not persuaded additional subjectivity in this area will improve practice. As such, we suggest maintaining the current guidance, particularly since other recent amendments have narrowed the circumstances in which it applies.

Our responses to the Board's specific questions are provided in the Appendix to this letter.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Adam Brown at (214)665-0673 or Gautam Goswami at (312)616-4631.

Very truly yours,

BDO USA, LLP

Appendix

Question 1: Should all common control arrangements (that is, for both private companies and public business entities) be excluded from the scope of VIE guidance (as opposed to just an option for private companies as provided in the amendments in this proposed Update)? Please explain.

As noted in the alternative views in the basis for conclusions, providing the exclusion to public business entities would accomplish the Board's goal of simplifying the guidance in this area and still provide decision-useful information by way of the related disclosures. Since a parent is typically able to restructure arrangements between its subsidiaries (implicit or explicit), we are not convinced that formal documentation is a compelling basis to apply different guidance for public business entities. Further, a parent's ultimate control of its subsidiaries inevitably calls into question whether one subsidiary should consolidate its sister company.

However, we acknowledge that more consideration may be required before expanding the option to public business entities. As a practical matter, we do not believe that redeliberations in this regard should delay finalizing the amendments proposed for private companies. If the Board chooses to spend additional time on this matter, it may consider a broader project to provide a formal definition of "common control" that would apply to all companies, public and private.

Private Company Accounting Alternative

Question 2: Do you agree that a private company (reporting entity) should have an option to not apply VIE guidance to legal entities under common control if both the common control parent and the legal entity being evaluated for consolidation are not public business entities? If not, please explain why.

Yes, we agree with private companies being provided a policy election to not apply VIE guidance to legal entities under common control. However, we suggest eliminating the last two criteria in paragraph 810-10-15-17AD, which indicates that the parent and the legal entity under common control should not be public business entities. Since only the private company's standalone financial statements would be affected by the proposed amendments, we do not believe there is a compelling basis for requiring the legal entity being evaluated for consolidation and the parent to be private companies.

The statement at the end of paragraph 810-10-15-17AD that the parent shall consolidate a legal entity over which it has a controlling financial interest appears self-evident. Therefore, we suggest clarifying in the basis for conclusions why this statement is necessary in the final amendments, and whether it is intended to change accounting outcomes. For instance, in multi-tier organizational structures, common control may exist at a level higher than the immediate parent of the reporting enterprise.

Question 3: Should the current accounting alternative for private company leasing arrangements under common control provided under Update 2014-07 be retained, or should it be replaced by the proposed broader private company alternative, assuming this proposed Update is finalized? Would the proposed accounting alternative continue to address the concerns of private companies currently applying the accounting alternative for leasing arrangements under common control? If not, please explain why. Additionally, what existing leasing arrangements that are eligible to be accounted for using the current alternative, if any, would not be captured by the accounting alternative in the proposed amendments?

We note that the proposed requirement about the parent and the legal entity under common control being nonpublic entities was not explicit in Update 2014-07. However, we are unaware of any private company leasing arrangements in practice that would not meet the proposed eligibility criterion, considering that such arrangements are primarily set up for tax or estate-planning or legal-liability purposes and generally do not involve public funding. Further, we note that once the new leasing standard is adopted, concerns about the extent of off-balance-sheet financing would be mitigated as the majority of leases are expected to be reflected on the balance sheet.

As a drafting matter, we also suggest deleting paragraph 810-10-55-205AV(d) or revising it to indicate that the lessor entity owns other assets. Unlike Update 2014-07, whether the lessor has assets other than the manufacturing facility is not relevant to the accounting alternative proposed in the ED.

Question 4: Do the proposed disclosure requirements in paragraphs 810-10-50-2AG through 50-2AI adequately provide information about a reporting entity's involvement with and exposure to a legal entity? If not, please explain why. Also, please elaborate on any additional disclosures that you consider necessary to appropriately reflect a reporting entity's involvement with and exposure to a legal entity.

Yes, we generally believe that the proposed disclosures are adequate for entities applying the scope election.

