



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

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Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Private Company Decision-Making Framework File Reference 2012-230

Dear Technical Director:

The United States Chamber of Commerce (the “Chamber”) is the world’s largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are both users and preparers of financial information. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve these goals the CCMC has supported the development of robust financial reporting systems and encouraged efforts to improve standards and reduce complexity. Financial reporting systems that provide decision useful information for users of private company financial reporting data are an important feature of efficient capital markets.

The CCMC is concerned that the Private Company Decision-Making Framework (“Framework”) as presented for comment will increase complexity in private company accounting while creating confusion amongst users of private company accounting. The CCMC urges the Financial Accounting Foundation (“FAF”), Financial Accounting Standards Board (“FASB”) and Private Company Council (“PCC”) to take the following steps to resolve these issues:

- 1) Reconcile the Framework with the Jumpstart Our Business Startups Act (“JOBS Act”);**

- 2) Clearly articulate the goals of the Framework and Develop Principles to Achieve Those Goals;**
- 3) Identify whom the users of private company financial reports are and their needs ;**
- 4) Develop a procedure of due process to address private company needs and allow broad based input by all stakeholders; and**
- 5) Develop a work plan to review existing accounting standards and how they should apply or not to private companies.**

The CCMC's concerns and recommendations are discussed in greater detail below.

Discussion

The American economy has always had and needs a diversity of business structures and capital sources to continue having the most vibrant and prosperous economy that the world has ever known. Robust private company financial reporting is an important keystone in this economic structure.

As noted earlier, the Chamber represents the interests of more than three million businesses in the United States. With about 10,000 public companies in the United States it can be surmised that over 99 percent of the Chamber's membership has a business formation other than a public company. These business forms may take many types including companies below the threshold required for public company reporting, limited liability companies, partnerships, limited liability partnerships, joint ventures, private equity arrangements or sole proprietorships to name a few. Some of these private businesses access public capital markets, others do not and obtain loans from institutions, while others may access capital through different vehicles including private equity, venture capital or angel investors.

As has been noted in many writings and discussions, the issues surrounding private company accounting have been the subject of intense debate and discussion for decades. In 2009, the International Accounting Standards Board ("IASB")

published International Financial Reporting Standards (“IFRS”) for small and medium sized entities (“SMES” and also known as “IFRS for SMEs”). IFRS for SMEs, at 230 pages, is about 10% of the larger public company IFRS standards and is expected to cover 95% of business forms for nations using IFRS. The fusion of private company issues with the publication of IFRS for SMEs prompted a review of the state of private company accounting in the United States. Accordingly, the American Institute of Certified Public Accountants (“AICPA”), FAF and the National Association of State Board of Accountancy (“NASBA”) created the Blue-Ribbon Panel on Standard Setting for Private Companies (“Blue Ribbon Panel”) to explore and make recommendations to resolve private company accounting issues.

The CCMC was a member of the Blue Ribbon Panel. The Blue Ribbon Panel, through a super-majority, decided that both public company and private company accounting should be based upon United States Generally Accepted Accounting Principles (“USGAAP”). However, many of the public company USGAAP requirements do not meet the needs of private company financial report users while imposing unnecessary costs and complexities upon private companies. Accordingly, the Blue Ribbon Panel recommended that a separate standard setting board for private companies be established with the power to determine the USGAAP standards that should apply to private companies, which should not apply and those standards that should be modified to meet the needs of private companies.

Under such a system, both public companies and private businesses would use a USGAAP form of financial reporting, but private companies would have a significantly pruned version to reflect their different constituents and needs.

The CCMC fully participated in the Blue Ribbon Panel discussion and supported its findings and recommendations. While the FAF has decided to create an infrastructure to address the needs of private company financial reporting that is different from the recommendations of the Blue Ribbon panel, the CCMC is committed to working with the FAF to make this system successful for all stakeholders in private company financial reporting.

