
Q&A Section 7100

Definition of a Public Business Entity

In accordance with FASB Accounting Standards Update (ASU) No. 2013-12, *Definition of a Public Business Entity—An Addition to the Master Glossary*, the FASB Accounting Standards Codification® (ASC) glossary was amended to include one definition of public business entity (PBE) in future use of accounting principles generally accepted in the United States of America (U.S. GAAP). Subsequent to the issuance of this ASU, the term has been used to not only delineate between PBE and non-PBE accounting alternatives, but also to establish effective dates and to scale disclosure requirements for new ASUs. This has directed attention to the definition of a PBE that had not previously existed. Sections 7100.01–7100.16 are intended to address questions regarding the definition of a PBE.

.01 Use of the Term “Security” in the Definition of a Public Business Entity

Inquiry—The FASB ASC glossary definition of a PBE uses the term “security.” ASU No. 2013-12 does not reference a specific definition of “security.” How should entities evaluate whether their financing instruments are securities?

Reply—The evaluation of financing instruments should utilize the definition of a security in FASB ASC 320, *Investments—Debt and Equity Securities*, which is the second definition of security in the FASB ASC glossary. Specifically, a *security* is defined as:

A share, participation, or other interest in property or in an entity of the issuer or an obligation of the issuer that has all of the following characteristics:

- a. It is either represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer.
- b. It is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment.



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- c. It either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

In FASB ASC Editorial and Maintenance Update No. 2017-06, FASB linked to the term security within the definition of a public business entity to the preceding definition of a security in the FASB ASC glossary.

[Issue Date: October 2017.]

.02 Types of Securities Included in the Definition of a Public Business Entity

Inquiry—The FASB ASC glossary definition of a PBE uses the term “security.” Are all forms of securities included or only certain forms (for example, equity securities) included?

Reply—All forms of securities are included for purposes of the evaluation of the criteria in the definition of a PBE. Entities should evaluate instruments they have issued regardless of the classification of the instrument as a liability or equity. Generally, throughout the following questions and answers, we will refer to these instruments as *financing instruments*, signifying an instrument that has been issued that needs to be evaluated to determine if it is a security. If the instrument is a security, an entity must analyze the instrument to determine if it causes them to be a PBE.

[Issue Date: October 2017.]

.03 Use of the Term “Over-the-Counter Market” in the Definition of a Public Business Entity

Inquiry—Criterion (d) of the FASB ASC glossary definition of a PBE states that a business entity (an entity other than a not-for-profit entity within the scope of FASB ASC 958, *Not-for-Profit Entities*, or an employee benefit plan accounted for under FASB ASC 960, *Plan Accounting—Defined Benefit Pension Plans*; FASB ASC 962, *Plan Accounting—Defined Contribution Pension Plans*; or FASB ASC 965, *Plan Accounting—Health and Welfare Benefit Plans*) that “has issued, or is a conduit bond obligor for, securities that are traded, listed, or quoted on an exchange or an over-the-counter market” is a PBE. How should an entity evaluate whether its securities (or securities for which it is a conduit bond obligor) meet this criterion?

Reply—The types of securities referenced in criterion (d) might include, for example, securities issued in public offerings that are exempt from registration under Sections 3 and 4 of the Securities Act of 1933. A business entity (an entity other than a not-for-profit entity within the scope of FASB ASC 958 or an employee benefit plan within the scope of FASB ASC 960, FASB ASC 962, or FASB ASC 965) should evaluate whether its issued securities (as defined in FASB ASC 320) are traded, listed, or quoted¹ on an exchange or over-the-counter (OTC) market.

¹ *Traded, listed, or quoted* can include any one of the three conditions. For example, if a security has not traded, but it has a currently executable bid or ask quote on a public over-the-counter (OTC) market, it would qualify under criterion (d). However, if a security does not meet any of the three criteria because it is not traded, listed, or quoted on a public OTC market it would not qualify under criterion (d).

One of the factors considered by FASB in defining a public business entity is noted in paragraph BC16 of ASU No. 2013-12:

...consistent with the existing definitions of nonpublic entity and public entity in the Accounting Standards Codification, entities that have securities that are traded, listed, or quoted on an exchange or an OTC market should be considered public.” Paragraph BC16 further indicates that “an OTC market includes an interdealer quotation or trading system for securities that are not listed on an exchange (for example, OTC Markets Group Inc., including the OTC Pink Markets, or the OTC Bulletin Board).

It is important to note that each of the example OTC markets are accessible by the public to execute trades. Further, the example OTC markets generally make various data points, including security listing, bid/ask pricing, or trade data (price and volume) publicly available. Based on discussions with FASB staff, markets that are not generally accessible by the public or that do not publish such data points are not OTC markets for the purposes of the PBE definition. Markets accessible by only certain investors (for example, qualified institutional or accredited investors) are not considered accessible by the public (that is, trading activity in nonpublic markets would not meet criterion [d]). Further, we understand that, based upon discussions with FASB staff, securities that can only be purchased by certain investors, such as 144A securities,² are not securities that can be traded by the public and are not subject to criterion (d), but are considered in the analysis of the other criteria. Throughout section 7100, the term *public OTC market* is used to draw a distinction between applicable and nonapplicable OTC markets (public and nonpublic).

[Issue Date: October 2017.]

.04 Use of the Term “Conduit Bond Obligor” in the Definition of a Public Business Entity

Inquiry—What is the meaning of the term “conduit bond obligor” within the FASB ASC glossary definition of a PBE? Are all entities that are conduit bond obligors considered PBEs?

Reply—As used in criterion (d) within the FASB ASC glossary definition of a PBE, the term *conduit bond obligor* refers to entities that are obligated for the repayment of conduit debt securities. As defined in the FASB ASC glossary, *conduit debt securities* are municipal securities (for example, certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments) issued by state or local governments, agencies, or instrumentalities (government entities) on behalf of a third-party such as a not-for-profit entity or for-profit entity. Municipal securities are exempt from registration under Section 3 of the Securities Act of 1933. Municipal securities issued in public offerings (when an underwriter purchases municipal securities from an issuer for reoffering to the public) trade thereafter in the public OTC market. Municipal securities issued in private placements generally are sold directly to qualified investors; they are not deemed to trade in public OTC markets because the markets in which they are available are limited to only certain investors.