We observe that paragraph 810-10-55-205AZ(d) discloses that the book value of the legal entity's liabilities are \$2,459,127. We note that disclosing specific amounts of the legal entity due to third parties may be problematic, e.g., there may be contingent liabilities that are difficult to quantify reliably. If this disclosure example is included in the final ASU, it could result in operational challenges for the reporting entity, and its auditor, by implying the reporting entity has to measure the VIE's obligations to its third parties. As such, we suggest that the example in the proposal only specify amounts that are between the reporting enterprise and the legal entity and be more qualitative regarding exposure related to third parties.

Decision-Making Fees

Question 5: Should indirect interests held through related parties that are under common control with a decision maker or service provider be considered on a proportionate basis, as opposed to being considered the equivalent of a direct interest in its entirety, when determining whether a decision-making fee is a variable interest in a VIE? If not, please explain why.

Yes, we agree. However, we note that the examples on proportional interest in the consolidation guidance only include scenarios in which the reporting entity holds an equity interest in its related party, which in turn holds an equity interest in the VIE or where the reporting entity has financed a related party's equity interest in the VIE. In those cases, the reporting entity concludes that it holds a proportionate indirect interest in the VIE expressed in terms of equity ownership. As stated in our earlier comment letter on File Reference No. 2016-260, *Interests Held Through Related Parties That Are under Common Control*, we also recommend addressing a scenario in which the reporting entity holds a non-equity interest, e.g., a loan (or other debt instrument) in the related party, which in turn holds a loan (or other debt instrument) in the VIE. In these cases, it is much less clear whether the reporting entity holds an indirect variable interest in the VIE, and if so, what proportion of the VIE's variability absorbed by the related party should the reporting entity consider

as its own? While we acknowledge the need for judgment, the standard could be improved and made more operational if it provided guidance for performing this assessment, which might include evaluating whether the arrangement was primarily designed for the purpose of transferring the VIE's credit risk to the reporting entity vs. a situation in which both loans were put in place for separate and valid business reasons. This assessment might include evaluating the related party's credit strength and collateral as distinguished from the VIE's credit strength and collateral.

We also note that the proposal to consider indirect interest on a proportionate basis is similar to a SEC staff member comments at the 2015 AICPA National Conference on Current SEC and PCAOB Developments. However, that speech also stated that in instances where a controlling party in a common control group designs an entity in a way to separate power from economics for the purpose of avoiding consolidation in the separate company financial statements of a decision-maker, such separation has been viewed to be non-substantive. In the basis for conclusions, we urge the Board clarify whether a similar substance-based assessment is implicit in the final amendments, for instance, by reminding practitioners of the guidance in 810-10-15-13B. That is, it may be helpful for the FASB to indicate whether there could be circumstances where the indirect interest still should be considered in its entirety, instead of proportionately.

VIE Related Party Guidance for Parties under Common Control

Question 6: Should a reporting entity be required to determine whether a controlling financial interest exists at the reporting entity level for situations in which power is shared among related parties or when related parties under common control, as a group, have a controlling financial interest but the parties individually do not? If not, please explain why. In doing so it is acknowledged that, in certain situations, it is possible that no reporting entity under common control will consolidate a VIE.

We do not believe that the alternative proposed to the current related party tie-breaker test would result in a more meaningful assessment.

Similar to the dissent in BC47, we believe that the proposal introduces a more subjective assessment compared to current practice. Determining whether any middle-tier entity in the related party group *may* be the primary beneficiary, as opposed to which entity within that related party group *must* consolidate the VIE creates more opportunity for second guessing, especially when no one in that group consolidates the VIE. We believe it is instructive that BC50 indicates stakeholders, including the SEC staff, have looked to the related party tie-breaker test in resolving issues for which reliance on the substance portion of the guidance could not resolve the questions and that the related party guidance supports the consistent application of the guidance. We also note that recent amendments to the consolidation guidance have narrowed the "related party tie-breaker" test only to limited circumstances in practice. If the scope election not to apply the VIE subsections for entities under common control is also provided for public entities, as discussed in our response to Question 1, the need for either the current related party tie-breaker test or the proposed alternative would further diminish.

Question 7: Are the factors in paragraph 810-10-25-44A adequate for determining whether a reporting entity within a common control group may be the primary beneficiary of a VIE? If not, please explain why and describe what other factors you would recommend.