1. Reconciling the Framework with the Jumpstart Our Business Startups Act (“JOBS Act”)

On April 5, 2012, President Barack Obama signed into law the JOBS Act that had passed the House of Representatives and Senate with large bi-partisan majorities several days earlier. The JOBS Act creates a number of requirements that the Securities and Exchange Commission (“SEC”), FASB and Public Company Accounting Oversight Board (“PCAOB”) must follow in relation to financial reporting for Emerging Growth Companies (“EGC’s”).¹ While one can debate the merits of the legislative requirements regarding financial reporting² it is the law of the land and must be followed.

Under the JOBS Act, EGC’s are not required to follow new accounting standards or modifications to accounting standards until an EGC meets certain threshold requirements that transform them into an issuer as defined under the Sarbanes-Oxley Act, or until such time non-issuers are required to follow those new standards. This is particularly important since the Framework seems to carve out a space of capital market activity or status of business formation that seemingly creates a direct conflict with the requirements of the JOBS Act. The Framework appears to conflate issuers and non-issuers within the public company category which would appear to be inconsistent with the JOBS Act treatment of EGCs. This could create situations where the JOBS Act may exempt businesses from following FASB pronouncements possibly rendering any PCC activity or decisions a nullity.

The CCMC has repeatedly requested that FASB coordinate its activity with regulators and legislators. This appears not to have happened as the Framework does not reference the JOBS Act or seem to contemplate how it must align with its legislative requirements. Such coordination with regulators and legislators should have occurred before the Framework was released for public comment and immediately casts into doubt the thoroughness of the Framework and the dedication of the PCC to addressing the needs of private company accounting.

¹ See the October 5, 2012 letter from the CCMC to SEC regarding **File Number PCAOB-2012-001, Public Company Accounting Oversight Board Proposed Rules on Auditing Standard No. 16, Communications with Audit Committees and Related Transitional Amendments to PCAOB Standards (Release No. 34-67807)**. The letter cites a failure by the PCAOB and SEC to perform a cost benefit analysis as required by the JOBS Act if an auditing standard is to be applied to an EGC.

² For instance see the Chamber’s letter of March 6, 2012 to the House of Representatives expressing concerns of a potential bifurcated system of financial reporting.

2. Clearly articulate the goals of the Framework and develop principles to achieve those goals

The Framework as presented for comment creates a system to review accounting standards if and when a private company accesses capital markets that are also used by public companies, primarily the debt bond markets, or if a private company owns a subsidiary that is organized as a public company. While this would seem to be logically consistent with the mission of FASB it presents three issues as it relates to private companies:

- i. Only a small subset of private companies access public capital markets;
- ii. Such a narrow focus will continue to leave the needs of the vast majority of private businesses to a status of benign neglect; and
- iii. By limiting the focus of the Framework upon public capital markets, a natural bias towards public company reporting will continue that may forestall any improvements to private company accounting and allow the decades long controversies to continue.

The Framework fails to resolve these three issues that are at the core of addressing private company needs. A failure to grapple with private business needs and issues will create the dangerous perception that the Framework is nothing more than window dressing.

To some degree this is best exemplified by the bright line test that private companies are not to be exempt from industry specific guidance. This goes to the heart of the matter—if private company financial statement users find industry specific guidance to be irrelevant, then why should private companies have to go through the expense and burden to comply? This one size fits all approach will lead to a lack of confidence in the Framework and erode the credibility needed for financial reporting policies to be effective.

The Framework also seeks to impose certain requirements upon a private company if it owns a public company subsidiary. This issue deserves fuller

consideration and discussion as the Framework seems to confuse public company requirements with the needs of private company owners.

The Framework should develop a holistic approach that clearly articulates the goal of the Framework as well as principles to show the path as to how FASB and the PCC will address the broad based needs of private businesses. This will require extinguishing public company biases from private business financial reporting. A failure to do both will doom the Framework to failure and continue the quagmire that has seemingly prevented the advancement of private business financial reporting.

3. Identify whom the users of private company financial reports are and their needs;

The Blue Ribbon Panel had extensive discussions to identify who the users of private company financial reports are. The basic conclusions were that those users were lenders of capital as well as management who may use financial reports as an administrative tool. Indeed certain investors, such as venture capital, may not be interested in the finances or control of a company, but rather they may train their focus on product development and rollout.

This places private company users on a much different plane than public company users.