² See further discussion of 144A securities in section 7100.14.

Typically, a PBE conduit bond obligor is a third party on whose behalf industrial development revenue bonds³ or similar securities have been issued. The definition of PBE excludes conduit bond obligors that meet the definition of a not-for-profit entity in the FASB ASC glossary and are within the scope of FASB ASC 958. Certain entities, such as certain healthcare entities, can be accounted for both⁴ within FASB ASC 958 and other industry specific guidance such as FASB ASC 954, *Health Care Entities*. In certain cases, the industry specific guidance can apply to both a for-profit entity or a not-for-profit entity; however, only not-for-profit entities accounted for within FASB ASC 958 are scoped out of the definition of a public business entity.

The definition of not-for-profit entity does not apply to entities that “provide dividends, lower costs, or other economic benefits directly and proportionately to their owners, members, or participants,” such as mutual insurance entities, credit unions, and certain cooperatives. If such an entity is a conduit bond obligor in a public offering of municipal securities, it would fall within the scope of the PBE definition because it is not within the scope of FASB ASC 958 and an analysis should be completed under criterion (d) to determine if it is traded, quoted, or listed on a public OTC market. If the conduit debt security is not traded, quoted, or listed, then entities should consider the applicability of criterion (e) within the FASB ASC glossary definition of a PBE.

Financing instruments like a conduit debt security (that is, a financing instrument that provides indirect access to public debt markets such as a trust preferred security) should not analogize to conduit bond obligors for purposes of analyzing the definition of a PBE.

[Issue Date: October 2017.]

.05 FINRA TRACE and MSRB EMMA Data and a Public Business Entity

Inquiry—Are the Financial Industry Regularity Authority (FINRA) Trade Reporting and Compliance Engine (TRACE) or Municipal Securities Rulemaking Board (MSRB) Electronic Municipal Market Access (EMMA) considered OTC markets? Should financial statements available in EMMA be considered under criterion (e) of the FASB ASC glossary definition of a PBE?

Reply—Trade reporting tools such as TRACE or the trade reporting feature within the EMMA are not themselves OTC markets.⁵ TRACE and EMMA report historical trades (price and volume) in eligible fixed income securities, but neither allows execution of trades. TRACE is a FINRA-developed vehicle that facilitates the mandatory reporting of secondary market transactions in eligible fixed income securities. All broker-dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE. Accordingly, TRACE can be a source of information for the analysis of criterion (d). EMMA includes similar trade reporting functionality to TRACE but is a repository for municipal securities with additional tools and reporting not available in TRACE. EMMA is the official SEC-designated repository for disclosure documents related to public offerings of municipal securities, and also provides historical trade

³ *Industrial development revenue bonds* are revenue bonds issued by a government on behalf of a private company, where the government's goal in providing the debt securities is to improve the economic and employment conditions of its region.

⁴ See *FASB Accounting Standards Codification*[®] (ASC) 958-10-15-3(g).

⁵ This includes both public OTC markets and nonpublic OTC markets.

prices, credit ratings, and other information related to those securities. EMMA trade data or financial statement information is generally relevant for the determination of the PBE status for conduit bond obligors under criteria (d) or (e); however, entities should consider their specific facts and circumstances.

[Issue Date: October 2017.]

.06 Use of the Phrase “Contractual Restriction on Transfer” and a Public Business Entity

Inquiry—Criteria (c) and (e) within the FASB ASC glossary definition of a PBE use the phrase “contractual restriction on transfer;” what types of restrictions would be included?

Reply—Although securities law includes definitions of contractual restrictions (for example, limitations on holding period, accredited, or qualified institutional buyers), the PBE definition does not refer to those legal definitions of contractual restrictions. Management preapproval for resale represents a contractual restriction for purposes of the PBE definition, as described in paragraph BC20 of ASU No. 2013-12. Based on discussions with FASB staff, a contractual restriction might be explicit in the contract or implicit because of the entity’s ownership structure.

Restrictions commonly included in S corporation shareholder agreements are examples of explicit contractual restrictions. Such agreements often require a shareholder to obtain management preapproval for transfer to ensure the S corporation maintains its pass-through status. An entity organized as an S corporation does not guarantee that such a restriction is included in the shareholder agreements; therefore, the presence of such a restriction should be validated by management when evaluating the entity’s status under the definition of a PBE. For S corporations with such a restriction in their shareholder agreements, management should also evaluate whether other outstanding financing instruments (such as debt securities) would cause the entity to be a PBE.

Contractual restrictions that limit transfers to existing shareholders also represent an explicit restriction because securities cannot be sold to new investors without the involvement of management. However, other provisions may not represent a contractual restriction on transfer and therefore would not meet the definition of a contractual restriction for purposes of applying the PBE definition. For example, a right of first refusal does not represent a contractual restriction on transfer because it only provides a designated party the right to purchase the security before it is sold and does not prevent the holder from transferring the security altogether.

Based on discussions with FASB staff, an implicit⁶ restriction on transfer is when explicit pre-approval on transfer is not required, but all securities are held by a parent entity (that is, the

⁶ The concept of an implicit restriction on a specific class of securities is based on discussions with FASB staff. It is limited to the specific facts and circumstances outlined (100 percent ownership of the class of securities by a single parent entity that controls the subsidiary).

entity is 100 percent wholly-owned by a single parent entity) that controls it. In effect, the parent entity controls the subsidiary and must approve the transfer of any of the securities currently outstanding, which constitutes an implicit restriction requiring the involvement of management.

[Issue Date: October 2017.]

.07 Use of the Terms “Prepare,” “Publicly Available,” “Financial Statements,” and “Periodic Basis” in the Definition of a Public Business Entity

Inquiry—Criterion (e) within the FASB ASC glossary definition of a PBE uses the terms “prepare,” “publicly available,” “financial statements,” and “periodic basis.” How are each of those defined?

