



September 20, 2013

Technical Director  
Financial Accounting Standards Board  
File Reference No. 2013-300  
401 Merritt 7  
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Re: Proposed Accounting Standards Update – Presentation of Financial Statements (Topic 205)  
Disclosure of Uncertainties about an Entity’s Going Concern Presumption

Marcum LLP (“we”) is pleased to submit its comments regarding this important proposal. We support the development of definitive guidance within the accounting literature for evaluating reporting entity going concern uncertainties, and in placing that responsibility with the entity’s management. However, we also believe that the distinction the proposed standard attempts to make between “ordinary course” and “outside the ordinary course” actions, and performing the going concern assessment at 12 and 24 months to be unworkable in practice. We believe the threshold ought to be “substantial doubt”, applied to both privately held entities and publicly held registrants, and not as defined in the proposed standard using the words “known” or “probable”. The definition of “substantial doubt” should be: when information about existing conditions and events, after considering mitigating plans, indicates that it is more likely than not that the entity will be unable to meet its obligations as they come due within 12 months from the date the annual or interim financial statements are available to be issued (for privately held entities) or the date the financial statements were issued (for publicly held registrants).

The following represents detailed responses to the Questions for Respondents in the proposed standard:

## Overall

**Question 1: The proposed amendments would define *going concern presumption* as the inherent presumption in preparing financial statements under U.S. GAAP that an entity will continue to operate such that it will be able to realize its assets and meet its obligations in the ordinary course of business. Do you agree with this definition? If not, what definition should be used and why?**



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Yes. However, as discussed in our subsequent responses below, we believe that the distinction the proposed standard attempts to make between “ordinary course” and “outside the ordinary course” actions, and performing the going concern assessment at 12 and 24 months to be unworkable in practice.

**Question 2: Currently, auditors are responsible under the auditing standards for assessing going concern uncertainties and for assessing the adequacy of related disclosures. However, there is no guidance in U.S. GAAP for preparers as it relates to management’s responsibilities. (a) Should management be responsible for assessing and providing footnote disclosures about going concern uncertainties? (b) If so, do you agree that guidance should be provided in U.S. GAAP about the timing, nature, and extent of footnote disclosures about going concern uncertainties for SEC registrants and other entities? Why or why not?**

- (a) Yes. Management is responsible for the fair presentation of the financial statements. To the extent that the basis of accounting of those financial statements is subject to substantial doubt; that assumption is critical to that fairness and should, therefore, be part of management’s responsibility.
- (b) Yes. As noted above, the basis of accounting is key to the fair presentation and, therefore, addressing the related disclosure in U.S. GAAP is appropriate.

**Question 3: (a) Would the proposed amendments reduce diversity in the timing, nature, and extent of footnote disclosures and provide relevant information to financial statement users? (b) If so, would the proposed disclosures for SEC registrants provide users with incremental benefits relative to the information currently provided under other sections of U.S. GAAP and under the SEC’s disclosure requirements?**

- (a) Yes
- (b) Since there are no current requirements in U.S. GAAP, the proposed amendments put the guidance in the proper place; in the accounting standards, not the auditing standards. While there is currently some diversity in practice as a result of auditor requirements, we do not believe there will be significant incremental benefits relative to current practice. Nevertheless, we believe it makes sense to move forward with an accounting standard.

**Question 4: The proposed amendments would require management to evaluate going concern uncertainties and additionally, for SEC filers, to evaluate whether there is substantial doubt about the entity’s ability to continue as a going concern. An alternative view is that such evaluations should not be required because management would inherently be biased and, thus, the resulting disclosures would provide little incremental benefit to investors. (a) Do you believe that an entity’s management has the objectivity to assess and provide disclosures of uncertainties about the entity’s ability to continue as a going concern? Why or why not? (b) If not, please also explain how this assessment differs from other assessments that management is required to make in the preparation of an entity’s financial statements.**

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- (a) Yes and no. Management has the best information to make such an assessment. Management is not unbiased and might be expected to lean towards a best case. But this is not different from any other management assessment and these assessments are subject to audit. These audits are relied upon by the capital markets to address the expectation of management bias. Already, as auditors assess the going concern presumption, it is normal to require management to prepare analyses supporting that presumption. To remain independent, auditors require management to make an assessment. The proposed standard would formalize management's responsibility and provide guidelines and disclosure. We do not believe that the normal presumption of management bias should be a significant factor in determining whether a going concern standard should become part of U.S. GAAP
- (b) See our response in (a) above.

