

# Technical Line

FASB – final guidance

## A closer look at the new definition of a public business entity

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### What you need to know

- ▶ The FASB has issued a broad new definition of a public business entity (PBE) that it is using to consider whether an entity can use accounting alternatives developed by the Private Company Council (PCC) and other “private” company relief (e.g., disclosure, transition, effective date differences) the FASB provides in new standards.
- ▶ Companies should consider whether they might become PBEs before electing private company alternatives. Without transition relief from the FASB or the SEC, companies that become PBEs would have to retrospectively apply public company accounting and reporting requirements.
- ▶ The FASB is using the term prospectively, meaning it does not change whether an entity is considered public or nonpublic for other existing US GAAP requirements. The FASB has asked the PCC to consider researching whether to change or consolidate the various definitions of public and nonpublic entities that exist in US GAAP.
- ▶ Whether an entity is a PBE may not always be clear or may be a surprise. Over time, we expect the scope of the definition to become clear and better understood.

### Overview

The Financial Accounting Standards Board (the FASB or Board) has issued a broad new definition of a PBE that it is using to consider whether an entity can adopt accounting alternatives developed by the Private Company Council or use other types of private company relief (e.g., disclosure, transition, effective date differences) the FASB provides in new standards.



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The new [definition](#), which the FASB issued in late December 2013 and began using in new guidance, doesn't change whether an entity is considered public or nonpublic for earlier requirements in US GAAP such as segment reporting. The FASB has asked the PCC to consider researching whether to change or consolidate the various definitions of public and nonpublic entities that exist in US GAAP.

The new definition includes several types of entities that are not considered public under other existing definitions in US GAAP. For example, an entity is considered a PBE if its financial statements (or financial information) are included in another company's Securities and Exchange Commission (SEC) filing (e.g., an acquired business, significant equity method investee).

Some financial institutions that have considered themselves private are now PBEs if they file reports with regulatory agencies other than the SEC (e.g., certain banking regulators) under the Securities Exchange Act of 1934 (the Exchange Act). In addition, entities that have securities that are traded, listed or quoted on an exchange or an over-the-counter (OTC) market are considered PBEs. The Board stated that an OTC market includes an interdealer quotation or trading system for securities that are not listed on an exchange (e.g., OTC Markets Group, Inc., including the OTC Pink Markets and the OTC Bulletin Board).

Another change in practice is that a subsidiary of a public company is not automatically a PBE, as it is under one of the existing definitions of public entity in US GAAP.<sup>1</sup> That is, there may be cases in which an entity previously viewed as public will not be a PBE for its standalone financial statements.

The new definition excludes not-for-profit entities (NFPs) and employee benefit plans (EBPs). Instead, the FASB will consider on a standard-by-standard basis whether NFPs and EBPs can apply private company accounting alternatives or other private company relief provided within US GAAP.

After issuing the new definition of a PBE, the FASB amended the Master Glossary of the Accounting Standards Codification (ASC) to define a private company as "an entity other than a public business entity, a not-for-profit entity, or an employee benefit plan within the scope of Topics 960 through 965 on plan accounting."

## Definition of a public business entity

Accounting Standards Update (ASU) 2013-12, *Definition of a Public Business Entity*, states that a business entity is a public business entity if it meets any 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.”

To address questions raised by constituents, the guidance states that under criterion (a) “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.” In other words, the entity can elect the PCC alternatives for purposes of its financial statements that are not included in an SEC filing (its standalone financial statements).

The definition of a PBE is now effective and the FASB has begun using it in new standards, including final guidance it issued earlier this year allowing eligible private companies to elect goodwill accounting alternatives and a hedge accounting approach developed by the PCC for certain interest rate swaps.

## Scope implications of the new definition

The new definition requires entities to conclude whether they are eligible to use private company relief because more entities are considered public than under the other definitions of public entities in US GAAP. In this publication, we use the term private company relief to apply to both PCC accounting alternatives and any differences in effective dates, transition or disclosure requirements the FASB provides.

### **Financial statements included in an SEC filing – criterion (a)**

An entity that is required to file or furnish financial statements with the SEC or that does file or furnish financial statements with the SEC (e.g., voluntary filers) meets the definition of a PBE under criterion (a). The FASB decided that a requirement to file or furnish financial statements with the SEC should be the fundamental basis for distinguishing between PBEs and other entities because (1) users of financial statements of entities that issue securities in a public market generally lack direct access to management to obtain financial information, (2) there are a large number of these users, and (3) they have broader and more diverse needs for financial information than typical users of private company financial statements.

