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FASB Approves First Private Company Alternatives

As noted in our previous A&A article, The Private Company Council (PCC), which was established to ease the accounting for private companies, has voted to finalize the accounting for interest rate swaps as well as the accounting for goodwill that resulted from a business combination for private companies. Below is a summary of FASB standards update No. 2014-03-Derivatives and Hedging (Topic 815): "Accounting for Certain Receive-Variable, Pay-Fixed Interest Rate Swaps-Simplified Hedge Accounting Approach" and Update No. 2014-2-Intangibles-Goodwill and other (Topic 350): "Accounting for Goodwill."

The interest rate swap amendment by the PCC would allow private companies, other than financial institutions, the option to use a simplified hedge accounting approach. The amendment will allow the use of the simplified hedge accounting to account for swaps that are entered into for the purpose of economically converting a variable-rate into a fixed-rate borrowing. Under this approach, the income statement charge for interest expense will be similar to the amount that would result if the entity had directly entered into a fixed-rate borrowing. Additionally, private companies in which the swap is the only derivative would be exempt from certain fair value disclosures.

The goodwill amendment would give a private company that is purchasing another private company an option to amortize goodwill over a period of 10 years or less. Additionally, the amendment will simplify the impairment model for goodwill. This will allow companies to test for impairment only when there is a triggering event that indicates that the fair value of a company (or a reporting unit) may be below its carrying amount. If a nonpublic company elects to apply the goodwill alternative, it will be required to apply all aspects of the alternative.

Effective date of adoption:

The FASB has endorsed the two accounting and reporting alternatives for private companies, marking the first standards to come from the efforts of the PCC. The effective date for these alternatives is fiscal years beginning after December 15, 2014, early adoption will be permitted.

What you should be aware of:

If you are a private company you have the option to continue accounting for interest rate swaps and goodwill as currently required under GAAP or you can adopt the alternative approach noted above. Please note if you are considering at any point to have your company become public we do not recommend that you adopt the alternative approach. If you adopt the alternative approach and subsequently your Company becomes public you will be required to adjust your financial statements to reflect the FASB approach and not this alternative approach. This can be costly to a Company.

Welcome to our February 2014 edition of the **A&A Advisor**. Our A&A Advisor continues to focus on issues impacting the Commercial, Governmental and Non-Profit Sectors; providing you with insight and guidance on new rules, proposed changes and views of standard setters to assist you in the management of the financial and reporting aspects of your organization. I encourage you to contact us with any comments or questions you may have.

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New York Non-Profit Revitalization Act of 2013 Signed Into Law

By Diana Miller, Director of Not-for-Profit

In December 2013, NY Governor Cuomo signed the NY Non-profit Revitalization Act of 2013 ("Act") which is the first major overhaul of significant changes for NY Non-profit Corporation Law in decades. Effective July 1, 2014, the Act applies to any nonprofit organization that is incorporated in New York or operates or solicits charitable contributions in New York. The purpose of the Act is to improve governance and operations, reduce redundancies and increase accountability.

The key significant changes impacted by the Act are as follows:

Conflict of Interest Policy

The Act requires a conflict of interest policy for all organizations to cover officers, directors, and key employees. The Act outlines specifics for the conflict of interest policy and defines the policy and process. A written statement of any conflicts is required to be signed by new directors, officers or key employees joining the board and must be signed annually by all board members. Typically a conflict of interest policy must include:

- a definition of circumstances that constitute a conflict of interest;
- procedures for disclosing conflicts to the audit committee or the board if there is no audit committee;
- a requirement that conflicted persons not be present at or participate in board or committee deliberations or voting on the matter giving rise to the conflict;
- a prohibition against any attempt by a conflicted person to wrongly influence deliberations or votes on the matter giving use to the conflict;
- a requirement that the existence and resolution of the conflict be documented in the organization's records, including minutes;
- procedures for disclosing, addressing, and documenting related party transactions; and
- a requirement that directors before initial election and annually thereafter, must complete, sign and disclose potential conflicts of interest to the best of the directors knowledge.

Whistleblower Policy

The Act requires a whistleblower protection policy be implemented for organizations with more than 20 employees and annual revenue in the prior fiscal year in excess of $1 million. The whistleblower policy should protect from retaliation persons who report suspected improper conduct. The whistleblower protection policy must:

- include steps for reporting violations of laws or corporate policies;
- an employee, officer or director be designated to administer the whistleblower policy and report to the audit committee (or board if no audit committee); and
- a copy be distributed to all directors, officers, employees and volunteers annually.

Related-Party Transactions

The Act defines and creates procedures for 'related parties' and requires the board approval by a majority vote for any related party transactions. "Related party" means any director, officer, trustee, or key employee of the corporation or any affiliate of the corporation, any relative of such persons, or any entity in which such a person or a relative has a 35% or greater ownership or beneficial interest, or, if the entity is a partnership, a direct or indirect ownership exceeding 5%. The board should ensure and document in the minutes that the related party transactions are fair, reasonable and in the best interest of the non-profit so that action will not have to be taken by the NY attorney general for violations.