**Question 5: At each reporting period, including interim periods, the proposed amendments would require management to evaluate an entity's going concern uncertainties. Do you agree with the proposed frequency of the assessment? If not, how often should the assessment be performed?**

Yes. We live in a rapidly changing world and quarterly is not too frequent an interval to make such assessments.

**Question 6: For SEC registrants, the proposed footnote disclosures would include aspects of reporting that overlap with certain SEC disclosure requirements (including those related to risk factors and MD&A, among others). The Board believes that the proposed footnote disclosures would have a narrower focus on going concern uncertainties compared with the SEC's disclosure requirements. (a) Do you agree? Why or why not? (b) What differences, if any, will exist between the information provided in the proposed footnote disclosures and the disclosures required by the SEC? (c) Is the redundancy that would result from this proposal appropriate? Why or why not?**

- (a) We agree. U.S. GAAP needs to be the repository for the guidance related to evaluating an entity's going concern uncertainties, and developing such a standard should complement the SEC's existing disclosure requirements, both within the financial statements and in the MD&A section, among others.
- (b) The various risk assessment sections of the interim and annual report filings may expand upon the impact going concern challenges might have on the entity, and address in greater detail management's plans to deal with the issues, and the consideration of alternatives, etc. There may be overlap, but the going concern assumption is part of the information required for financial statements to be able to stand on their own.
- (c) We do not take issue with regard to potential redundancy as we would expect greater details to be provided outside of the footnotes to the financial statements. Currently, the SEC's requirements for disclosure of risks and uncertainties are significantly greater than existing U.S. GAAP requirements, so we do not see developing this proposed new standard as creating undesirable redundancy, as the financial statements and related footnotes ought to be able to stand on their own as a self-contained document for an SEC registrant.

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**Question 7: For SEC registrants, would the proposed footnote disclosure requirements about going concern uncertainties have an effect on the timing, content, or communicative value of related disclosures about matters affecting an entity's going concern assessment in other parts of its public filings with the SEC (such as risk factors and MD&A)? Please explain.**

No. We believe the expanded footnote disclosure requirements will become better aligned with the existing requirements for such disclosures outside the financial statements.

**Question 8: The proposed footnote disclosures about going concern uncertainties would result in disclosure of some forward-looking information in the footnotes. (a) What challenges or consequences, if any, including changes in legal liability for management and its auditors, do you anticipate entities may encounter in complying with the proposed disclosure guidance? (b) Do you foresee any limitations on the type of information that preparers would disclose in the footnotes about going concern uncertainties? (c) Would a higher threshold for disclosures address those concerns?**

- (a) The required information to be disclosed as set forth by 205-40-50-7 is initially based upon an identification of existing conditions and effects as of the balance sheet date, which is not forward looking information. However, evaluating their possible effects does require an evaluation of future events, which is inherent in providing management's best estimate of the significance of those conditions, mitigating conditions and events. All of this is well within the capability of management, and we believe such considerations do not necessarily create a higher liability for management or the auditors to a degree that the SEC should consider extending the existing protections to registrants regarding forward looking disclosures. We do not see this as problematic.
- (b) Management may resist providing certain disclosures related to details related to key strategies for fear of a instigating a competitive disadvantage. Nevertheless, we believe the proposed nature and extent of disclosures are sufficiently broad to mitigate this perception.
- (c) A higher threshold is not necessary, for the reasons stated in (b) above.

**Question 9: What challenges, if any, could auditors face if the proposed amendments are adopted?**

Auditors have had to deal with the going concern issue without any U.S. GAAP guidance for a long time. The absence of U.S GAAP guidance has resulted in perhaps an excessively principles-based environment as to this issue. The absence of U.S. GAAP standard for guidance has resulted in disparate application of judgment which could make comparisons difficult. Although "bright line" rules can result in form over substance application, a common standard should bring more consistency.

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**Question 10: Do the expected benefits of the proposed amendments outweigh the incremental costs of applying them?**

Yes.