This led the FASB to also include in criterion (a) a reference to financial statements (or financial information) that are required to be or are included in another entity’s SEC filing. Therefore, in filings with the SEC, an otherwise private entity may be considered a PBE. For example, entities whose financial statements are included in a registrant’s SEC filing because they are significant acquirees under Rule 3-05 of Regulation S-X, significant equity method investees under Rule 3-09 of Regulation S-X, and equity method investees whose summarized financial information is included in a registrant’s SEC filing under Rule 4-08(g) of Regulation S-X are considered PBEs for purposes of such furnished or filed financial statements or financial information.

The FASB clarified that if an entity meets the definition of a PBE solely because its financial statements (or financial information) are included in another entity’s SEC filing, the entity is a PBE for purposes of filing or furnishing information with the SEC (and therefore must adhere to public company accounting requirements in filings with the SEC). However, it can still elect the PCC alternatives in its standalone financial statements.

Some non-issuers that are considered nonpublic under other definitions are now PBEs.

The Board said that allowing a private entity to use the PCC alternatives in its standalone financial statements may provide relevant information to users of those financial statements (e.g., a lender or investors in a private company) while reducing costs. However, it is unclear whether many companies will elect to do this because of the cost and complexity of maintaining two sets of books and records.

### How we see it

- Defining PBEs to include entities whose financial statements (or financial information) are furnished or filed in another entity's SEC filing is much broader than the other definitions of public entities and publicly traded companies in US GAAP. In the other definitions, whether an entity was a public "issuer" was determinative.
- This criterion may make many otherwise private companies think twice about using PCC alternatives if their exit or capital-raising strategies include initial public offerings, sales to public companies or significant investments from public companies.

### Filing or furnishing financial statements with a regulator other than the SEC – criterion (b)

Some financial institutions are required by the Exchange Act to file financial statements with the Federal Deposit Insurance Corporation, the Federal Reserve or the Office of the Comptroller of the Currency, but not the SEC.<sup>2</sup> Similarly, some insurance companies are required by the Exchange Act to file financial statements with state insurance regulators, but not the SEC.<sup>3</sup> These entities are considered PBEs under criterion (b), which includes entities that are required by the Exchange Act to file or furnish financial statements with a regulatory agency other than the SEC.

### How we see it

- This is a narrow criterion that applies to certain financial institutions and insurance companies.

### Filing or furnishing financial statements to issue securities – criterion (c)

Entities that file or furnish financial statements with a foreign or domestic regulatory agency to prepare to sell or to issue securities that are not subject to contractual restriction on transfer are considered PBEs under criterion (c).

### How we see it

- This criterion primarily includes entities that file or furnish US GAAP financial statements with a foreign regulatory agency and should not result in a big change in practice because such entities generally are considered public entities under the other definitions in US GAAP.<sup>4</sup>

### Securities trading on secondary markets – criterion (d)

If an entity has securities that are traded, listed or quoted on an exchange or an OTC market, it is a PBE. In the ASU for the new definition of a PBE, the Board stated that an OTC market includes an interdealer quotation or trading system for securities that are not listed on an exchange (e.g., OTC Markets Group, Inc., including the OTC Pink Markets and the OTC Bulletin Board).

An OTC market includes an interdealer quotation or trading system for securities that are not listed on an exchange.

### How we see it

- ▶ What is meant by an OTC market and whether any platform that maintains or provides a marketplace for bringing together buyers and sellers of securities is an OTC market may warrant additional guidance. For example, some have asked whether alternative trading systems that are registered with the SEC (e.g., SecondMarket Inc. and SharesPost Financial Corporation that provide platforms for private companies' shares to trade) would constitute an OTC market. In addition, some have asked whether the PORTAL market (Private Offering, Resale and Trading Through Automated Linkages), a facility that was created for trading among qualified institutional buyers in connection with Rule 144A, would constitute an OTC market.
- ▶ Absent additional guidance, an entity with securities quoted on an alternative trading system or PORTAL market should carefully evaluate whether it is a PBE based on the FASB's statement on what constitutes an OTC market. Specifically, it will need to carefully consider whether the secondary market is an interdealer quotation or trading system that would cause the entity to meet the definition of a PBE under criterion (d).
- ▶ This is an arguably different view of what constitutes an OTC market than what is generally considered an OTC market under other existing accounting guidance.

