August 21, 2013

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

By e-mail: director@fasb.org

Re: Proposed Accounting Standards Update –
Derivatives and Hedging (Topic 815): Accounting for Certain Receive-Variable, Pay-Fixed Interest Rate Swaps (a proposal of the Private Company Council)

(File Reference No. PCC-13-03)

Dear Ms. Cosper:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 29,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned exposure draft.

The NYSSCPA's Financial Accounting Standards Committee deliberated the proposed accounting standards update and prepared the attached comments. If you would like additional discussion with us, please contact Robert M. Rollmann, Chair of the Financial Accounting Standards Committee at (914) 421-5605, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

N Y S S C P A

J. Michael Kirkland
President

Attachment

NEW YORK STATE SOCIETY OF

CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON

PROPOSED ACCOUNTING STANDARDS UPDATE –
DERIVATIVES AND HEDGING (TOPIC 815): ACCOUNTING FOR CERTAIN RECEIVE-VARIABLE, PAY-FIXED INTEREST RATE SWAPS (A PROPOSAL OF THE PRIVATE COMPANY COUNCIL)

(File Reference No. PCC-13-03)

August 21, 2013

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New York State Society of Certified Public Accountants

Comments on
Proposed Accounting Standards Update –
Derivatives and Hedging (Topic 815): Accounting for Certain Receive-Variable, Pay-Fixed Interest Rate Swaps (a proposal of the Private Company Council)

(File Reference No. PCC-13-03)

General Comments

We are pleased to respond to the Proposed Accounting Standards Update– *Derivatives and Hedging (Topic 350): Accounting for Certain Receive-Variable, Pay-Fixed Interest Rate Swaps, a proposal of the Private Company Council* (the "Update"). We are generally supportive of the proposed Update, although our comments on specific issues identified by the PCC are noted below.

We believe that both the combined instrument approach and simplified hedge accounting approach have overly restrictive criteria. For example, both approaches apply only to instruments whose value is zero at inception and whose terms do not include a floor or cap. In our experience, these criteria would scope out many common swaps engaged in by private companies. Banks and other lenders typically require private companies to engage in a swap as part of the loan agreement. The counterparty usually is either the lender or a party related to the lender. In substantially all cases, the swaps are entered into with the borrower neither paying nor receiving any initial fee, implying expected cash flows of zero, and then the borrower frequently ends-up paying substantial amounts. Some fixed for variable swaps contain ceilings, but those ceilings are so high as to make attainment unlikely in the foreseeable future. In addition, the requirement that both the variable rate of the swap and borrowing should be based on the same index would only cause confusion in cases where a variable rate and fixed rate are swapped.

Responses to Questions

Question 1: Please describe the entity or individual responding to this proposed Update. For example:

a. Please indicate whether you primarily are a preparer, user, public accountant, or other (if other, please specify).
b. If you are a preparer of financial statements, please indicate whether your entity is privately held or publicly held and describe your primary business and its size (in terms of annual revenue, the number of employees, or other relevant metric).
c. If you are a public accountant, please describe the size of your firm (in terms of number of partners or other relevant metric) and indicate whether your practice focuses primarily on public entities, private entities, or both.

d. If you are a user of financial statements, please indicate in what capacity (for example, lender, investor, analyst, or rating agency) and whether you primarily use financial statements of private entities or those of both private entities and public entities.

Response: We are the New York State Society of Certified Public Accountants, representing more than 29,000 CPAs in public practice, industry, government and education. We represent our entire membership some of whom are auditors, users, and preparers of financial statements of both publicly and privately held companies.

Question 2: Do you agree that the scopes of both the combined instruments approach and the simplified hedge accounting approach should exclude financial institutions described in paragraph 942-320-50-1, such as banks, savings and loan associations, savings banks, credit unions, finance companies, and insurance entities? If not, please explain why. Are there any other entities that should be excluded? (See also Question 3 below.)

Response: We agree that the scope of this proposal should exclude financial institutions.

Question 3: Should the Board consider expanding the scope of either the combined instruments approach or the simplified hedge accounting approach (or both) to other entities, such as publicly traded companies or not-for-profit entities? If the scope is expanded to other entities, what changes, if any, should the Board consider for these approaches? Please explain why.

Response: Not-for-profit entities (NPOs) should be included in the scope of this proposal. NPOs engage in interest rate swap transactions, and we see no reason to exclude them.

NPOs that are conduit bond obligors should be included in the Update (see our answer to Question 21). Certain NPO entities are parties to conduit bonds issued by such entities as the Dormitory Authority of the State of New York and State Educational facilities. While tradable, such securities are frequently held by a limited number of institutional and sophisticated investors. This also applies to some private businesses funded with Industrial Development Authority bonds. We seriously question the benefit of excluding such conduit bond obligors from the scope of the Update. Further, we believe that a conduit bond obligor is most interested in available cash flows to service the debt and not whether traditional hedge accounting rules are being followed including whether the fair value of a swap is recognized on the balance sheet.

