



January 29, 2010

Russell G. Golden, CPA
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Re: December 29, 2009 Exposure Draft (ED) of a Proposed Accounting Standards Update, *Subsequent Events (Topic 855): Amendments to Certain Recognition and Disclosures Requirements* [Amendments ED]

Dear Mr. Golden:

One of the objectives that the Council of the American Institute of Certified Public Accountants (AICPA) established for the PCPS Executive Committee is to act as an advocate for all local and regional firms and represent those firms' interests on professional issues, primarily through the Technical Issues Committee (TIC). This communication is in accordance with that objective. These comments, however, do not necessarily reflect the positions of the AICPA.

TIC has reviewed the Amendments ED and is providing the following comments for your consideration. TIC also reached out to certain constituencies to develop some of the points discussed in this letter.

GENERAL COMMENTS

Now that the new subsequent events standard has become effective, a number of issues have surfaced for entities that do not file or furnish financial statements with the SEC (hereinafter referred to as either nonpublic entities or non-SEC filers) regarding the date through which subsequent events should be evaluated. The Amendments ED has renewed TIC's focus on these issues. After careful study, it is now clear to TIC that FASB *Accounting Standards Codification*TM paragraph 855-10-25-2 is fatally flawed with respect to the requirement to evaluate subsequent events through the date that the financial statements are issued whenever the entity has a current expectation of widely distributing its financial statements to its shareholders and other financial statement users. Such a requirement is inconsistent with the needs of the users of the financial statements of nonpublic entities and is detrimental from their perspective. Furthermore, as preparers within TIC's constituency





have started to implement the subsequent events standard, they have encountered considerable confusion about the application of the requirements. TIC has prepared multiple examples below to illustrate why the standard would be nonoperational for most non-SEC filers that “widely distribute” their financial statements.

TIC Conclusions and Recommendations

Nonpublic Entities

Some of the disclosure provisions of ASC Topic 855 (Subsequent Events) appear to be aimed at fixing problems that do not exist.

Requiring nonpublic entities to evaluate subsequent events through the expected date of widely distributing the financial statements to their shareholders and other financial statement users is not operational for two key reasons:

- The evaluation criteria are complex and confusing and will lead to diversity in practice.
- The standard denies many non-SEC filers the ability to have GAAP financial statements prior to the date of wide distribution.

TIC therefore recommends that all nonpublic entities evaluate subsequent events through the date that the financial statements are “available to be issued” (without exception). This revision would establish two clear criteria for evaluating subsequent events (one for SEC filers; another for nonpublic entities) that would simplify the standard without a negative effect on the public interest or users of financial statements of nonpublic entities.

If the Board decides that certain nonpublic entities will continue to be subject to the “issued” date based on expectations of “widely distributing” their financial statements, the amended standard should address the issues that TIC has identified, which may include consideration of the following:

- Providing clear criteria for the concept of wide distribution. The guidance should be adapted to accommodate the process used by nonpublic entities to provide financial statements to their users.
- Minimizing the re-evaluation of subsequent events when an entity has successive wide distributions.

SEC Filers

The Amendments ED eliminated the definition of a “public entity” from the original





standard and replaced it with the notion of “an entity that files or furnishes financial statements with the SEC.” TIC believes the requirement would be clearer if the Board provides guidance on how to interpret “files or furnishes” when the entity does not submit its financial statements directly to the SEC, but they are made available to the public through the EDGAR database.

Further discussion of the above points is provided in the section below.

SPECIFIC COMMENTS

TIC believes the Board is seeking a level of perfection in the evaluation of subsequent events that is neither achievable nor necessary for nonpublic entities.

Irrelevance to Private Company Needs

TIC believes the “issuance” of financial statements is an SEC concept that has little meaning outside the world of SEC registrants. Nonpublic entities do not issue financial statements to all users at a particular, predetermined filing date; rather, they provide them to their users on an as-needed basis. (In some cases, the statements are never provided to 3rd party users and are simply held by management.) There is no central repository for the financial statements of nonpublic entities where potential users can access the information they need at the same time. As a result, it is inappropriate to force certain nonpublic entities into an issuer model simply because their statements are widely distributed (however defined).