### Preparing US GAAP financial statements and making them publicly available – criterion (e)

As noted above, criterion (e) states that if an entity has securities that are not subject to contractual restrictions on transfer and it is required by law, contract or regulation to prepare US GAAP financial statements (including footnotes) and make them publicly available on a periodic basis, it is a PBE. During its deliberations, the Board noted that criterion (e) is intended to respond to future changes in markets.

### How we see it

- ▶ It is important to note that an entity must meet both conditions of criterion (e) to be considered a PBE. Many entities may satisfy one component of criterion (e), but not the other. For example, many regulators require financial information to be provided to investors in connection with exempt securities offerings, but they often do not require a complete set of US GAAP financial statements including footnotes to be made publicly available on a periodic basis. In addition, many private companies impose contractual restrictions on transfers of their securities.

### Issuing securities in exempt offerings

Entities that issue securities through offerings that are exempt from registration under the Securities Act of 1933 (Securities Act) should consider their specific facts and circumstances to determine whether they meet the definition of a PBE. Included below are common exemptions under the Securities Act and factors to consider when evaluating whether an entity meets the definition of a PBE. Determining the financial reporting requirements of the offering, the securities' contractual restrictions on transfer and whether the securities are traded, listed or quoted on an exchange or an over-the-counter market can be complex and may require the assistance of legal counsel.

### ***Regulation D***

Regulation D provides exemptions (Rules 504, 505 and 506) that are commonly used by private companies to issue securities exempt from registration under the Securities Act. The disclosure requirements for these offerings vary considerably based on whether the company is already an SEC registrant, the size of the offering and the rule under which the exemption is claimed.

Generally, securities issued in these offerings are subject to restrictions on public resale. Although Regulation D requires an issuer to provide certain financial information to nonaccredited investors, there is no requirement for the issuer to file or furnish financial statements with the SEC or to make its financial statements (including footnotes) publicly available on a periodic basis.

The FASB decided that the definition of a PBE should include only issuers with securities that are not subject to contractual restrictions on transfer (e.g., securities that are not subject to management preapproval on resale) because many private companies place restrictions on the resale of their securities and control who can purchase their securities. The definition of a PBE in criterion (e) only includes restrictions imposed by contract (e.g., restrictions specified in a purchase agreement, the terms of the security).

### **How we see it**

- Some believe the phrase “contractual restrictions on transfer” means that a restriction would not be deemed contractual solely by operation of the federal or state securities laws. In contrast, transfer restrictions would be deemed contractual if they are specified by contract (e.g., purchase agreement, placement of a legend referring to the restrictions as contemplated by Rule 502(d) of Regulation D).

Generally, an entity would not meet the definition of a PBE solely based on securities issued in a Regulation D offering due to the absence of any ongoing financial reporting requirements and due to the transfer restrictions included in the legend to the exempt securities. However, exempt offerings under Regulation D may cause an entity to be considered a PBE if the securities become traded, listed or quoted on an exchange or an OTC market, which would meet criterion (d).

### ***Regulation A and proposed Regulation A+ and crowdfunding exemptions***

Entities that issue securities in exempt offerings under Regulation A are required to provide financial statements to the SEC and therefore meet criterion (a) in the definition, even if those financial statements are unaudited.

As mandated by the Jumpstart Our Business Startups Act (JOBS Act), the SEC recently proposed rules that would (1) create a second tier of exempt offerings under Regulation A for offerings of up to \$50 million in a 12-month period (referred to as Regulation A+) and (2) allow issuers to sell securities of up to \$1 million in a 12-month period through the internet (referred to as crowdfunding). If these exemptions are finalized as proposed, issuers that rely on them would meet the definition of a PBE because they would be required to file or furnish financial statements with the SEC.

Appendix B considers whether issuing securities through these and other exemptions would cause an entity to meet the definition of a PBE.

Entities should consider whether issuing securities in an exempt offering makes them PBEs.

### ***Private placements and resales under Rule 144A***

The resale to qualified institutional buyers under Rule 144A of securities initially sold in a private placement exempt from registration under Section 4(2) or Regulation D of the Securities Act may cause the issuer to be considered a PBE depending on whether the securities are traded on an OTC market.