Reply—Prepare and Publicly Available. Paragraph BC17 of ASU No. 2013-12 states that publicly available financial statements include those that are “made available publicly upon request or posted to an entity’s website for public access.” Preparing and making financial statements publicly available must be required by law, contract, or regulation to meet criterion (e). Accordingly, voluntarily preparing and making financial statements publicly available does not cause an entity to be a PBE under criterion (e); however, if such financial statements are voluntarily filed or furnished with the SEC, the entity would be a PBE under criterion (a). A requirement to solely prepare financial statements on a periodic basis is not sufficient to meet criterion (e), even if the entity voluntarily makes their financial statements publicly available because the requirement must include both an obligation to prepare financial statements and make them publicly available on a periodic basis.

The ability of a third party to request financial statements under statutes such as the Freedom of Information Act (FOIA) does not qualify as a requirement to prepare and make financial statements publicly available on a periodic basis. FOIA requests typically are granted on a case-by-case basis and subject to exemptions from disclosure. One such exemption, *Government Organization and Employees, U.S. Code Title 5, Section 552(b)(4)*, protects from public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” Accordingly, FOIA does not require an entity to make full financial statements publicly available on a periodic basis. Based on discussions with FASB staff related to assessing criterion (e), it is inappropriate to combine separate contractual, legal, and regulatory requirements to conclude that an entity is required to (1) periodically prepare financial statements, and (2) make financial statements publicly available on a periodic basis. Accordingly, preparing and submitting financial statements on a periodic basis for a license, permit, or other reason would not qualify under criterion (e) if the financial statements are only publicly available under FOIA, which is a separate requirement. FASB staff indicated that other combinations of laws, contracts, or regulations would not be appropriate in the analysis of criterion (e).

Financial statements. The definition indicates that financial statements are full U.S. GAAP financial statements, including footnotes. Footnote 1 to paragraph BC17 of ASU No. 2013-12 further indicates that “Reports of Condition and Income (Call Reports) that are required by federal

financial institution regulators are not considered U.S. GAAP financial statements for purposes of this Update because they, at a minimum, do not require compliance with all of the footnote requirements under U.S. GAAP.” Absent meeting criteria (a)–(d), an entity that is solely required to file a call report would not be a PBE under criterion (e); however, the FDIC requires banks with consolidated total assets of \$500 million or more as of the beginning of their fiscal years to file audited comparative annual financial statements⁷ and these financial statements are “available for public inspection.” The Federal Financial Institutions Examination Council clarified in its *Supplemental Instructions to the September 2014 Call Report* that these financial statements would constitute being “publicly available” for purposes of criterion (e). See additional discussion in section 7100.11.

Periodic basis. Paragraph BC18 of ASU No. 2013-12 specifies that interim or annual financial statements are examples of *periodic basis*, which means financial statements are prepared on a recurring rather than on a one-time basis.

[Issue Date: October 2017.]

.08 Application of the Definition of a Public Business Entity When Entities are Organized in Tiered Organizational Structures (Parent, Consolidated Subsidiaries, Nonconsolidated Entities, Guarantors, Equity Method Investees)

Inquiry—Should the FASB ASC glossary definition of a PBE be applied on an entity-by-entity basis, or should entities *look through*, or evaluate the organizational structure in totality, when applying the definition of a PBE?

Reply—The definition should be applied on an entity-by-entity basis, as demonstrated in the following fact patterns.

Holding company that is a PBE and controls a subsidiary that is a private company.

Assume a corporate structure in which a holding company owns 100 percent of the common stock issued by a subsidiary, and the holding company has issued unrestricted common equity securities to third party investors that trade on a public OTC market. Also, assume that the subsidiary does not meet criteria (a)–(c) and has no other instruments outstanding that would cause it to meet criteria (d)–(e) of the definition of a PBE. In this case, the two entities (a holding company and a subsidiary) might reach different conclusions regarding whether each is a PBE.

The holding company would be a PBE under criterion (d) because it has issued equity securities that trade on a public OTC market. Therefore, the holding company’s consolidated financial statements would be prepared using accounting standards and effective dates applicable to PBEs.

⁷ See FDIC Rules and Regulations Part 363, Annual Independent Audits and Reporting.

Assuming none of the other criteria are met, the subsidiary would not be a PBE because an implied transfer restriction exists with respect to its only class of issued securities, which are 100 percent-owned by the holding company that controls it. In reaching this conclusion, the subsidiary would not look through to evaluate the organizational structure in totality, even if the holding company's only asset is its investment in the subsidiary. Therefore, if the subsidiary prepares stand-alone financial statements, it would be able to use, for example, deferred effective dates and private company council alternatives not available to PBEs. Notwithstanding the subsidiary's stand-alone financial statements, the holding company must still obtain financial information of the subsidiary sufficient to comply with PBE based accounting standards and effective dates for the purposes of the holding company's consolidated financial statements.

Holding company that is a non-PBE, a subsidiary that is a PBE, and the consolidated entity as a whole.

Paragraphs BC33–BC34 of ASU No. 2013-12 address the fact pattern of a private holding company (parent) that controls and consolidates a subsidiary that is a PBE (for example, the subsidiary is an SEC registrant). The Board considered whether the consolidated entity as a whole would be considered a PBE if a subsidiary within the consolidated financial statements has some public shareholders (that is, the consolidated financial statements present a noncontrolling interest owned by public shareholders). The Board concluded that the presence of a noncontrolling interest owned by public shareholders does not cause the consolidated entity as a whole to be a PBE. For example, if the subsidiary meets criterion (d) within the FASB ASC glossary definition of a PBE due to outstanding securities that trade on an exchange or a public OTC market, the consolidated entity as a whole would not meet criterion (d) unless the parent has its own securities outstanding that trade on an exchange or public OTC market. Although the example is written in terms of equity securities, the analysis would be the same for outstanding debt securities (that is, there does not have to be a noncontrolling interest to conclude the consolidated entity is not a PBE). Further, the same analysis applies regardless of the reason the subsidiary is determined to be a PBE.

Nonconsolidated variable interest entity.

The same entity by entity analysis would apply to an entity that issues debt securities (the debt issuer) to a nonconsolidated variable interest entity (VIE) that, in turn, issues unrestricted securities (for example, trust preferred securities that trade on an exchange or a public OTC market) to third party investors. The debt issuer is not required to look through the VIE for the purposes of assessing whether the debt issuer is a PBE. However, the debt issuer still needs to evaluate whether any of the other criteria are met on a stand-alone basis. For example, the debt securities issued to the VIE need to be evaluated under criterion (e), and the debt issuer might determine that the debt securities are restricted if the VIE cannot sell

the securities without the sponsor's or transferor's involvement. Further, the debt issuer may not have a requirement to periodically prepare financial statements and make them publicly available. It would not be appropriate to analogize to conduit bond obligor or conduit debt securities for purposes of analyzing such a structure.