With the issuance of Statement of Financial Accounting Standards No. 165 (SFAS 165), *Subsequent Events* (now codified as ASC Topic 855), the FASB took an important step in requiring that a user be informed of the date through which subsequent events be evaluated. The disclosure effectively communicates that all financial statements may become stale in short order, since financial statements would not reflect events that occurred after the disclosed date. Now that users will be put on notice about the evaluation date for subsequent events, there is even less reason than before to update the evaluation after the available-to-be-issued date. Users will obtain a given set of financial statements of a public or nonpublic entity at different times. Each user will have access to the disclosure of the evaluation date and can decide whether that date is sufficient for the user’s purpose. It is therefore impossible, and should not be management’s objective, to repeatedly re-evaluate financial statements for subsequent events.

TIC also believes that user needs are very different for companies that file or furnish statements to the SEC v. those that don’t. Securities of SEC registrants typically are traded





daily in the public marketplace. Financial statement users do not have direct access to company management and so a fair and equitable information system is necessary to ensure, to the extent possible, that the most up-to-date information about a company is available simultaneously to each interested user. The SEC controls financial statement issuance and availability through an integrated framework of keeping current requirements, legally established filing deadlines, and centralized distribution via the EDGAR database.

Users of entities other than those that file or furnish financial statements with the SEC have fundamentally different needs and use the financial statements for different purposes. They are not competing to buy and sell the securities of these entities on a daily basis. Rather, they are granting credit, considering an equity investment, gauging management’s stewardship of the company or, in the case of regulators, fulfilling an oversight role. There is no evidence that we know of that nonpublic users seek a re-evaluation of subsequent events immediately before receiving the financial statements, and unlike the public company world, regulators and most other users would have direct access to the private company management to obtain any additional information needed.

In addition, unlike public company analysts, many users of private company statements often oppose burdening preparers with costly and unnecessary requirements. They are not inclined to advocate for more and more disclosure because they are not trying to value the company. They are interested only in the disclosures that will be consistently decision-useful for lending, investing, governance or public interest oversight purposes, and they typically perform their own due diligence prior to entering into any transaction or for any other reason they deem necessary. They have the ability to access management directly for updated subsequent events information whenever and through whatever date they need it. Therefore, in TIC’s view, the Board is trying to fix a problem that does not exist.

Reasons why the standard cannot be operationalized

Subsequent to the issuance of SFAS 165, TIC realized that the requirements of SFAS 165 for non-SEC filers will be problematic because of the confusion that centers on the issue of wide distribution. ASC Paragraph 855-10-25-2 requires a nonpublic entity that has a current expectation of widely distributing its financial statements to its shareholders and other financial statement users to evaluate subsequent events through the date that the financial statements are issued. (This requirement would not change as a result of the Amendments ED.) The term “widely distributed” is not defined in the original standard or in the Amendments ED. TIC predicts the ambiguity surrounding this term will cause significant variations in practice.





Some of the questions surrounding the meaning of wide distribution include:

- Is there a numerical threshold that would apply? For example, would a mailing of 500 statements constitute wide distribution, whereas a distribution of 60 statements would not?
- Are statements widely distributed when distributions are made to 100% of the members of specific user groups (such as all of the entity’s lenders, investors, donors, or governing boards, etc.)?
- Do the financial statements have to be available to the general public to be considered widely distributed and, if so, what are the criteria surrounding such availability?
- Would filings with regulatory agencies other than the SEC constitute wide distribution if the statements become a matter of public record?
- Does wide distribution include financial statements that are available upon request, either from a regulator or from the entity, including electronically accessible?
- Has the entity met the definition of widely distributed if it posts the financial statements to its own web site? (Note: Pursuant to the SEC-related guidance in ASC paragraph 855-10-S99-2, FN4, “Posting financial statements to a registrant’s web site would be considered wide distribution to all shareholders and other financial statement users if the registrant uses its web site to disclose information to the public in a manner consistent with the requirements of Regulation FD.” [Source: See the Commission’s interpretive guidance in Exchange Act Release No. 58288 (Aug. 7, 2008)]). However, the Board’s views concerning this guidance were not included in the non-SEC portion of ASC Topic 855.)
- If the entity plans to have several filings that qualify as a wide distribution, do subsequent events have to be re-evaluated for each such distribution (issuance)?
- Would distributions of GAAP financial statements prior to the wide distribution be effectively prohibited because the financial statements would not be considered GAAP financial statements prior to the issued date (i.e., the date of the wide distribution)? In other words, prior to the date of wide distribution, the financial statements would not be “complete in a form or format that complies with GAAP” since GAAP requires subsequent events to be evaluated through a date which has not yet arrived. If so, does FASB believe that those financial statements sent to a bank or other creditor prior to wide distribution are not GAAP?

TIC explored the ramifications of varying interpretations of the term “widely distributed” and found that it is nonoperational as a criterion for determining when to use the available-to-be-issued date v. the issuance date. The illustrative examples below, which are not meant to be exhaustive, describe the practical implementation issues that would be encountered by





a number of different entity types.

Conduit Debt Obligors

Under the Amendments ED, conduit debt obligors would not necessarily be considered an entity that files or furnishes financial statements with the SEC. Conduit debt obligors therefore must decide whether they are required to evaluate subsequent events through the available-to-be-issued date v. the issued date. TIC is aware that certain conduit debt obligors (i.e., private sector entities that obtain financing for the acquisition/construction of facilities deemed to be in the public interest via tax exempt bonds issued through quasi-governmental authorities) file their financial statements with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (EMMA) repository. (TIC is also aware that certain conduit debt obligors are not required to file with EMMA.) Some conduit debt obligors also post their financial statements on their web sites.

Conduit debt obligors that file with EMMA would need to understand how users access EMMA and whether such access is a factor to be considered in the definition of "widely distributing." They would also need to be aware of the SEC's position on posting financial statements to an entity's web site and would have to consider whether the FASB held the same view. To expect preparers to expend the effort to make such determinations is unrealistic and burdensome. Without guidance from FASB, non-SEC filers could reach varying interpretations of "widely distributing," which could lead to inconsistent disclosures of subsequent events and related dating in financial statements contained in the EMMA database.

Some EMMA filers may also need to provide GAAP financial statements prior to the EMMA filing deadline to lenders or other financial statement users. EMMA filers would be unable to make such distributions.

The users who access financial statements through EMMA will not understand or care about the technical "advantage" they have "benefited from" regarding "possible updated information that may have been added arising from the re-evaluation of subsequent events. It is also important to emphasize that the EMMA system does not require the entities to consider their subsequent events right up to the filing date as the SEC's 1934 Exchange Act does.

TIC questions whether these potential outcomes are what the Board intended. The process is cumbersome and may lead to much inadvertent noncompliance. It potentially affects many private-sector entities including hospitals, colleges and universities, and many others. It is





not operational for these entities to delay the distribution of their financial statements until the EMMA filing date, which varies by entity and can run from 180 days to as much as 365 days from the balance sheet date. This unnecessary and unwanted delay is unfair to the EMMA filers and to certain user groups that may have to wait longer to receive the filer's financial information.

Not-for-Profit Entities (without conduit debt)

Assume a not-for-profit entity completes its GAAP financial statements (i.e., they meet the definition of available-to-be issued) on March 31, and the auditor signs and releases the auditor's report on the same day. The entity wants to send out the financial statements immediately to its lender and five major contributors. The entity expects to post the financial statements to its web site as soon as possible, but cannot do so until April 30 because it has no IT staff and must rely on volunteers to find the time to update the web site. The entity also engages its independent auditor to perform a single audit under OMB Circular A-133. The financial statements along with the single audit information package will be filed electronically with the Federal Clearing House five months later (August 31).