Securities that are resold using the Rule 144A exemption generally include contractual restrictions on transfer. Although the security holder and purchaser have the right to obtain certain financial and nonfinancial information from the issuer, there is no requirement for the issuer to file or furnish financial statements with the SEC or to make its financial statements (including footnotes) publicly available on a periodic basis. This suggests that an entity would not meet the definition of a PBE. However, issuers of these securities will need to carefully evaluate criterion (d) of the new definition to determine whether the securities are traded on an OTC market. For example, if such securities are listed on the PORTAL market, the issuer might meet the definition of a PBE under criterion (d).

Appendix C considers whether a resale of securities issued under an exempt offering would cause an entity to meet the definition of a PBE.

### **How we see it**

- Determining whether an entity is a PBE may be complex and may require assistance from legal counsel in some circumstances.

### **Financial institutions**

The Board considered whether all financial institutions should be PBEs because they are publicly accountable (i.e., they manage investments for other institutions and individuals and act in fiduciary capacities) but concluded that they should apply the PBE criteria like other entities. As noted above, some financial institutions may meet the PBE definition based on requirements in the Exchange Act to file financial statements with a regulator other than the SEC.

The Board also decided to consider whether to allow financial institutions to apply the PCC alternatives on a standard-by-standard basis. For example, the FASB decided that financial institutions can't use the simplified hedge accounting approach the PCC developed for certain interest rate swaps regardless of whether they meet the criteria in the PBE definition.

### **How we see it**

- Determining whether to allow financial institutions to elect the PCC alternatives on a standard-by-standard basis creates exceptions to the PBE definition and will add to complexity in financial reporting.

### **Not-for-profit entities and employee benefit plans**

The FASB considered whether to distinguish between public and nonpublic NFPs based on (1) whether an NFP issues or is an obligor for conduit debt securities that are traded in a public market (a distinguishing factor in other definitions in US GAAP), (2) whether the NFP receives public donations, or (3) the size of the NFP. The Board decided that these distinctions may not be appropriate in all cases and could create an ineffective bright line between public and nonpublic NFPs. Because NFPs and their users also are unique, the Board decided that a public or nonpublic distinction should not be made. Instead, the FASB will consider on a standard-by-standard basis whether NFPs can apply the accounting alternatives provided within US GAAP.



Similarly, the definition of a PBE excludes all EBPs. The Board will consider on a standard-by-standard basis whether these plans can apply the alternatives based on user needs and preparer resources.

### **Consolidated subsidiaries**

Entities that are consolidated subsidiaries of public companies are considered public in one of the definitions of a public entity that exists in US GAAP.<sup>5</sup> However, the Board decided that allowing these entities to use private company relief in their standalone financial statements may provide users with relevant information while reducing costs. Therefore, these entities are not automatically PBEs under the new definition.

Consistent with existing practice, private companies that control public subsidiaries are not within the scope of the new definition because the FASB determined that the financial reporting requirements of a public subsidiary should not preclude a private parent from applying private company relief.

### **How we see it**

- An entity that is eligible to elect private company relief may not find it beneficial to do so. For example, a private subsidiary of a public company may decide that it is too costly or complex to maintain a second set of books for its standalone financial statements in contrast to what it reports to its parent for purposes of consolidated financial reporting that must conform to the accounting policies of its public parent.

## **Transition guidance and other considerations**

Companies should consider whether they are likely to go public, be acquired by a public company or otherwise become a PBE when deciding whether to elect private company relief because the FASB and the SEC have not provided any transition guidance.

The FASB discussed transition when it redeliberated its private company decision-making framework and noted that any transition efforts to comply with public business entity reporting requirements should be a factor for private companies to consider in determining whether to elect a PCC accounting alternative. The SEC staff recently commented that if an entity elects a PCC alternative and then goes public, it will have to undo the elections for financial statements provided to the SEC.

In the absence of specific transition guidance, companies that become PBEs after using private company relief would have to retrospectively apply the public entity accounting and reporting requirements to all prior periods presented. This could be challenging, could delay transactions or SEC filings and could make private companies that elect the alternatives less attractive business partners to PBEs. For example, SEC registrants will need to evaluate whether the financial statements and/or financial information of other entities that they are required to include in their filings have been prepared using private company relief. If so, it could be costly and challenging to provide information that complies with US GAAP for public business entities in a timely manner.