Question 4: Do you agree with the required criteria for applying the combined instruments approach and the simplified hedge accounting approach, respectively? If not, please explain why.

Response: Except as discussed in our general comments, we generally agree with the criteria for applying the combined instrument approach. We also believe that the re-pricing and settlement date criteria in 815-20-25-131(c) should extend for a reasonable period of time not in excess of 10 business days versus the 3 day period proposed. We believe that this would provide flexibility without affecting the hedge's effectiveness over time. Furthermore, we suggest that sub-paragraph f of the aforementioned guidance be modified as follows (additions are in italics): The notional amount of the swap is equal to or less than the principal amount of the borrowing *throughout the life of the borrowing.*

Question 5: Do you agree with the differences in criteria for applying the combined instruments approach versus the simplified hedge accounting approach? If not, please explain why.

Response: The major differences in the specific criteria of both approaches are that the combined instruments approach includes swaps whose terms approximates the term of the borrowing and whose effective date is on the same day or within a few days of the borrowing while the simplified approach permits swaps whose terms are equal to or less than the term of the borrowing. In addition, the combined approach is applicable to all swap instruments while the simplified approach is permitted to be applied to specific instruments. All other criteria are the same.

We agree with the different criteria, except the terms of the swap agreement. We believe that both approaches, including the combined instruments approach, should be available to account for interest rate swaps whose terms are equal to or less than the term of the borrowing.

Question 6: For applying the combined instruments approach, should additional criteria about management's intent to hold the swap to maturity (unless the borrowing is prepaid) be included? Please explain why.

Response: We believe the criteria are appropriate. Additional criteria will only cause confusion as we anticipate difficulty in distinguishing between management not having an original intent to hold the swap to maturity and management reacting to actual or perceived economic events sometime during the instruments' terms. Accordingly, disclosure should only be required if an early termination of the swap is imminent.

Question 7: Under the combined instruments approach, should there be a requirement that there have been no adverse developments regarding the risk of counterparty default such that the swap is not expected to be effective in economically converting variable-rate borrowing to fixed-rate borrowing? Please explain why or why not.

Response: In many instances, the counterparty is the lender: so the risk of default will affect both the swap and the debt as the same parties are typically involved. As discussed in our general comments, many lenders require private companies to enter into swap agreements which result in the borrower paying more in interest than expected under the original agreement. Consequently, we do not believe an "adverse development" criteria should be added.

Question 8: Do you agree that the primary difference between settlement value (that is, the amount to be paid to or received from the swap counterparty to terminate the swap) and fair value is that generally the nonperformance risk of the swap counterparties is not considered in the settlement value? If not, please explain why.

Response: Substantially all derivative issuers do not disclose their method of determining the fair value of their instruments, citing proprietary considerations. In a general sense, it has long been known that the expected trajectory of interest rates is an important component in computing the fair value of swaps in addition to nonperformance risk.

We believe that the term "settlement value" needs to be defined. Settlement value is not a standard measurement because it is typically calculated in accordance with the terms of the specific swap contract, or negotiated between the swap counterparty and the holder. For example, settlement value could be based on the difference between the original stated interest rate and the swapped rate at the date of instrument termination or on the fair value at the termination date.

Question 9: Would disclosure of the swap's settlement value (instead of its fair value) adequately provide users of financial statements with an indication of potential future cash flows if the swap were to be terminated at the reporting date? If not, please explain why.

Response: We agree, as this disclosure would indicate the amounts the reporting entity must pay to terminate the swap (presuming the term "settlement value" is defined).

Question 10: Are the costs of obtaining and auditing settlement value significantly less than fair value? Please explain why.

Response: Both fair value and settlement value are typically obtained from the counterparty, so any related costs would be the same in that regard. In our experience, auditors will audit the fair value of a swap as a means of verifying the reasonableness of the confirmed fair value, the cost of which is not insignificant. Eliminating fair value from measurement and disclosure guidance, consequently, will save costs for many private companies. The cost of auditing the settlement value would be dependent on how settlement value is calculated under the swap contract, as discussed in our response to Question 8. Auditing costs related to settlement rates based on the fair value at the termination date would not be reduced.

Question 11: Do you agree that the following should be disclosed if the combined instruments approach is applied and that no additional disclosures should be required? If not, please explain why.

a. The settlement value of the swap (along with the valuation method and assumptions)
b. The principal amount of the borrowing for which the forecasted interest payments have been swapped to a fixed rate and the remaining principal amount of the borrowing that has not been swapped to a fixed rate
c. The location and amount of the gains and losses reported in the statement of financial performance arising from early termination, if any, of the swap
d. The nature and existence of credit-risk-related contingent features and the circumstances in which the features could be triggered in a swap that is in a loss position at the end of the reporting period.

Response: We agree that afore-listed items a., b., c., and d. should be disclosed if the combined instruments approach is applied and that no additional disclosures should be required.