This entity would face the following issues in determining whether its financial statements are widely distributed, and, if so, whether it has multiple wide distributions. Because of the lack of guidance in the standard, the entity would not know whether the posting to its own web site qualified as a wide distribution. (SEC guidance implies that it would, but [as mentioned above] the basis for this determination has not been included in the authoritative section of ASC Topic 855. Since the entity has no obligation to look at SEC rules, it does not know this guidance exists.) The entity also may not know when the electronic statements are made available to others or who has access to the Federal Clearing House data base, so may not be able to judge whether the statements filed with the single audit package qualify as a wide distribution. If the entity decides that both are wide distributions, then it has no guidance to determine whether the subsequent events evaluation has to be updated for each issuance. If even one of the two qualifies as a wide distribution, the entity would have to deny other users access to the GAAP financial statements. The statements that were "available to be issued" on March 31 would not be GAAP financial statements, and therefore the lender and five donors could not obtain them until the first date of wide distribution. This would be an untenable situation from the NPO's perspective and makes little sense.

Employee Benefit Plans

The following scenario illustrates why the widely distributed criterion is operationally





unworkable and prejudicial to certain user groups of employee benefit plans:

On September 15, an employee benefit plan has prepared financial statements that technically meet the definition of available-to-be-issued per the ASC section 855-10-20 glossary. Before the issuance of SFAS 165, the statements would now be available to plan participants upon request or other users as needed.

Certain plans (but not all plans) are required to prepare Form 5500 (with audited financial statements attached) and file the completed documents electronically with the U.S. Department of Labor (DOL) using its EFAST 2 system, a public database. The filings are generally available to the public within 24 hours of the filing being processed and are easily accessible through a link on the DOL web site. No special credentials are needed to view the filings and no registration is required.

Approximately 60% of the estimated 85,000 filings made each year are filed between October 5 and October 15, the extended filing deadline for a calendar-year plan. For many plans, the filing date would always follow the traditional available-to-be issued date by approximately one to two months. In many cases, it is impossible to issue the financial statements on the same date as they are filed with the Form 5500. For example, when preparation of the Form 5500 is outsourced to third party service providers (which is quite common), they usually require that all information, including the audited financial statements, be submitted to them two-to-three weeks prior to the date that they will be filed. They want to see everything before they begin preparing the Form 5500.

If an EFAST 2 filing is considered wide distribution, the plan would have to delay the distribution of its financial statements to plan participants and any other individual users, since the available-to-be-issued statements are no longer compliant with GAAP. Furthermore, all plan auditors would have to update their review of management's subsequent events procedures up to October 15, which is an unworkable time frame given the number of plans that would have these filings.

Impact on OCBOA Statements of Insurance Enterprises

Insurance companies generally file financial statements with each state in which they do business; some regulators may make them available to outside parties upon request. However, such statements are generally filed using the statutory basis of accounting (a type of other comprehensive basis of accounting [OCBOA]). The Board may therefore believe that these filings would not be affected by the requirements of ASC Topic 855, simply because the basis of accounting used is OCBOA.





The AICPA Auditing Standards Board *Professional Standards* section AU section 623 and AU 9623 represent the only sources of established guidance on OCBOA disclosures. Specifically, Interpretation 12 of AU section 9623.60+, *Evaluation of the Appropriateness of Informative Disclosures in Insurance Enterprises' Financial Statements Prepared on a Statutory Basis*, addresses subsequent events disclosures for the insurance industry. This guidance parallels the generic disclosure guidance applicable to all OCBOA financial statements and states that the auditor should consider whether the financial statements and the related notes include informative disclosures that are appropriate for the accounting basis used. The guidance goes on to say that the auditor, in evaluating the fairness and sufficiency of disclosure, should apply essentially the same criteria to OCBOA financial statements as to GAAP financial statements. This means similar informative disclosures should be provided for items within the OCBOA financial statements that are the same as the GAAP financial statements, as well as for matters such as subsequent events that are not identified on the face of the statements. When ASC Topic 855 was issued, the AICPA finalized a Technical Practice Aid (TPA) 1500.07, *Disclosure Concerning Subsequent Events in Financial Statements Prepared on an Other Comprehensive Basis of Accounting*, which says that the disclosures in ASB Topic 855 should be made in OCBOA statements. Therefore, entities that use OCBOA, including a myriad of insurance enterprises, will have to address the same ambiguities relating to wide distribution as those that file under GAAP.