## How we see it

- ▶ An emerging growth company (EGC), a new category of issuer created by the JOBS Act, may elect to follow private company effective dates for new accounting standards issued by the FASB. However, an EGC would not be able to follow other private company relief (e.g., PCC alternatives, disclosure relief).
- ▶ Absent specific transition relief, an entity that becomes a PBE would be required to follow public company effective dates for new accounting standards. This requirement would apply to entities whose financial statements are included in another entity's SEC filing (e.g., significant acquired business, significant equity method investee) as well as entities offering securities in exempt offerings that meet the definition of a PBE (e.g., Regulation A, proposed Regulation A+ and crowdfunding exemptions). As a result, such entities will be required to adopt new accounting standards sooner than EGCs that elect to follow private company effective dates.

Entities also should monitor any decisions by the FASB to expand the use of the accounting alternatives to public companies. The FASB has said it will consider whether to allow public companies to use the alternatives and has already begun discussing how to simplify goodwill accounting for public business entities and not-for-profit entities.

Entities should understand that it isn't clear whether or when the FASB will allow public companies to use the alternatives and whether the FASB will modify any of the alternatives if it decides to allow their use by public companies.

### Endnotes:

- <sup>1</sup> Definition 2 of *Public Entity* in the Master Glossary, which is referenced in ASC Topics 470 and 718.
- <sup>2</sup> Section 12(i) of the Securities Exchange Act of 1934.
- <sup>3</sup> Section 12(g)(2) of the Securities Exchange Act of 1934.
- <sup>4</sup> Definition of *Public Entity* in the Master Glossary, which is referenced in ASC Topics 280, 350, 805, 954, and 958, Definition 2 of *Public Entity* in the Master Glossary, which is referenced in ASC Topics 470, 718, and Definition 1 of *Publicly Traded Company* in the Master Glossary, which is referenced in ASC Topics 220, 270, 325, and 825.
- <sup>5</sup> Definition 2 of *Public Entity* in the Master Glossary, which is referenced in ASC Topics 470 and 718.

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## Appendix A: Applying the definition of a PBE to common examples of entities whose financial statements (or financial information) are included in an SEC filing

	Entities whose financial statements (or financial information) are included in another entity's SEC filing	Meet the definition of a PBE?
Rule 3-05 of Regulation S-X	<ul style="list-style-type: none"> <li>Financial statements of businesses acquired or to be acquired.</li> </ul>	<ul style="list-style-type: none"> <li>Yes. Meets criterion (a) of the definition regarding financial statements or financial information included in an SEC filing, but may elect PCC alternatives and other private company relief in standalone financial statements (those not filed with the SEC).</li> </ul>
Rule 3-09 of Regulation S-X	<ul style="list-style-type: none"> <li>Separate financial statements of subsidiaries not consolidated and 50% or less owned persons.</li> </ul>	
Rule 3-10 of Regulation S-X	<ul style="list-style-type: none"> <li>Financial statements of guarantors and issuers of guaranteed securities registered or being registered.</li> </ul>	
Rule 3-14 of Regulation S-X	<ul style="list-style-type: none"> <li>Financial statements of significant consummated or probable acquisitions of real estate operations.</li> </ul>	
Rule 3-16 of Regulation S-X	<ul style="list-style-type: none"> <li>Financial statements of affiliates whose securities collateralize an issue registered or being registered.</li> </ul>	
Rule 4-08(g) of Regulation S-X	<ul style="list-style-type: none"> <li>Summarized financial information of subsidiaries not consolidated and 50% or less owned persons.</li> </ul>	