First, lenders provide capital with an expectation of repayment and return, but do not seek a measure of control as do public company stockholders. Indeed, this is even present within the scope of the Framework regarding a private company accessing certain capital markets, primarily the bond market. A bondholder lends capital to a company with the expectation of a steady return over the course of a defined period and if the Company has financial difficulties, bondholders receive a preferential position in bankruptcy. Investors who purchase public company stock do so with the potential of returns higher than a bondholder and input into long-term management of the company. Public company stockholders are at the bottom of the line in a bankruptcy situation, often with the expectation of no recoupment. Therefore, there is a wide gulf between the needs and legal requirements of bondholders versus stockholders.

Accordingly, potential public capital market investors for private companies and public companies have different needs and expectations. Attempting to shape private company accounting standards through the lens of a public company investor will create skewed and incompatible standards for private company users.

Secondly, lenders of capital, such as banks, will often request information in forms and quantities that suit their internal decision making needs. Often, this would mean that public company accounting standards could provide irrelevant information in formats that may not suit the private company lenders needs. The FASB and PCC should have discussions with such lenders, large and small, to determine basic thresholds of disclosure and how they should be presented within the Framework.

Thirdly, private company management that uses financial statements does so to make short-term as well as long-term decisions. Managers in this situation control how frequently or infrequently this information is needed, the data that should be provided and the format it should take. This is again different from a public company shareholder, who while they have a say in the direction of the company, weigh in on the long-term direction of a company and are not involved in the day to day operation of the company.

These are but some of the differences, subtle and stark, that private company accounting poses. The CCMC believes that the Framework has missed these critical nuances and differences. The CCMC believes that FASB and the PCC should clearly identify who the users of private company financial reports are, what their needs are and how the FASB and PCC will meet those needs. The Framework as currently contemplated fails to do so and instead creates a situation whereby private company accounting will be a slightly sanitized version of public company accounting.

A failure to rectify this situation will do a disservice to the markets and their ability to efficiently deploy capital.

4. Develop a procedure of due process to address private company needs and allow broad based input by all stakeholders

Broad-based and transparent input is integral for the successful development and application of standards and regulations. This allows standard setters to have a

dialogue with relevant stakeholders, avoid potential unforeseen adverse consequences and insure that a need is being met in a manner that that does not allow the costs to outweigh the benefits.

Creating a system of due process to insure accountability and transparency in standard setting development is a necessity for the system to work. Accordingly, the PCC needs to identify whom the stakeholders in private company financial reporting are and how to interact with them in the standard setting and review processes. These systems are needed not only to insure broad-based input, but also to make certain that public company financial reporting biases do not seep into the consideration of private company issues. A clearly articulated, transparent and accountable system of due process will lead to robust private company accounting standards and provide them with the credibility needed for users to take them seriously.

5. Develop a work plan to review existing accounting standards and how they should apply or not to private companies

FASB and the PCC should develop and publish for public comment a work plan to review existing accounting standards with an eye towards: 1) if those standards should apply to private companies, 2) if those standards should be modified for private company financial reporting users and 3) the time parameters within which the PCC will undertake these projects. This work plan should be developed in accordance with the due process procedures and input as has been described earlier. This work plan will allow market participants to better understand the priorities of the FASB and PCC, if those priorities are well placed, while fostering the input needed by FASB and PCC to address private company needs.

Conclusion

The CCMC appreciates the work and dedication of FAF, FASB and PCC in attempting to address the needs of private company financial reporting. This is an issue of importance to the more than 20 million businesses that are private and the capital formation tools they need to develop and grow.

While the current proposed Framework is an important first step, it is only one step on a much longer road. The CCMC believes that the issues raised in this letter—

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reconciliation with the JOBS Act, articulation of clear goals of the Framework, identification of users and their needs, construction of due process procedures and broad based input, as well as the development of a work plan, need to be addressed for private company financial reporting to receive the attention it deserves and to give private company financial reporters the information they need.

The CCMC is dedicated to working with the FAF, FASB and PCC to make sure that this endeavor is successful and looks forward to further discussions to achieve this goal.

Sincerely,

A handwritten signature in black ink, appearing to be 'TK' followed by a long, sweeping horizontal stroke.

Tom Quaadman