Audit Committee

The Act requires a designated audit committee for charitable organizations that are required to file an audit report with the state. The audit committee must consist of "independent directors" (see below) and is accountable for overseeing the audit process, communicating with the auditor, retaining an independent audit firm and reviewing the audit results, and implementing and overseeing governance policies such as the Conflicts of Interest and Whistleblower Policies noted above.

Independent Director

The Act defines the criteria for an "Independent Director" including limitations on current and former employees, vendors meeting a minimum compensation threshold (exceeds lesser of $25,000 or 2% of gross revenues in any of last 3 fiscal years), relatives of the organization's current and former employees, beneficiaries of the organization, donors and past/present board members.

Board

The Act will not allow employees from serving as chair of the board or in a similar officer-type position effective as of January 1, 2015.

The Act also deals with decisions related to compensation paid to officers, directors and key employees to ensure they are in the best interest of the non-profit and are fair, reasonable and commensurate with the services provided to the organization or the NY attorney general may bring action.

Electronic Communications

The Act allows the use of electronic methods of communication (fax, email, Skype and video-conferencing) related to board meeting notifications, waivers of notice of meetings, voting and meeting attendance. Each method of communication must continue to have required signatures and/or show authorization.

Rules Around Mergers, Acquisitions and Real Estate Transactions

The Act allows for an easier process to obtain board approval for the merger, acquisition, sale, mortgage or lease of real-estate. For example, permitting a majority vote of the board rather than a two-thirds vote to approve non-substantial real-estate transactions.

Educational Purpose

The Act changes the incorporation requirement for certain organizations with an educational purpose whereby they no longer have to file with the NYS Commissioner of Education unless they are a non-profit operating school, library, museum or historical society (does not apply to colleges/universities), but rather notify the State Education Department of their formation after incorporation.

Classification System

The Act updated the classification system used to categorize different types of non-profit organizations by eliminating the Type A, B, C and D classifications to either "charitable" (types Band C and some D) or "non-charitable" entities (type A and all other type D entities). The Act defines "charitable purposes" as charitable, educational, religious, scientific, literary, cultural, or for the prevention of cruelty to children or animals, and all corporations formed for such purposes are charitable corporations; all other nonprofit corporations formed are non-charitable.

Annual Reporting Requirement

The Act increases the gross revenues thresholds for annual report filing requirements for organizations as noted in the table below, and increased the fee payable to the NY Attorney General from $10 to $25 where applicable.

Gross Revenues	**Unaudited Financial Report on Form Provided by the Attorney General**	**Independent CPA Review Report**	**Independent CPA Audit Report**
Current	$100,000 or less	More than $100,000 but not more than $250,000	More than $250,000
Effective July 1, 2014	$250,000 or less	More than $250,000 but not more than $500,000	More than $500,000
Effective July 1, 2017	$250,000 or less	More than $250,000 but not more than $750,000	More than $750,000
Effective July 1, 2021	$250,000 or less	More than $250,000 but not more than $1,000,000	More than $1,000,000

In summary, the purpose of the Act is to make significant changes to enhance governance policies, procedures and oversight, and reduce the unnecessary burden for smaller non-profit organizations. Non-profit organizations impacted by the Act should review their existing internal controls, by-laws, policies and procedures to ensure they are in compliance with the Act.   For further details see *http://open.nysenate.gov/legislation/bill/S5845-2013*.

Accounting Considerations for Gain/Loss Contingencies

The accounting for gain and loss contingencies differs under ASC 450, Contingencies.

Gain contingencies should not be recognized prior to when they are realized or realizable.   For example, if your company was involved in a legal matter, the matter settles in your favor, you were entitled to a financial winfall, and there is no avenue for appeal by the third party, you would then record the gain contingency. However, if the other party has a right to appeal or take other action to dispute your windfall, you would generally not be allowed to record the gain contingency until the third party has exhausted their appeals or have no other avenue to dispute the windfall. We generally tell our clients to record a gain contingency once cash is received or when through written communication with the third party there is very strong evidence that the third party would not dispute the windfall.

There are special considerations for gain contingencies related to insurance recoveries. To the extent that recovery is probable the portion of an insurance claim that relates to recovery of an incurred loss may be recognized when the loss is recognized as long as there is no indication that the insurance company will not dispute the claim.   Generally, claims in excess of the loss would only be recorded once the insurance provider acknowledges they will cover such gains.   (Note insurance recoveries for lost revenues are not included in the special consideration for insurance recoveries)

A loss contingency, on the other hand, would be recorded when an event occurs and the loss associated with the event is probable and reasonable estimable. The FASB standards make it easier to record a loss contingency then to record a gain contingency. Disclosures are required for loss contingencies even when it is determined that it is not necessary to record the related loss. The standards however, do not require disclosures for loss contingencies when the likelihood of occurrence is remote.

We recommend that you consult with your accountants when you have potential gain/loss contingencies.

Revenue Recognition Standard — Update

In October, the FASB wrapped-up their revenue recognition deliberations.   The FASB now expect to issue a final standard in the first half of this year. We anticipate in April or May of this year.