

Q&A on the public business entity definition

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The Financial Accounting Standards Board's (FASB) Accounting Standards Codification (ASC) contains multiple definitions of public and nonpublic companies (e.g., *nonpublic entity*, *public entity*, *publicly traded company* and *publicly traded entity*). However, starting in late 2013, the FASB generally utilizes one definition, *public business entity*, to specify the scope of accounting and reporting guidance. This definition also is used as a starting point for determining which entities are permitted to take advantage of the private-company accounting alternatives included within U.S. generally accepted accounting principles (GAAP).

Within the Master Glossary of the ASC, a public business entity is defined as follows:

A public business entity is a business entity (which excludes a not-for-profit entity within the scope of FASB Accounting Standards Codification (ASC) 958 or an employee benefit plan within the scope of ASC 960 through 965 on plan accounting) meeting any one of the following criteria:

- 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).
- b. It is required by the Securities Exchange Act of 1934 (the Act), as amended, or rules or regulations promulgated under the Act, to file or furnish financial statements with a regulatory agency, other than the SEC.
- c. It is required to file or furnish financial statements with a foreign or domestic regulatory agency in preparation for the sale of or for purposes of issuing securities that are not subject to contractual restrictions on transfer.
- d. It 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.
- e. It has one or more securities that are not subject to contractual restrictions on transfer, and it is required by law, contract, or regulation to prepare U.S. GAAP financial statements (including footnotes) and make them publicly available on a periodic basis (for example, interim or annual periods). An entity must meet both of these conditions to meet this criterion.

As used in the *public business entity* definition, the term *securities* includes the following based on the definition of *security* in the Master Glossary of the ASC:

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.
- 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.

As Section 7100 of the American Institute of Certified Public Accountants' (AICPA) [technical question and answer \(TQA\) document](#) clarifies, all forms of securities are included for purposes of the evaluation of the criteria in the definition of a *public business entity*, regardless of the classification of the instrument as a liability or equity.

The definition of *public business entity* differs from some of the existing definitions of public entity in the ASC. The *public business entity* definition specifies that:

- An entity that is required by the SEC to file or furnish financial statements with the SEC, or does file or furnish financial statements with the SEC, is considered a public business entity. Some of the existing definitions of public entity in the ASC do not include this criterion to define public entity.
- A consolidated subsidiary of a public company is not considered a public business entity for purposes of its standalone financial statements other than those included in an SEC filing by its parent or by other registrants or those that are issuers and are required to file or furnish financial statements with the SEC. Some of the existing definitions of public entity in the ASC consider a consolidated subsidiary of a public company to be public.
- A business entity that has securities that are not subject to contractual restrictions on transfer and that is by law, contract, or regulation required to prepare U.S. GAAP financial statements (including footnotes) and make them publicly available on a periodic basis is considered a public business entity. The existing definitions of public entity in the ASC do not include this criterion and do not consider an entity to be public unless it meets one of the other criteria included in the applicable definition (e.g., if it has debt or equity securities that trade either on a stock exchange or an over-the-counter market).

As indicated earlier, the definition of a public business entity has been and will continue to be used by the FASB to specify the scope of accounting and reporting guidance. In other words, the definition does not affect the definitions of other related preexisting terms in the ASC (e.g., public entity, publicly traded company) or the situations in which those definitions are used. The FASB may consider whether to replace a preexisting term with the term public business entity as part of a separate project.

The determination of whether an entity meets any of the criteria to be considered a public business entity can be difficult. The following are questions and answers (Q&As) focused on issues frequently encountered in making this determination.

Criterion (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).*

- ***Is a private company that is a consolidated subsidiary of a public company considered a public business entity for purposes of its own standalone financial statements?***

If a company meets the definition of public business entity only because its financial statements or financial information has to be included in another company's SEC filing (e.g., because it passes the significant subsidiary test under Regulation S-X, Rule 3-09, *Separate Financial Statements of Subsidiaries Not Consolidated and 50 Percent or Less Owned Persons*), then it is a public business entity only for that purpose. In other words, it is not considered a public business entity for purposes of its standalone financial statements that are not filed with or furnished to the SEC.

However, if for purposes of consolidation a private subsidiary has to prepare and provide financial information to its public company parent that follows public company U.S. GAAP, an election by the private subsidiary to apply private-company accounting alternatives when preparing standalone financial statements may not result in significant benefits.

- ***Is a private company that controls a public subsidiary considered a public business entity?***

No. A private company that controls and consolidates a public company in its financial statements should not be considered a public business entity. For purposes of both its standalone and consolidated financial statements, it is permitted to apply private-company accounting alternatives within U.S. GAAP.

In reaching this conclusion, the FASB considered that if a controlling private company is not permitted to apply private-company accounting alternatives in its consolidated financial statements, its private subsidiaries would be required to provide the parent with financial information prepared in accordance with public company U.S. GAAP, which could be costly to prepare and irrelevant to financial statement users.