#### **Disclosure Threshold**

**Question 11: Under the proposed amendments, disclosures would start at the more-likely-than-not or at the known or probable threshold as described in paragraph 205-40-50-3.**

**a. Is the disclosure threshold appropriate? What are the challenges in assessing the likelihood of an entity's potential inability to meet its obligations for purposes of determining whether disclosures are necessary?**

We believe that 205-40-50-3 (a) and (b) present an unworkable standard. The attempt to concurrently apply the terms "more likely than not", and "probable" in this situation is counterproductive to users' needs and lacks precision when dealing with a global issue such as an entity's assessment of its ability to continue as a going concern. The standard ultimately developed should be less complex. Users of the financial statements of privately held entities and publicly held registrants should not be required to grasp the technical distinction between "more likely than not" (> 50/50) and probable (> 70%), when they are most likely to believe they mean the same thing. In addition, we believe it is practically impossible to reach a "probable" assessment for a 24 month period, and the assessment should be limited to a 12 month period as discussed below. Visibility significantly decreases for most entities as forecasts extend beyond 12 months.

The threshold ought to be "substantial doubt", applied to both privately held and publicly held registrants, and not as defined in the standard using the words "known" or "probable". The definition of "substantial doubt" should be: when information about existing conditions and events, after considering mitigating plans, indicates that it is more likely than not that the entity will be unable to meet its obligations as they come due within 12 months from the date the annual or interim financial statements are available to be issued (for privately held entities) or issued (for publicly held registrants). We have seen numerous situations where financial statements are issued beyond the end of the next fiscal year, or approaching the end of the next fiscal year. Just because an entity has "made it" for 12 months, should not obviate the need for disclosure of the going concern presumption for a reasonable period of time beyond the issuance of the financial statements. Accordingly, we believe that the appropriate period of time is 12 months from the date the financial statements are available to be issued (for privately held entities) or the date the financial statements are issued (for publicly held registrants). This would better align the expectations of preparers, auditors and users of the financial statements.

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- b. Are there differences between assessing probability in the context of transactions and assessing probability in the context of the overall state of an entity that are meaningful to determining the appropriateness of a probability model for assessing substantial doubt?**

Yes. The more complex the entity, the more complex the assessment.

- c. Do the proposed amendments adequately contemplate qualitative considerations? Why or why not?**

Yes, the proposed standard's inclusion of "all relevant information" is adequately broad to be implemented in practice.

- d. Do you believe that the guidance in paragraph 205-40-50-4 about information on how an entity should assess the likelihood of its potential inability to meet its obligations and the implementation guidance within the proposed amendments are helpful and appropriate? Why or why not?**

The guidance presented is acceptable; however, we strongly believe the assessment period should be limited to 12 months as discussed in our response to question 11.a. above.

- e. Are your views the same for SEC registrants and non-SEC registrants?**

Yes. We believe there ought to be no distinction in the development of U.S. GAAP between a privately held entity and a publicly held registrant with respect to the going concern assessment, as there is a consistent need to provide meaningful disclosure to the users of the financial statements. We believe this approach can be easily developed by adopting our suggestion for a uniform measurement standard as discussed in our response to question 11.a. above. When it comes to assessing the going concern uncertainty, users of privately held entity financial statements have very similar needs to users of public registrant financial statements.

**Question 12: The proposed amendments would require an entity to assess its potential inability to meet its obligations as they become due for a period of 24 months after the financial statement date. Is this consideration period appropriate? Is it appropriate to distinguish the first 12 months from the second 12 months as proposed in the amendments? Why or why not?**

We believe the period for the assessment should be limited to 12 months as discussed above.

**Question 13: Under the proposed amendments, management would be required to distinguish between the mitigating effect of management's plans in and outside the ordinary course of business when evaluating the need for disclosures. (a) Is this distinction relevant to determining if and when disclosures should be made? (b) If so, explain how management's plans should be considered when defining the two different disclosure thresholds.**

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- (a) The proposed amendments present an unworkable standard, as “In the ordinary course of business” and “outside the ordinary course of business” is inherently too subjective. Attempts to make a distinction between the two add unnecessary complexity to what should be a broad principles-based approach to an entity’s determination of its ability to continue as a going concern. Whatever it is that management has to accomplish in order for the entity to continue to be able to meet its obligations is what should be disclosed. The degree of certainty with which these plans can be accomplished should also be disclosed to provide the reader of the financial statements with all the relevant information.
- (b) As stated above, there should only be one disclosure threshold.