That is, insurance companies will need to determine which state filings constitute wide distribution and will have the same questions about the need to update the subsequent events evaluation for those that are. If so, it would be burdensome for the entities to comply. If not, then some states will receive more current information about subsequent events than others. Regulatory structures outside of the SEC do not have consistent frameworks and cannot accommodate a standardized updating process. Therefore, TIC believes the FASB should not attempt to set standards that cannot be applied consistently. The regulators should decide for themselves how current the financial information needs to be to serve the interests of the public in each state.

Summary

TIC believes there is considerable ambiguity surrounding the concept of widely distributed financial statements and its application within the nonpublic arena. Within the Basis for Conclusions of SFAS 165 (paragraph A12), the Board stated that “management must use judgment in determining whether they have the current expectation of widely distributing their financial statements.” TIC believes management cannot be expected to exercise the professional judgment that the Board intends unless the Board provides some criteria for the





concept of “widely distributed.” Management, using professional judgment, could easily reach the conclusion that any distribution of financial statements beyond management is wide distribution. Such judgment can be exercised only within suitable parameters, which are lacking in this standard.

TIC also believes the illustrations above demonstrate that wide distribution is a prejudicial condition for evaluating subsequent events in private entities. According to the standard, if an entity expects wide distribution of its financial statements at a future date, the financial statements would be unavailable to be issued to other parties before that date since the statements are not considered GAAP until they are widely distributed. This makes no sense for TIC’s constituency since many different users may want the statements earlier for other purposes that do not relate to the intended purpose associated with the wide distribution. It would be inappropriate to subordinate one user’s interests to another’s.

Imposing such additional burdens on nonpublic entities at this time is misdirected effort. All nonpublic entities are struggling to understand and implement new accounting standards these days, and that burden will only increase in upcoming years. Given the number of industries and entities that would have to evaluate subsequent events through the issued date, preparers and their independent auditors would unnecessarily struggle, as a practical matter, to cope with the additional decision-making necessary to determine whether a nonpublic entity expects wide distribution of its financial statements. Adding irrelevant new requirements to address perceived information needs that users don’t have will inevitably result in inconsistent application of the standard and will encourage preparers to find ways to circumvent standards.

Evaluation of subsequent events has always been a well-understood process. This standard has added a level of complexity that just doesn’t make sense for nonpublic entities. The level of interpretation necessary to comply with this standard would be to the detriment of preparers, auditors and selected user groups.

The Board is purporting to know what each regulator and other user needs, but, at the same time, is creating artificial barriers for distribution that are prejudicial to certain classes of users.

TIC cannot support this outcome and asks the Board to recognize that SFAS 165, if applied as written, would bring about a huge change in practice that is totally unnecessary and confusing for the vast majority of non-SEC filers. TIC urges the Board to adopt one criterion for all non-SEC filers that is driven by the available-to-be-issued date.





Suggested Changes to the Amendments ED for Those Entities That File or Furnish Statements to the SEC

The Amendments ED proposes new ASC paragraph 855-10-25-1A, which states:

An entity that files or furnishes financial statements with the SEC shall evaluate subsequent events through the date the financial statements are issued.

TIC believes certain entities, such as broker/dealers, may be uncertain whether they meet this requirement since they do not file with the SEC but their financial statements are made available to the public on the EDGAR database. TIC suggests that a footnote be added to the phrase “files or furnishes” to explain how the requirement is to be interpreted. This description would be especially important if the term is written in a specific legal context.

TIC appreciates the opportunity to present these comments on behalf of PCPS member firms. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

Philip J. Santarelli, Chair
PCPS Technical Issues Committee

cc: PCPS Executive and Technical Issues Committees