Further, if the facts changed and the VIE was consolidated, the VIE would be considered a subsidiary of the parent entity and the applicable analysis in the above sections would apply.

Equity method considerations.

PBE Analysis of Equity Method Investees

Equity method investees are analyzed on an entity-by-entity basis to determine if they meet the definition of a PBE. The PBE status of the equity method investor may also be relevant to the determination of the status of the equity method investee when the equity method investor is a PBE under criterion (a). In particular, when the equity method investor is a PBE under criterion (a) and the equity method investee's financial statements or financial information are required to be or are included in the equity method investor's filing with the SEC, the equity method investee is a PBE. In the following scenarios (not all inclusive), the equity method investee would be a PBE when the investor is a PBE under criterion (a):

- The equity method investee is significant under Rule 3-09 of Regulation S-X and the equity method investor is required to provide separate financial statements of the investee in its SEC filings
- The acquisition of an interest in a business accounted for under the equity method is significant under Rule 3-05 of Regulation S-X, which results in a requirement to provide financial statements or financial information of the equity method investee in the acquirer's SEC filings
- The equity method investee is significant (individually or in the aggregate with other equity method investments) under Rule 4-08(g) of Regulation S-X and the investor is required to provide summarized financial information of the investee(s) in its SEC filings

Per ASU No. 2013-12, if an entity (for example, an equity method investee) is a PBE solely because its financial statements or financial information is required to be or is included in another entity's filing with the SEC, "the [equity method investee] is only a public business entity for purposes of financial statements that are filed or furnished with the SEC," and the equity method investee may prepare financial statements using non-PBE standards or effective dates for purposes other than filings with the SEC.

Based on a SEC staff member’s speech at the 2016 AICPA National Conference on SEC and PCAOB Developments,⁸ if an entity does not otherwise meet the definition of a PBE (does not meet criteria [a]–[e] on a stand-alone basis, including not filing or furnishing financial statements or financial information in another entity’s SEC filing), amounts recognized in the equity method investor’s financial statements related to recognizing its share of the earnings or losses of the investee (the equity method pick-up by the equity method investor) “would not be considered financial information included in a filing with the SEC under the FASB’s definition of [PBE].” As a result, an equity method investee who is not otherwise a PBE would not become a PBE solely due to a PBE investor⁹ recording its share of equity method earnings or losses.

Effective Dates, Accounting Alternatives, and the Equity Method Pick-up

If an equity method investee is not a PBE, it can elect to apply deferred effective dates or non-PBE accounting alternatives,¹⁰ or both, for non-PBEs as applicable in its stand-alone financial statements. The following table discusses the ability to apply deferred effective dates and non-PBE accounting alternatives, as well as the implications on the investor’s equity method pick-up.

		Criterion (a) PBE Investor	Criteria (b)–(e) PBE Investor	Non-PBE Investor
Effective dates	PBE Investee	The investor and investee generally ⁽¹⁾ cannot elect deferred effective dates. However, if applicable, ⁽²⁾ the investee might apply the deferred effective date guidance discussed by the SEC staff at July 20, 2017, EITF Meeting (Staff Announcement, discussed in section 7100.09). If the investee applies the Staff Announcement, the equity method pick-up by the criterion (a) PBE investor would not need to be adjusted to conform the adoption dates.	The investee is a PBE and generally ⁽³⁾ cannot use deferred effective dates for standalone financial statements. Assuming the investee is a PBE for purposes that make the July 20, 2017, SEC Staff Announcement not applicable, the effective dates should be aligned and no adjustments to the equity method pick-up would be necessary.	The investee is a PBE and generally ⁽³⁾ cannot use deferred effective dates for stand-alone financial statements. The non-PBE investor can apply deferred effective dates, but should not conform the investee’s PBE effective date adoption for purposes of the equity method pick-up.

⁸ <https://www.sec.gov/news/speech/wiggins-2016-aicpa.html>.

⁹ For example, an SEC registrant investor or a bank investor that is also considered a public business entity because of its filing requirements under Section 12(i) of the Securities Exchange Act of 1934.

¹⁰ Non-public business entity (Non-PBE) accounting alternatives include both standards originated by the Private Company Council as well as other accounting alternatives that have been provided by FASB for use by non-PBEs.

	Non-PBE investee	Deferred effective dates are allowed for purposes of the non-PBE investee financial statements and for purposes of the criterion (a) PBE investor's equity method pick-up (no adjustment for effective date differences).	Deferred effective dates are allowed for purposes of the non-PBE investee financial statements and for purposes of the criteria (b)–(e) PBE investor's equity method pick-up, no adjustment is required.	Deferred effective dates are allowed for purposes of the non-PBE investee financial statements and for purposes of the non-PBE investor's equity method pick-up, no adjustment is required.
Investee non-PBE accounting alternatives⁽⁴⁾	PBE Investee	The investor and investee entities cannot elect non-PBE accounting alternatives.	The investor and investee entities cannot elect non-PBE accounting alternatives.	The investor can elect non-PBE accounting alternatives. The investee cannot apply non-PBE accounting alternatives. An investor should not conform the investee's accounting policy for purposes of the investor's equity method pick-up.
	Non-PBE investee	The investee can elect non-PBE accounting alternatives. However, generally these accounting alternatives are not available under GAAP for criterion (a) PBE investors. If material, such alternatives may need to be adjusted by the investor during its equity method pick-up.	The investee can elect non-PBE accounting alternatives. Based on discussion with FASB staff, the accounting policies do not need to be conformed by the investor for purposes of the equity method pick-up. However, the investor can elect to conform the accounting policies of the investee for purposes of the equity method pickup if conforming reverses a non-PBE accounting alternative elected by the investee. ⁽⁵⁾	The investee and investor can elect non-PBE accounting alternatives. The investor can elect to conform the accounting policies of the investee for purposes of the equity method pickup if conforming reverses a non-PBE accounting alternative elected by the investee. ⁽⁵⁾

(1) Emerging Growth Companies (EGCs) can elect to defer adopting new or revised financial accounting standards applicable to public business entities (PBEs) until non-PBEs are required to comply, which may result in an extended transition period (deferred effective dates) depending on the standard issued.