**Question 14: Do you agree with the definition of management’s plans that are outside the ordinary course of business as outlined in paragraph 205-40-50-5 and the related implementation guidance?**

We agree with the definition, but suggest the proposed standard’s prohibition from management’s consideration be reevaluated in light of our response to question 13 above. For example, management might consider placing the business up for sale; consider a bankruptcy filing or other, infrequent actions. No actions should be excluded from management’s evaluation.

**Question 15: Do you agree with the nature and extent of disclosures outlined in paragraph 205-40-50-7? Should other disclosure principles be included?**

Yes, we agree with the extent of the disclosures.

#### **Substantial Doubt Determination**

**Question 16: The proposed amendments define substantial doubt as existing when information about existing conditions and events, after considering the mitigating effect of management’s plans (including those outside the ordinary course of business), indicates that it is known or probable that an entity will be unable to meet its obligations within a period of 24 months after the financial statement date. Do you agree with this likelihood-based definition for substantial doubt? Do you agree with the 24-month consideration period? Why or why not? Do you anticipate any challenges with this assessment? If so, what are those challenges?**

We believe the proposed standard for management to apply in assessing its ability to continue as a going concern ought to be developed as suggested in our response to question 11.a. Otherwise, we would expect the current proposed standard to be unworkable in practice, resulting in substantial inconsistency in application. A 24-month period is too long- it is often difficult for either management, or the auditors to look that far into the future. Using a 24-month period would likely increase the expectation gap between users, preparers and auditors. We also believe that using a known or probable standard is too high of a threshold, which would likely significantly reduce the number of “substantial doubt” disclosures from current practice. The entity should disclose that there is a going concern uncertainty if after considering management’s

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plans and other mitigating factors (whether in or outside the ordinary course), there is a conclusion that it is more likely than not that the entity will be unable to meet its obligations within 12 months from the date the annual or interim financial statements are available to be issued (for privately held entities) or issued (for publicly held registrants).

**Question 17: Do you agree that an SEC filer's management, in addition to disclosing going concern uncertainties, should be required to evaluate and determine whether there is substantial doubt about an entity's ability to continue as a going concern (going concern presumption) and, if there is substantial doubt, disclose that determination in the footnotes?**

As stated in several of our responses above, we believe the evaluation to determine if there is substantial doubt ought to be applicable to both privately held entities and publicly held registrants, and such determination should be made by management of both types of entities. When it comes to the determination of substantial doubt, users of privately held entity financial statements have very similar needs to users of public registrant financial statements.

**Question 18: Do you agree with the Board's decision not to require an entity that is not an SEC filer to evaluate or disclose when there is substantial doubt about its going concern presumption? If not, explain how users of non-SEC filers' financial statements would benefit from a requirement for management to evaluate and disclose substantial doubt.**

No. We do not see any distinction regarding why this important evaluation should not be applied to non public entities.

**Question 19: The Board notes in paragraph BC36 that its definition of substantial doubt most closely approximates the upper end of the range in the present interpretation of substantial doubt by auditors. (a) Do you agree? Why or why not? (b) Assuming it does represent the upper end of the range of current practice, how many fewer substantial doubt determinations would result from the proposed amendments? (c) If the proposed amendments were finalized by the Board and similar changes were made to auditing standards, would the occurrence of audit opinions with an emphasis-of-matter paragraph discussing going concern uncertainties likewise decrease and be different from what is currently observed? If so, by how much? (d) Is such a decrease an improvement over current practice? Why or why not?**

(a) Yes, we agree as to the assumption the consideration of substantial doubt would represent the upper end of a range, or possibly beyond the upper end of the range. However, we continue to believe the definition ought to be applied to a 12-month period using a more likely than not threshold as discussed above, and management should be allowed to consider all available mitigating strategies; thus, eliminating the distinction the proposed standard draws between "ordinary course" and "out of the ordinary" actions.

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- (b) We believe that using a known or probable standard is too high of a threshold, which would likely significantly reduce the number of “substantial doubt” disclosures from current practice.
- (c) See response to b.
- (d) We do not believe it would be an improvement to current practice. It would effectively be reducing the number of warnings that users of financial statements receive, requiring users to make more assumptions about entities than they currently make under current practice, and management should be in a better position to make such determinations.

We thank you for the opportunity to comment on this matter. We would be glad to discuss our opinions with you further should you have any questions or require additional information.

Very truly yours,

Marcum LLP



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**GG/tm**

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