We note that the factors are similar to those in the current "related party tie-breaker" test, but may lead to a more subjective assessment, considering the context in which they're applied. We also note that a significant challenge in applying the related party tie-breaker test is how to weight

the four factors currently provided in paragraph 810-10-25-44 and think that the same questions will exist under the proposed guidance. We do not believe the proposed assessment would lead to a more meaningful conclusion, therefore we have not further analyzed their adequacy. See our responses to Question 6.

However, if retained, we urge the Board to provide at least two examples on how the factors would be applied, one resulting in consolidation and the other not identifying any reporting enterprise under common control as the primary beneficiary, so that the guidance can be applied consistently.

Question 8: Does the "related party tie-breaker" test currently in GAAP (paragraph 810-10-25-44) result in appropriate consolidation results? If yes, please explain why. Alternatively, would the proposed amendments cause unintended consequences or allow reporting entities to achieve a desired consolidation result that is inconsistent with the economics of a related party arrangement? If yes, please explain how.

It has been our experience that the "related party tie-breaker" test generally results in appropriate identification of the party most closely associated with the VIE and therefore the primary beneficiary, especially in highly structured transactions. We also believe the "related party tie-breaker" test is comparatively easier to understand and apply than the proposed approach.

However, we also note that arrangements around the entity i.e., certain transactions that the reporting enterprise enters into directly with other parties involved with the VIE creates an added layer of complexity in applying the tie-breaker test and also in determining applicability of that test. This is especially true of certain foreign jurisdictions where foreign business practices may inadvertently cause one of the otherwise unrelated parties to inadvertently become a de-facto agent, thereby counter-intuitively triggering the tie-breaker test. We would be pleased to discuss this matter in more detail with the FASB staff.

Transition and Effective Date

Question 9: Do you agree with the proposed transition requirements in paragraph 810-10-65-9? If not, what transition approach would be more appropriate?

Yes, we agree.

Question 10: Should a reporting entity be required to provide the transition disclosures specified in this proposed Update? Should any other disclosures be required? If so, please explain why.

Yes, we agree and believe them to be sufficient.

Question 11: How much time is needed to implement the proposed amendments?

We believe the private company election not to apply the VIE Subsections and the proposal to consider indirect interests on a proportionate basis for evaluating decision-maker fees generally would not be time consuming. However, as indicated in our responses to Question 5, if the proportional interest is through a non-equity interest, that would require more analysis. Moreover, understanding and appropriately applying the proposed replacement to the related party tie-breaker test would be more challenging, necessitating more implementation time.

As such, we propose at least a year's delay in adopting the final amendments. Also see our responses to Question 12.

Question 12: Should the proposed amendments be effective on the same date for both public business entities and entities other than public business entities?

We believe that providing additional time to entities other than public business entities would be appropriate given the recent pace of updates to accounting standards and would be consistent with the Board's previous updates. We also believe that early adoption should be permitted as entities would benefit from the proposed Update.

Question 13: Should the effective date of the private company accounting alternative be consistent with the amendments in Accounting Standards Update No. 2016-03, Intangibles—Goodwill and Other (Topic 350), Business Combinations (Topic 805), Consolidation (Topic 810), Derivatives and Hedging (Topic 815): Effective Date and Transition Guidance?

Yes. Given the Board's intent to simplify practice, particularly for private companies, we recommend making the new provisions easily accessible, using the same approach as ASU 2016-03.

Other Comments:

We observe that a reporting enterprise that applies the alternative not to apply the VIE Subsections may still prepare combined financial statements, as also acknowledged in BC20. We note that paragraph 810-10-45-10 indicates that intra-entity transactions and profits or losses in combined financial statements should be eliminated in the same manner as in consolidated financial statements; however, does not specify which consolidation model to follow i.e., whether voting interest or variable interest. As such, the Board might consider clarifying whether there is a similar policy choice in attributing the resulting effect of the elimination to both the reporting enterprise and noncontrolling interests or only to the reporting enterprise in accordance with paragraph 810-10-35-3.

We note that over time, amendments to the consolidation guidance have made navigation of Topic 810 less user-friendly, including the effect of differing exclusions for private companies versus public business entities. As such, we welcome the Board's project on Consolidation Reorganization and look forward to the issuance of that proposal.