- ***If an entity's financial statements or financial information is included in a filing with the SEC pursuant to any of the following SEC rules, does that entity meet the definition of a public business entity: (a) Regulation S-X, Rule 3-09, (b) Regulation S-X, Rule 3-05, Financial Statements of Businesses Acquired or to Be Acquired, or (c) Regulation S-X, Rule 4-08(g), Summarized Financial Information of Subsidiaries Not Consolidated and 50 Percent or Less Owned Persons?***

Yes. In those situations, the financial statements must be prepared using public company U.S. GAAP. As indicated in an earlier Q&A, if a company meets the definition of public business entity only because its financial statements or financial information has to be included in another company's SEC filing, then it is a public business entity only for that purpose. In other words, it is not considered a public business entity for purposes of its standalone financial statements that are not filed with or furnished to the SEC.

Criterion (d): *It 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.*

- ***How should an entity evaluate whether an over-the-counter (OTC) market exists?***

The following is noted in paragraph BC16 of Accounting Standards Update 2013-12, *Definition of a Public Business Entity: An Addition to the Master Glossary*: "The Board stated 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)."

In [TQA Section 7100.03](#), the AICPA noted markets that are not generally accessible by the public or that do not publish data points (e.g., bid/ask pricing or trade data) are not OTC markets for purposes of the public business entity definition. Further, markets accessible by only certain investors, would not meet criterion (d).

Criterion (e): *It has one or more securities that are not subject to contractual restrictions on transfer, and it is required by law, contract, or regulation to prepare U.S. GAAP financial statements (including footnotes) and make them publicly available on a periodic basis (for example, interim or annual periods). An entity must meet both of these conditions to meet this criterion.*

- **What does the concept publicly available include?**

The concept of *publicly available* as used in this criterion not only encompasses public filings of financial statements with regulators (e.g., a 10-K filing with the SEC), but also financial statements that are made publicly available upon request or upon being posted to an entity's website for public access.

However, keep in mind that it is not enough for an entity to make its U.S. GAAP financial statements publicly available on a periodic basis for this criterion of the public business entity definition to be met. An entity must be *required* (by law, contract or regulation) to prepare and make those financial statements publicly available on a periodic basis, and must also have one or more securities not subject to contractual restrictions on transfer. See a later Q&A for further discussion about contractual restrictions on transfer of a security.

- **Does a call report filed with federal financial institution regulators result in a bank being considered a public business entity?**

No. An entity has to provide a full set of U.S. GAAP financial statements (including footnotes) to meet this criterion. Reports of Condition and Income (call reports) that are required by federal financial institution regulators are not considered U.S. GAAP financial statements for this purpose because they, at a minimum, do not require compliance with all of the footnote requirements under U.S. GAAP.

- **Do banks with over \$500 million in assets that are required to file annual audited financial statements with the Federal Deposit Insurance Corp. (FDIC) meet the definition of a public business entity under this criterion?**

Banks with over \$500 million in assets are required to file annual audited U.S. GAAP financial statements with the FDIC and to make those financial statements available to the public upon request. Accordingly, if such a bank has one or more securities not subject to contractual restrictions on transfer, that bank would be considered a public business entity. See a later Q&A for further discussion about contractual restrictions on transfer of a security.

- **If a bank covenant requires an entity to provide the bank with quarterly U.S. GAAP financial statements, would those financial statements be considered publicly available?**

No. Financial statements provided to a lender or limited number of lenders are not considered publicly available.

- **If a nonpublic company, such as an LLC, places its U.S. GAAP financial statements on its website for its members and a login and password is required to access these financial statements, would those financial statements be considered publicly available? Nonmembers would not have access.**

No. Financial statements that can be accessed on an entity's website only by members or shareholders would not be considered publicly available.

However, even if financial statements posted to an entity's website did allow for public access and, as such, were considered publicly available, the entity would still not necessarily be considered a public business entity under this criterion. An entity must be *required* (by law, contract or regulation) to prepare and make those financial statements publicly available on a periodic basis, and must also

have one or more securities not subject to contractual restrictions on transfer. See a later Q&A for further discussion about contractual restrictions on transfer of a security.

- ***What are contractual restrictions on transfer of a security?***

Contractual restrictions on transfer of a security means sale of the securities is subject to management pre-approval. These restrictions limit the ability of the holder to transfer the security. Such restrictions may be contained in buy-sell, shareholder or other agreements. We do not believe that a right of first refusal held by the entity is a restriction on transfer of the security.

In [TQA Section 7100.06](#), the AICPA further clarifies a contractual restriction may be explicit in the contract or implicit based on an entity's ownership structure. For example, an implicit restriction on transfer exists when explicit pre-approval is not required, but all securities are held by a parent entity. As the parent entity controls the subsidiary and must approve the transfer of any of the securities, this effectively constitutes an implicit restriction requiring the pre-approval of management.

This criterion in the definition of public business entity considers only securities that are not subject to contractual restrictions on transfer because many private companies place restrictions on the sale of their securities in a secondary market and can control to whom they sell their securities. Securities that are subject to contractual restrictions on transfer generally are sold to a limited number and type of investors who often will have a greater ability to access management (characteristics consistent with a private company). Therefore, when these contractual restrictions exist, the entity is not considered a public business entity (provided it does not meet any of the other four criteria included in the definition of a public business entity).

For additional guidance on the application of the public business entity definition, refer to the AICPA's [TQA Section 7100](#).

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