Question 12: Do you agree that the current U.S. GAAP disclosures, including those under Topics 815 and 820 should apply for a swap accounted for under the simplified hedge accounting approach and that the settlement value may be substituted for fair value, wherever applicable? If not, please explain why.

Response: We agree, but as discussed in our response to Question 8, the term "settlement value" needs to be defined.

Question 13: Do you agree with providing an entity-wide accounting policy election for applying the combined instruments approach? If that policy election is availed, should this approach be applicable for all qualifying swaps, whether entered into on or after the date of adoption or existing at that date? If not, please explain why.

Response: We agree that the policy election should apply to all swaps, but in our experience only a limited number of private companies have more than one debt subject to a swap agreement.

Question 14: Do you agree that the entity-wide accounting policy election to apply the combined instruments approach must be made upon adoption of the amendments in this proposed Update or, for entities that do not have existing eligible swaps, within a few weeks after the entity enters into its first transaction that is eligible for the accounting policy election? If not, please explain why.

Response: We do not agree. As a practical matter, many private companies do not consider the accounting until preparing financial statements. This is implied in paragraph BC4 in the proposal's Background Information. Accordingly, a provision permitting adoption of the combined instruments approach at the time financial statements are prepared should be permitted.

Question 15: Do you agree that the simplified hedge accounting approach could be elected for any qualifying swaps, whether existing at the date of adoption or entered into on or after the adoption date? If not, please explain why.

Response: See our response to Question 14.

Question 16: Do you agree that the election to apply the simplified hedge accounting approach to an existing qualifying swap must be made upon adoption of the amendments in this proposed Update? If not, please explain why.

Response: We agree that the election to apply the simplified hedge accounting approach to an existing qualifying swap must be made upon adoption of the amendments in this proposed Update.

Question 17: Do you agree that the formal documentation required by paragraph 815-20-25-3 to qualify for hedge accounting must be completed within a few weeks of hedge designation under the simplified hedge accounting approach? If not, please explain why.

Response: See our response to Question 14.

Question 18: Do you agree that entities within the scope of this proposed Update should be provided with an option to apply the amendments in this proposed Update using either (a) a modified retrospective approach in which the opening balances of the current period presented would be adjusted to reflect application of the proposed amendments or (b) a full retrospective approach in which financial statements for each individual prior period presented and the opening balances of the earliest period presented would be adjusted to reflect the period-specific effects of applying the proposed amendments? If not, please explain why.

Response: We agree that entities within the scope of this proposed Update should be provided with an option to apply the amendments in this proposed Update using either (a) a modified retrospective approach or (b) a full retrospective approach. The full retrospective approach is more representationally faithful but would be more costly to apply. We do not think that the possible reduction in comparability would be of significant disadvantage to users. We do not believe that requiring the full retrospective method would be worth the costs but think that entities should have the flexibility to apply the preferable method if they think the costs of applying it are warranted.

Question 19: Do you agree that an entity within the scope of this proposed Update should be permitted to early adopt the proposed amendments? If not, please explain why.

Response: We agree.

Question 20: How much time is needed to implement the proposed amendments? Please explain.

Response: Private companies would need at least a year after issuance to apply provisions of this Update.

Question 21: The scope of this proposed Update uses the term **publicly traded company** from an existing definition in the Master Glossary. In a separate project about the definition of a nonpublic entity, the Board is deliberating which types of business entities would be considered public and would not be included within the scope of the Private Company Decision-Making Framework. The Board and PCC expect that the final definition of a public business entity resulting from that project would be added to the Master Glossary and would amend the scope of this proposed Update. The Board has tentatively decided that a **public business entity** would be defined as a business entity meeting any one of the following criteria:

a. It is required to file or furnish financial statements with the Securities and Exchange Commission.
b. It is required to file or furnish financial statements with a regulatory agency in preparation for the sale of securities or for purposes of issuing securities.
c. It has issued (or is a conduit bond obligor) for unrestricted securities that can be traded on an exchange or an over-the-counter market.

d. Its securities are unrestricted, and it is required to provide U.S. GAAP financial statements to be made publicly available on a periodic basis pursuant to a legal or regulatory requirement.

Do you agree with the Board's tentative decisions reached about the definition of a public business entity? If not, please explain why.

Response: The Board's tentative definition of a public business is appropriate; however, as discussed in our answer to Question 3, we believe that the Board should reconsider inclusion of NPO conduit bond obligors in such definition. We also believe the Board should reconsider part (a) of the tentative definition which would include a non-issuer introducing broker dealer qualifying for the exemption from Securities Exchange Act Rule 15c3-3 that files with the SEC both a statement of financial condition and a complete set of financial statements – the statement of financial condition is made publicly available, while the financial statements are confidential and not available to the public. Leaving non-issuer introducing broker dealers out of the definition of "public business entity" would still allow the Board to make certain standards applicable to both "public business entities" and to non-issuer introducing broker dealers if it chose to do so. We also believe the Board's tentative definition of public business should address whether to include or exclude those entities whose securities are traded on websites (as opposed to formal exchanges), such as those under the JOBS Act.