(2) The Staff Announcement is not applicable to entities that are PBEs for reasons other than filing or furnishing financial statements or financial information in another entity's filing with the SEC. The Staff Announcement is only applicable to adoption of FASB ASC 606, *Revenue from Contracts with Customers*, and FASB ASC 842, *Leases*.

- (3) Exceptions include the aforementioned Staff Announcement or the extended transition periods allowed for EGCs, if elected.
- (4) Non-PBE accounting alternatives include both standards originated by the Private Company Council as well as other accounting alternatives that have been provided by FASB for use by non-PBEs.
- (5) Generally, accounting policies are not permitted to be conformed; however, based on discussions with FASB staff, exceptions might exist in certain circumstances. An example would be if an investor planned to go public and would become a PBE upon registration with the SEC and wants to conform accounting policies when recording its equity method pick-up.

Guarantees of debt issued by a parent or subsidiary.

In circumstances when a parent has issued a guarantee on the debt issued by a subsidiary (or vice versa), the same entity by entity approach should be followed. If the financial guarantee does not cause the guarantor to meet any of the criteria in the definition of a PBE, guarantors should not be considered substantively equivalent to a conduit bond obligor.

Generally, the circumstances in which a guarantee would cause an entity to be a PBE would be limited to guarantors that may be required to file or furnish financial statements or financial information with the SEC under Regulation S-X, Rule 3-10, which would affect the analysis under criterion (a).

In all circumstances, the subsidiary's PBE status is not relevant to the evaluation of the parent guarantor's PBE status.

Conditions of criterion (e) are met at different levels of the consolidated company.

The analysis should be performed on an entity-by-entity basis. For example, when evaluating criterion (e), both conditions—(1) one or more securities that are not subject to contractual restrictions on transfer, and (2) required by law, contract, or regulation to prepare U.S. GAAP financial statements and make them publicly available on a periodic basis—must be met by the individual entity being analyzed for it to meet criterion (e). This is consistent with the Board's conclusion in paragraph BC17 of ASU No. 2013-12, which states that “the Board decided to clarify in the final Update that an entity must meet all conditions in criterion (e) to be considered a public business entity.”

To illustrate, assume a corporate structure in which a holding company owns 100 percent of the common stock issued by a subsidiary, which are the subsidiary's only securities outstanding. An implicit contractual restriction exists and, as such, the subsidiary does not meet part (i) of criterion (e). Further, assume the holding company issues unrestricted securities to investors, and the holding company meets part (i) of criterion (e) but does not meet part (ii) of criterion (e). If the subsidiary has a regulatory requirement to periodically prepare U.S. GAAP financial statements and make them publicly available, but the parent does not have such a requirement, then neither the holding company nor the subsidiary meet both aspects

of criterion (e). This is because the holding company does not have a requirement to periodically prepare financial statements and make them publicly available, and the subsidiary's only securities outstanding are implicitly restricted from transfer given the 100 percent ownership by the holding company. Each entity fails to meet all conditions of criterion (e) individually, and the entities are not combined for purposes of evaluating the definition of a PBE. The same analysis applies if the fact pattern is reversed; that is, the holding company has a regulatory requirement to periodically prepare U.S. GAAP financial statements and make them publicly available, but its securities are contractually restricted from transfer, and the subsidiary has an outstanding security that is not restricted, but it does not have a requirement to prepare U.S. GAAP financial statements and make them publicly available.

[Issue Date: October 2017.]

.09 Financial Statements or Financial Information Filed With the SEC and Considerations for Effective Dates and the Definition of a Public Business Entity

Inquiry—Are there any effective date accommodations available to PBE entities that otherwise would not meet the definition of a PBE, except for a requirement to include or the inclusion of its financial statements or financial information in another entity's filing with the SEC?

Reply—On July 20, 2017, the SEC staff provided an SEC Staff Announcement at the Emerging Issues Taskforce meeting (codified¹¹ in FASB ASU No. 2017-13, *Revenue Recognition [Topic 605], Revenue from Contracts with Customers [Topic 606], Leases [Topic 840], and Leases [Topic 842]: Amendments to SEC Paragraphs Pursuant to the Staff Announcement at the July 20, 2017 EITF Meeting and Rescission of Prior SEC Staff Announcements and Observer Comments*).

The following is the text of SEC Staff Announcement: Transition Related to Accounting Standards Updates No. 2014-09 and 2016-02.

FASB Accounting Standards Updates No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, issued in May 2014 and codified in ASC Topic 606, *Revenue from Contracts with Customers*, and No. 2016-02, *Leases (Topic 842)*, issued in February 2016 and codified in ASC Topic 842, *Leases*, provide effective dates that differ for (1) **public business entities** and certain other specified entities and (2) all other entities. The SEC staff has received inquiries from stakeholders regarding the application of the effective dates of ASC Topic 606 and ASC Topic 842 for a public business entity^{FN1} that otherwise would not meet the definition of

¹¹ FASB ASC 606-10-S65-1 and FASB ASC 842-10-S65-1.

a public business entity except for a requirement to include or the inclusion of its financial statements or financial information in another entity's filing with the SEC.

The transition provisions in ASC Topic 606 require that a public business entity and certain other specified entities adopt ASC Topic 606 for annual reporting periods beginning after December 15, 2017, including interim reporting periods within that reporting period.^{FN2} All other entities are required to adopt ASC Topic 606 for annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019.

The transition provisions in ASC Topic 842 require that a public business entity and certain other specified entities adopt ASC Topic 842 for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years.^{FN3} All other entities are required to adopt ASC Topic 842 for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020.

In response to the stakeholder inquiries outlined above, the SEC staff would not object to a public business entity that otherwise would not meet the definition of a public business entity except for a requirement to include or the inclusion of its financial statements or financial information in another entity's filing with the SEC adopting (1) ASC Topic 606 for annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019, and (2) ASC Topic 842 for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020.

A public business entity that otherwise would not meet the definition of a public business entity except for a requirement to include or the inclusion of its financial statements or financial information in another entity's filing with the SEC may still elect to adopt ASC Topic 606 and ASC Topic 842 according to the public business entity effective dates outlined above.

