



**CENTER FOR CAPITAL MARKETS
COMPETITIVENESS**

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September 17, 2013

Mr. Russ Golden
Chairman
Financial Accounting Standards Board
301 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-05116

Re: Proposed Accounting Standards Update on *Presentation of Financial Statements (Topic 205): Disclosure of Uncertainties about an Entity's Going Concern Presumption* (File Reference No. 2013-300)

Dear Chairman Golden:

The U.S. 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.

The CCMC appreciates the opportunity to comment on the Financial Accounting Standards Board (“FASB”) Exposure Draft on **Disclosures of Uncertainties about an Entity's Going Concern Presumption** (“the Proposal”).¹ The objective of the current Proposal is to provide guidance in U.S. Generally Accepted Accounting Principles (“U.S. GAAP”) about management’s responsibilities

¹ The Proposal represents the second exposure draft on Going Concern issued by the FASB. Subsequent to the issuance of the initial Exposure Draft in October 2008, the FASB promulgated guidance on Liquidation Basis of Accounting (Subtopic 205-30).

for assessing the reasonableness of the going concern presumption and disclosing going concern “uncertainties.”

The CCMC acknowledges the importance of the going concern presumption to financial reporting and applauds the FASB’s efforts to provide guidance in U.S.GAAP on the topic. Nevertheless, the CCMC is very concerned that the Proposal does not provide the appropriate criteria to assess and issue going concern disclosures and may be impossible to implement. The CCMC believes the Proposal would increase financial reporting complexity and potentially expand legal liability for companies, management, boards of directors, and auditors. Such a change in liability profiles may achieve the opposite outcome than FASB has intended by promoting boilerplate disclosures and not giving investors more decision useful information.

These concerns are discussed in more detail below.

I. Background

The FASB’s Conceptual Framework recognizes that financial statements are prepared under the presumption that a reporting entity will be able to continue to operate to realize its assets and meet its obligations in the ordinary course of business (“the going concern presumption”). If significant information to the contrary exists that makes this going concern presumption problematic for a reporting entity, disclosure of such concerns would be warranted.

Management should have the responsibility for assessing going concern and making relevant disclosures in the appropriate circumstances. However, there currently is no authoritative guidance in U.S. GAAP related to the going concern presumption and current guidance on going concern can be found in both the American Institute of Certified Public Accountants (“AICPA”) Generally Accepted Auditing Standards (“GAAS”) and the auditing standards of the Public Company Accounting Oversight Board (“PCAOB”). Auditors are given this role because federal securities laws require that an auditor evaluate whether there is substantial doubt about an entity’s ability to continue as a going concern for a reasonable period of time (“substantial doubt”). A reasonable period of time has been defined as a period not to exceed one year beyond the date of the financial statements being audited.

Nevertheless, there has been a long-standing call for FASB to issue going concern guidance under U.S. GAAP.² The Proposal seeks to achieve this goal by promulgating a requirement for an entity to evaluate going concern “uncertainties” as each annual and interim reporting period. Under the Proposal, GAAP footnote disclosures would be required when it is either (1) more likely than not that the entity will be unable to meet its obligations within 12 months after the financial statement date without taking actions outside the ordinary course of business or (2) it is known or probable that the entity will be unable to meet its obligations within 24 months after the financial statement date without taking actions outside the ordinary course of business. The Proposal also provides disclosure requirements when these thresholds are met and would require an entity that files with the Securities and Exchange Commission (“SEC”) to evaluate whether there is substantial doubt about its going concern presumption and if there is then the entity would need to disclose that determination in the footnotes.³

II. Conceptual Concerns

The CCMC supports two fundamental premises of the Proposal:

- 1) Management should have the responsibility for assessing going concern; and
- 2) Relevant disclosures should be made in appropriate circumstances.

Nevertheless the CCMC does not believe FASB has the right model for evaluating going concern and the need for related disclosures. To understand the core of these concerns, consider Question 11(b) in the Proposal which asks if there are differences between assessing probability in the context of transactions and assessing probability in the context of the overall state of the entity that are meaningful to determining the appropriateness of a probability model for assessing substantial doubt. The answer to this question is yes.

² For example, see the recommendation of the Panel on Audit Effectiveness *Report and Recommendations* (August 31, 2000), pages 59-62.

³ Based on the Proposal (page 3), substantial doubt would exist if, after assessing existing conditions and events and after considering all of management’s plans (including those outside the normal course of business), the entity concludes that it is known or probable that it will be unable to meet its obligations within 24 months after the financial statement date.

It is one thing for GAAP to include guidance on assessing the amount, timing, and uncertainty of future cash flows for measuring assets and liabilities in the financial statements (transaction guidance). This is consistent with the general purpose of financial reporting, namely to provide information about the financial position and condition of a reporting entity—including information about the entity’s economic resources and the claims against the reporting entity.⁴ However, it is quite another matter to ask preparers and auditors to make probability assessments about future states of an entity and implicitly or explicitly disclose these assessments, which is what the Proposal would do.⁵

It is management’s job to provide decision-useful information to financial statement users about the reporting entity. Such information includes disclosing the circumstances when a fundamental presumption for recognition and measurement of the entity’s economic resources and claims (i.e., the going concern presumption) appears no longer reasonable (i.e., in “substantial doubt”). It is within the purview of financial statement users to make an assessment about the state of a business entity.

Providing information for users to make their own probability assessments about the future states of the entity is quite different from requiring preparers and auditors to make those assessments as part of thresholds (that include “bright-lines”) for other disclosures related to going concern. The Proposal would have the effect of significantly restructuring the roles and responsibilities of issuers, auditors, and users in relation to users’ decisions. Essentially, the Proposal undermines the role and responsibilities of users and would ask companies and auditors to step into the shoes of equity and debt analysts.