## Appendix B: Applying the definition of a PBE to entities that issue securities in common exempt offerings

	Description of offering	Meet the definition of a PBE?
<b>Unregistered public offerings (Regulation A)</b>	<ul style="list-style-type: none"> <li>Offerings up to \$5 million in any 12-month period.</li> <li>Entities must file an offering statement with the SEC that includes unaudited financial statements (unless audited financial statements are available). No ongoing reporting requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Yes. Meets criterion (a) of the definition because of the financial reporting requirements.</li> </ul>
<b>*Proposed unregistered public offerings (Regulation A+, Tier 1)</b>	<ul style="list-style-type: none"> <li>Proposed requirements are similar to Regulation A.</li> </ul>	<ul style="list-style-type: none"> <li>Yes. If finalized as proposed, would meet criterion (a) of the definition because of the financial reporting requirements.</li> </ul>
<b>*Proposed unregistered public offerings (Regulation A+, Tier 2)</b>	<ul style="list-style-type: none"> <li>Offerings up to \$50 million in any 12-month period.</li> <li>Entities must file an offering statement with the SEC that includes financial statements. Requires ongoing periodic reporting (annual and semiannual).</li> </ul>	<ul style="list-style-type: none"> <li>Yes. If finalized as proposed, would meet criterion (a) of the definition because of the financial reporting requirements.</li> </ul>
<b>*Proposed unregistered public offerings (crowdfunding)</b>	<ul style="list-style-type: none"> <li>Offerings up to \$1 million in any 12-month period.</li> <li>Entities must file an offering statement with the SEC that includes financial statements. Requires ongoing periodic reporting.</li> </ul>	<ul style="list-style-type: none"> <li>Yes. If finalized as proposed, would meet criterion (a) of the definition because of the financial reporting requirements.</li> </ul>
<b>Private and limited offerings (Regulation D, Rules 504, 505 and 506)</b>	<ul style="list-style-type: none"> <li>Various exemptions under Regulation D are used by private companies to issue securities exempt from registration. Use of certain exemptions may require compliance with state securities (blue sky) laws.</li> <li>The disclosure requirements vary considerably based on whether the company is already an SEC registrant, the size of the offering, whether the investors are accredited or sophisticated and the particular rule under which the exemption is claimed.</li> <li>Purchasers generally receive "restricted securities," which can't be resold to the public without SEC registration, the use of another exemption or satisfaction of the Rule 144 one-year holding period.</li> </ul>	<ul style="list-style-type: none"> <li>Maybe. Does not meet criterion (a) because the issuer is not required to file or furnish financial statements with the SEC. Also, does not meet one condition of criterion (e) because neither law nor regulation requires the issuer to make its financial statements (including footnotes) publicly available on a periodic basis for purposes of a Regulation D offering.</li> <li>If the issuer is required by law, regulation or contract to make its US GAAP financial statements (including footnotes) publicly available on a periodic basis, the issuer should evaluate whether there are any contractual restrictions on transfer (e.g., included in the legend to the securities). There generally would be contractual restrictions on transfer, which would cause the issuer to not meet criterion (e).</li> <li>The issuer should evaluate the effect of any information requirements resulting from state securities laws, which could cause it to meet criterion (c) if the issuer is required to file or furnish financial statements with a state securities regulator.</li> <li>Could meet criterion (d) if the securities become traded on an OTC market.</li> </ul>

## Appendix C: Applying the definition of a PBE to resales of securities issued in an exempt offering

	Type of resale of securities	Meet the definition of a PBE?
<b>Private resales (Rule 144)</b>	<ul style="list-style-type: none"> <li>▶ Rule 144 provides a safe harbor that allows for the resale of "restricted securities" if certain conditions are met. There are various criteria and information requirements depending on whether the issuer is an SEC reporting company or whether the person selling the restricted securities is an affiliate of the issuer.</li> <li>▶ For resale to the public by affiliates after the one-year holding period, certain information about the issuer must be publicly available. For non-reporting companies, this includes a comparative balance sheet and income statement, but not complete US GAAP financial statements with footnotes.</li> </ul>	<ul style="list-style-type: none"> <li>▶ No. Does not meet the definition based on criterion (e) that requires that the securities not be subject to contractual restrictions on transfer and that US GAAP financial statements (including footnotes) be required by law, contract or regulation to be made publicly available on a periodic basis.</li> <li>▶ Could meet criterion (d) if the securities are traded on an OTC market.</li> </ul>
<b>Private resales (Rule 144A)</b>	<ul style="list-style-type: none"> <li>▶ Allows for private resales of "restricted securities" to qualified institutional buyers. Transactions cannot involve restricted securities that are of the same class as securities listed on a national securities exchange.</li> <li>▶ Holders and prospective purchasers must have the right to obtain from the issuer, upon request, certain reasonably current financial information. For non-reporting companies, this includes a comparative balance sheet and income statement, but not complete US GAAP financial statements with footnotes.</li> </ul>	<ul style="list-style-type: none"> <li>▶ No. Does not meet the definition based on criterion (e) that requires that the securities not be subject to contractual restrictions on transfer and that US GAAP financial statements (including footnotes) be required by law, contract or regulation to be made publicly available on a periodic basis.</li> <li>▶ Could meet criterion (d) if the securities are traded on an OTC market.</li> </ul>