This announcement is applicable only to public business entities that otherwise would not meet the definition of a public business entity except for a requirement to include or the inclusion of its financial statements or financial information in another entity's filing with the SEC. This announcement is not applicable to other public business entities.

FN 1 The definition of Public Business Entity in the FASB's ASC Master Glossary states, in part, the following:

A public business entity is a business entity meeting any one of the criteria below...

- a. It is required by the U.S. Securities and Exchange Commission (SEC) to file or furnish financial statements, or does file or furnish financial statements (including voluntary filers), with the SEC (including other entities whose financial statements or financial information are required to be or are included in a filing) . . .

An entity may meet the definition of a public business entity solely because its financial statements or financial information is included in another entity's filing with the SEC. In that case, the entity is only a public business entity for purposes of financial statements that are filed or furnished with the SEC.

FN 2 Early adoption of ASC Topic 606 is permitted for public business entities and certain other specified entities only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period.

FN 3 Early adoption of ASC Topic 842 is permitted for public business entities and certain other specified entities, as well as for all other entities.

[Issue Date: October 2017.]

.10 Accounting Standard Update Effective Dates and the Definition of a Public Business Entity

Inquiry—Do non-PBEs always receive deferred effective dates?

Reply—No. Each standard has specific effective date guidance. Accordingly, entities that are not PBEs may still have an early effective date. Additionally, FASB intends to address the applicability of each standard for PBEs, not-for-profit entities, and employee benefit plans separately, and may align effective dates between certain not-for-profit entities, employee benefit plans, and PBEs. For example, ASU No. 2014-09¹² is effective for PBEs, certain not-for-profit entities, and certain employee benefit plans on the same effective date. Accordingly, the conclusion of whether or not an entity is a PBE is not the sole determinant of the effective date. For example, a not-for-profit entity that would not be a PBE may still have to use the same effective date as PBEs when adopting ASU No. 2014-09.

[Issue Date: October 2017.]

¹² As deferred by FASB Accounting Standards Update No. 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date*.

.11 Evaluating the Definition of Public Business Entity for Financial Institutions Subject to Section 36 of the Federal Deposit Insurance Act and Part 363 of the FDIC Rules and Regulations

Inquiry—Is a financial institution subject to the Federal Deposit Insurance Corporation Improvement Act (FDICIA) always a PBE?

Reply—No. An insured depository institution (IDI) subject to FDICIA¹³ needs to separately evaluate each entity in its organizational structure using each of the criteria in the FASB ASC glossary definition of a PBE. For example, assume an IDI subject to FDICIA does not meet criteria (a)–(d). Criterion (e) includes two conditions: (1) the entity has one or more securities that are not subject to contractual restrictions on transfer, and (2) the entity is required by law, contract, or regulation to prepare U.S. GAAP financial statements and make them publicly available on a periodic basis. As noted in the definition of a “public business entity” in the master glossary of the Federal Financial Institutions Examination Council (FFIEC) Call Report instructions:¹⁴

An insured depository institution with \$500 million or more in total assets as of the beginning of its fiscal year is required by Section 36 of the Federal Deposit Insurance Act and Part 363 of the FDIC’s regulations, “Annual Independent Audits and Reporting Requirements,” to prepare and make publicly available audited annual U.S. GAAP financial statements. In certain circumstances, an insured depository institution with \$500 million or more in total assets that is a subsidiary of a holding company may choose to satisfy this annual financial statement requirement at a holding company level rather than at the institution level. An insured depository institution of this size that satisfies the financial statement requirement of Section 36 and Part 363 at either the institution level or the holding company level would meet the fifth criterion’s second condition.

The IDI subject to FDICIA has a regulatory requirement to prepare U.S. GAAP financial statements and make them publicly available on a periodic basis regardless of whether it satisfies that requirement at the IDI or holding company level. If the consolidated financial statements of the holding company are used to fulfill the regulatory requirement of the IDI, it does not mean that the holding company has met the second condition of criteria (e) because the regulatory requirement exists at the IDI level.

IDIs subject to FDICIA need to determine if any financing instruments outstanding are a security and lack a contractual restriction. IDIs organized as a corporation typically have issued some form of stock that is a security (for example, common or preferred stock). However, other forms of financing instruments could be considered debt securities and will also need to be evaluated. In circumstances when the only IDI securities outstanding are common stock, entities should consider if a restriction exists on that common stock. If a holding company is present in the organizational structure that controls the IDI by owning 100 percent common stock, the IDI has an implicit restriction on transfer of the common stock. If no holding company is present in the organizational structure, the IDI must determine if any form of a contractual restriction exists on

¹³ This applies to any insured depository institution with respect to any fiscal year in which its consolidated total assets as of the beginning of such fiscal year are \$500 million or more.

¹⁴ https://www.fdic.gov/regulations/resources/call/crinst/2016-09/916GLOSS_093016.pdf.

the transfer of the common stock. If no such restriction exists, the IDI would be considered a PBE under criterion (e) because it meets both conditions. Generally, in either case (holding company or no holding company), if an entity that presently does not meet any criteria to be considered a PBE and elects to follow non-PBE effective dates or applies PCC alternatives, management is responsible for having internal controls in place to monitor new issuances of financing instruments as well as existing financing instruments to ensure appropriate conclusions are reached about the status of the entity (or the entities) as a PBE.

The FDICIA requirement to prepare and make financial statements publicly available on a periodic basis is not the same as the requirement in the Securities Exchange Act of 1934 to file or furnish financial statements with a regulatory agency other than the SEC (for example, Section 12[i] of the act). Therefore, the requirements of FDICIA are not applicable to the analysis of criterion (b) of the definition of a PBE but are applicable to the evaluation of criterion (e).

[Issue Date: October 2017.]

.12 Mutual Depository Institutions and the Definition of a Public Business Entity

Inquiry—Does the FASB ASC glossary definition of a PBE affect entities such as credit unions or mutual thrifts?

Reply—The FASB ASC glossary definition of a PBE excludes not-for-profit entities within the scope of FASB ASC 958. Although a credit union is organized as a not-for-profit for tax purposes, a credit union is not in the scope of FASB ASC 958 and is explicitly excluded from the FASB ASC glossary definition of a not-for-profit entity. Accordingly, credit unions need to assess whether they meet the PBE definition.