III. Implementation and Other Practical Concerns

The CCMC is also concerned that the Proposal cannot be implemented or audited. The thresholds, time-horizons, and substantial doubt requirements involve judgments that are difficult and complex. The Proposal also requires that these

⁴ For example, see FASB Statement of Financial Concepts No. 8 (September 2010) on *The Objective of General Purpose Financial Reporting (Chapter 1)* and *Qualitative Characteristics of Useful Financial Information (Chapter 3)* (par. OB 12).

⁵ In addition, this type of assessment for a company does not easily equate to current assessments under GAAP, such as ones on goodwill impairment.

judgments consider the mitigating effects of management's plans, intent, and actions within or outside the ordinary course of business.

One particular concern is the precision for the disclosure thresholds included in the Proposal. For example, the use of "more likely than not" is a bright-line threshold that has the advantage of being objective in definition, but the disadvantage of being complex and subjective in application. A close call to disclose or not disclose going concern would ultimately be a judgment call despite the bright line test.

Accordingly, the Proposal may contribute to an expectations gap and increased complexity. While an objective of the Proposal is to reduce the diversity in the timing, nature, and extent of existing footnote disclosures related to going concern, this is unlikely given the nature of the complex assessment and judgments involved in determining if these disclosures are necessary.

Moreover, based on these complex and difficult judgments, if it is decided that going concern related disclosures are necessary, the Proposal would require the disclosure of information that is already largely included in disclosures required by the SEC in Management Discussion and Analysis ("MD&A").⁶ Duplicative disclosures for public companies do not add decision-useful information, contribute to disclosure overload and create liability, which reduces return for investors, through financial reporting disclosures

The potential for expanded legal liability represents an important downside to the Proposal. The nature of the complex judgments involved in the Proposal, as previously discussed, appear to be ripe for second-guessing in the context of litigation, inspection deficiencies for auditors, and regulatory enforcement actions. In addition, moving what would be forward looking information from MD&A to the GAAP footnotes that are audited or reviewed appears to represent another important source for an expansion in legal liability for companies, management, boards, and auditors, especially since the GAAP footnotes do not carry similar safe harbors as MD&A. Furthermore, the Proposal has the potential for operating as a "backdoor" through standard-setting into strict liability for auditors. Therefore, the CCMC is concerned

⁶ As an aside, very few of the examples of adverse conditions and events mentioned in the Proposal (par. 205-40-55-3) would not be public information currently available to investors and other financial statement users irrespective of any new going concern disclosures, especially for public companies.

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that the Proposal will represent a boon to the trial bar without providing any new useful information to investors and in fact potentially reducing return for investors.

Accordingly, the CCMC respectfully requests that regulators and standard-setters (FASB, SEC, and PCAOB) work together to develop a comprehensive financial reporting disclosure framework that would provide a template for considering going concern related disclosures that are beneficial for all stakeholders.⁷

Auditors of public companies are required by law to consider substantial doubt, which may trigger a going concern disclosure. With regards to private companies, it should be noted that users of private company financial statements can differ from those of public companies—and, for the most part, private company users are debt holders. Some debt holders may include audit report modifications for going concern among their debt covenants, while others may not.

The Proposal does not extend the substantial doubt requirement to management of private companies, although auditors of private companies would still be required to assess substantial doubt under GAAS. The rationale in the Proposal for such a distinction is not persuasive. In this particular situation, different GAAP requirements for management of public and private companies would be confusing to users and add complexity. In addition, different requirements could create a possibility for “regulatory arbitrage” and potentially make public companies (especially smaller public companies and emerging growth companies) worse off than private companies. Frankly, it is not clear that users of public and private company financial statements would be well served by any such differential requirement.

The Proposal also includes a horizon of 24 months after the financial statement date which relates to the FASB consideration of the October, 2008 Exposure Draft which stressed the importance of a bright-line horizon. However, given that the Proposal would apply to both annual *and interim* financial reporting it would seem that

⁷ Regulators and standard-setters should also work together to consider the implications of the interplay among their various proposals. For example, the PCAOB recently issued an Exposure Draft on “Proposed Auditing Standards Regarding the Auditor’s Report and the Auditor’s Responsibilities Regarding Other Information” (PCAOB Release No. 2013-005, August 13, 2013) that would include a requirement for auditors to identify and report on critical audit matters. Reporting on critical audit matters may interact with the requirements in the FASB Proposal.

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the current guidance, that a reasonable period of time beyond the date of the financial statements is not to exceed one year, should remain.

Finally, the October, 2008 Exposure Draft was geared towards the convergence of U.S. GAAP with International Financial Reporting Standards (“IFRS”). The CCMC has been a strong advocate for a single set of global accounting standards through the convergence of U.S. GAAP with IFRS and believes that the Proposal should be considered as convergence project.

IV. Conclusion

The CCMC appreciates the opportunity to comment on the Proposal. However, we have serious concerns regarding the Proposal in its current state in that it will not provide investors with additional decision useful information, increase complexity, contribute to disclosure overload, duplicate existing disclosures and create liability for companies. We believe that FASB should reconsider the Proposal with these concerns in mind and that as an alternative that FASB, the PCAOB and the SEC work on a comprehensive and coordinated effort to provide all stakeholders with decision useful information with clear lines of authority and responsibility.

The CCMC stands ready to assist in the effort to work this effort.

Sincerely,

A handwritten signature in black ink, appearing to read "TQ".

Tom Quaadman

Cc: Mr. Paul Beswick, Securities and Exchange Commission