Generally, mutual depository institutions such as credit unions or mutual thrifts do not issue equity securities. However, a mutual depository institution might issue a financing instrument in the form of debt security. For example, a mutual depository institution might have issued certificates of deposit that might be considered a security. Additionally, certain credit unions may have issued various forms of subordinated debt that might be considered a security. Low-income designated credit unions and corporate credit unions can also issue secondary capital which might be issued in a form that is considered a security. Generally, financing instruments of these types are identified on the Form 5300 for a credit union. Similar data is available on the FFIEC Call Report for other mutual entities. If criteria (a)–(c) are not applicable, if such an entity has any debt or equity securities outstanding, a careful analysis of criteria (d)–(e) should be completed.

Criterion (d) within the FASB ASC glossary definition of a PBE is met if an entity has issued securities that are traded, quoted, or listed on an exchange or an OTC market. It is uncommon for a credit union or mutual thrift to issue a security that is traded on an exchange or public OTC market. Nonetheless, to the extent that securities are outstanding, an analysis should be completed to determine if any of the securities are traded, quoted, or listed on an exchange or a public OTC market.

Criterion (e) within the FASB ASC glossary definition of a PBE is met if an entity has issued one or more unrestricted securities, and the entity is required to prepare and periodically make publicly available U.S. GAAP financial statements, including footnotes (financial statements). Both a credit union and a mutual thrift may have a requirement to make their financial statements publicly available on a periodic basis. For example, mutual thrifts may be required to make financial statements publicly available under Section 36 of the Federal Deposit Insurance Act and Part 363 of the FDICIA.¹⁵ Credit unions do not have to comply with FDICIA and generally only have to make their financial statements available to members or the National Credit Union Administration (NCUA) upon request under NCUA Rule 715.10. An *upon request* requirement for members or the NCUA does not meet the requirement to periodically prepare financial statements and make them publicly available under criterion (e). However, other requirements for credit unions may exist, such as at the state level, that could obligate the credit union to prepare and make their financial statements publicly available on a periodic basis which would cause the credit union to be a PBE under criterion (e) if any form of an unrestricted debt or equity security is outstanding.

[Issue Date: October 2017.]

.13 Brokered Certificates of Deposit and the Definition of a Public Business Entity

Inquiry—How would a brokered certificate of deposit (CD) be evaluated under the FASB ASC glossary definition of a PBE?

Reply—Brokered CDs are most commonly issued by utilizing The Depository Trust Company (DTC) as a sub-custodian. A financial institution establishes the CD by recording the CD on their books in the name of DTC as the agent for its participants (that is, a broker-dealer or another financial institution offering the CD to its customers) and issuing a master certificate of deposit (master certificate) to DTC to set the terms of the CDs. Typically, the CDs are issued in denominations of \$1,000 and the master certificate specifies the number of CDs issued. Each \$1,000 CD can be transferred, pledged, or sold independently of any other CD as evidenced by the master certificate.

Based on discussions with FASB staff:

- Brokered CDs issued in this form that are traded OTC with publicly quoted prices would meet criterion (d) of the FASB ASC glossary definition of a PBE and result in the entity that issued the securities being a PBE.
- Brokered CDs that are not traded OTC with publicly quoted prices would not meet criterion (d) and would not need to be evaluated under criterion (e).
- The conclusions reached regarding brokered CDs are solely for purposes of determining an entity's status as a PBE.

¹⁵ Mutual thrifts with requirements to make financial statements publicly available on a periodic basis under the Federal Deposit Insurance Corporation Improvement Act would be a PBE if they have any form of unrestricted debt or equity securities outstanding.

[Issue Date: October 2017.]

.14 Private Resales (Rule 144 and Rule 144A) and the Definition of a Public Business Entity

Inquiry—How are private resales under SEC Rules 144 or 144A (Rule 144 and Rule 144A securities) analyzed under the FASB ASC glossary definition of a PBE?

Reply—Rule 144 and 144A securities involve different types of resale rights. Assuming the only security outstanding is a Rule 144 or Rule 144A security and the entity has not filed a registration statement with the SEC (that is, criterion [a] is not applicable), the analysis would focus on criteria (d) and (e) of the FASB ASC glossary definition of a PBE.

Criterion (d) analysis.

144A Security

Criterion (d) is not relevant to a resale under Rule 144A as such securities can only be sold to qualified institutional buyers unless the securities become registered with the SEC, which would affect the analysis of criterion (a). That is, if not registered, such securities are not traded, listed, or quoted on an exchange or an OTC market.

144 Security

Criterion (d) can be relevant for a resale under Rule 144. Rule 144 provides a safe harbor for the resale of “restricted securities” if certain conditions are met. For example, certain holding period, public information, trading volume, and notice requirements may need to be met. Ultimately, if the conditions are met and the securities can be sold to the public, analysis of whether the securities trade on a public OTC market would be required.

Criterion (e) analysis.

144A Security

Criterion (e) is relevant to a Rule 144A security. Rule 144A does not require full U.S. GAAP financial statements with footnotes to be made publicly available (only a comparative balance sheet and income statement). However, an entity with such a security outstanding might have another applicable requirement, such as FDICIA, to prepare and make their full U.S. GAAP financial statements publicly available periodically. If such a requirement exists, it is important to determine if the security is contractually restricted or unrestricted. Generally, a 144A security is restricted for resale to a qualified institutional buyer; however, such a restriction is not a

management preapproval on resale restriction as contemplated in the PBE definition. Accordingly, if a 144A security is outstanding without a management preapproval restriction and a requirement to periodically prepare full U.S. GAAP financial statements and make them publicly available exists, the entity is likely a PBE under criterion (e).

144 Security

Criterion (e) is also relevant to a Rule 144 security. Like a 144A security, Rule 144 does not require full U.S. GAAP financial statements with footnotes. However, other requirements might apply, such as FDICIA to periodically prepare and make full U.S. GAAP financial statements publicly available. If such a requirement exists, it becomes necessary to determine if the Rule 144 security is contractually restricted. If the security can be resold without management preapproving resale (that is, the Rule 144 security has been registered or can be resold under an available exemption from registration such as to qualified institutional or accredited investors) the security would not be considered contractually restricted under criterion (e). Other restrictions can also exist that would need to be analyzed to determine whether they are a management preapproval restriction to the extent they are present.

[Issue Date: October 2017.]

.15 Insurance Companies and the Definition of Public Business Entity

Inquiry—Is an insurance entity considered a PBE under the FASB ASC glossary definition?

Reply—An insurance entity may or may not be considered a PBE based on its facts and circumstances and an analysis of each of the criteria in the definition of a PBE. The following are examples of common insurance arrangements and considerations for determining if an insurance entity is a PBE. It should be noted that the list of examples is not all inclusive.

The definition of a PBE excludes not-for-profit entities within the scope of FASB ASC 958. The FASB ASC glossary definition of a not-for-profit entity explicitly excludes “entities that provide dividends, lower costs, or other economic benefits directly and proportionately to their owners, members, or participants, such as mutual insurance entities.” Therefore, such entities that do not meet the FASB definition of a not-for-profit entity must be analyzed to determine PBE status.

Insurance entity that is required to file statutory accounting financial statements with an insurance regulator.

An insurance entity might be required to make statutory accounting financial statements publicly available. Such a requirement would not meet the second condition of criterion (e) to periodically prepare full U.S. GAAP financial statements and make them publicly available.

Insurance entity that is required to file stand-alone U.S. GAAP financial statements with a regulator.

Some insurance entities (such as captives, risk retention groups, and health plans) may file stand-alone U.S. GAAP financial statements with the applicable state regulator instead of statutory accounting financial statements.

The elements of criterion (e) under the FASB ASC glossary definition of a PBE should be analyzed. Generally, the financial statement requirement and public availability of financial statements for insurance companies is a facts and circumstances analysis.

The insurance entity should determine if any securities are subject to contractual restriction on transfer and consider the discussion in section 7100.06. This includes both explicit and implicit restrictions as discussed in section 7100.06. Many wholly owned (100 percent) entities, such as captives, will not qualify as PBEs due to this analysis.

If it is determined that one or more securities are not subject to contractual restriction, an assessment of the remaining requirements of criterion (e) should be made. As a reminder, entities should determine if they have met all of the following requirements of criterion (e):

- a. Is required by law, contract, or regulation
- b. To prepare and make publicly available
- c. Full U.S. GAAP financial statements including footnotes
- d. On a periodic basis

If the financial statements are made publicly available on a voluntary basis (regardless of who makes them publicly available), the entity would not meet all of the previous requirements. Entities should refer to section 7100.07 and consider the discussion of the terms *prepare*, *publicly available*, *financial statements*, and *periodic basis* in their evaluation of criterion (e). As a reminder, it is inappropriate to combine the ability to request financial statements under statutes such as the Freedom of Information Act (FOIA) with other requirements to prepare financial statements because FOIA does not qualify as a requirement (by law, contract, or regulation) to prepare and make financial statements publicly available on a

periodic basis as FOIA does not include a requirement to prepare financial statements. This would also be applicable to state statute or regulation.

Separate accounts registered under the 1940 Act that file U.S. GAAP financial statements with the SEC.

Separate accounts of an insurance entity are used to support variable annuity contracts and variable life insurance policies (hereinafter referred to together as variable contracts). Separate accounts can be registered investment companies under the Investment Company Act of 1940 (1940 Act). A variable contract can be both a security registered under the Securities Act of 1933 and an insurance policy filed with, and approved and regulated by, state insurance departments.

Separate accounts that are registered under the 1940 Act and are required to file U.S. GAAP financial statements with the SEC in product filings for variable contracts (N-3, N-4, or N-6) would meet criterion (a).

Separate accounts registered under the 1940 Act that are exempt from filing U.S. GAAP financial statements with the SEC.

Separate accounts that are registered under the 1940 Act and that are exempt from submitting product filings (N-3, N-4, or N-6) for variable contracts (referred to as Great Wested), but do file U.S. GAAP financial statements on the SEC's website (for example, under SEC Rule N-30D) where the financial statements are publicly available, would meet criterion (a).

Insurance sponsor of a separate account filing.

An insurance entity that sponsors a separate account and includes its U.S. GAAP financial statements in product filings for variable contracts (N-3, N-4, or N-6) with the SEC would meet criterion (a).

Insurance entity subsidiary when the immediate or ultimate parent company is a PBE.

Like the discussion in section 7100.08, if an insurance subsidiary is deemed to not be a PBE but its immediate or ultimate parent company is a PBE, the subsidiary's stand-alone financial statements would be able to use deferred effective dates and private company council alternatives not available to PBEs. Notwithstanding the subsidiary's stand-alone financial statements, the parent company must still obtain financial information of the subsidiary sufficient to comply with PBE based accounting standards and effective dates for the purposes of the parent company's consolidated financial statements.

Surplus notes.

The issuance of surplus notes by an insurance entity may or may not cause the insurance entity to be considered a PBE based on the facts and circumstances of the arrangement and analysis of each of the criteria in the definition of a PBE.

[Issue Date: October 2017.]

.16 Brokers, Dealers, and Futures Commission Merchants and the Definition of a Public Business Entity

Inquiry—Is a broker, dealer, or future commission merchant considered a PBE?

Reply—Both issuer and non-issuer broker-dealers registered with the SEC are considered PBEs. Criterion (a) includes entities that are required to file or furnish financial statements or financial information with the SEC. Section 17(e)(1)(A) of the Securities Exchange Act of 1934 requires that registered broker-dealers annually file with the SEC a certified balance sheet and income statement. Rules 17a-5, 17a-12, and Form X-17A-5 require financial statements and financial information filed with the SEC to be prepared in accordance with U.S. GAAP. Further, certain affiliates of the broker-dealer monitored under the broker-dealer risk assessment program may be required to file financial statements or financial information with the SEC on forms such as Form 17-H. Such broker-dealer affiliates would also be considered PBEs.

Unlike SEC registered broker-dealers, entities registered with the Commodity Futures Trading Commission (CFTC) as introducing brokers or futures commission merchants do not file with the SEC, unless they are dual registered with both the CFTC and the SEC. Therefore, they are not PBEs under criterion (a) but could be a PBE under other criteria.

[Issue Date: October 2017.]