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2013-300
Comment Letter No. 18
330 North Wabash, Suite 3200
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September 24, 2013

Via email to director@fasb.org

Susan M. Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

RE: Proposed Accounting Standards Update, *Disclosure of Uncertainties about an Entity's Going Concern Presumption* (File Reference No. 2013-300) ("the ED")

Dear Ms. Cospers:

We are pleased to provide comments on the going concern proposal. We support incorporating the guidance on going concern matters into U.S. GAAP to address management's responsibility for evaluating and disclosing going concern uncertainties. Moreover, we believe including such guidance within U.S. GAAP appropriately recognizes the distinct responsibilities of management as the preparer of the financial statements from those of the independent auditor.

As described more fully below in our responses to the questions posed, overall, we support the proposed amendments and believe that they will improve the quality of financial reporting about going concern matters. As a result, we believe users of financial statements will have access to more timely and decision-useful information. However, we also encourage the FASB to work with the SEC staff to mitigate any redundancies in information that SEC registrants are required to disclose that would also be required under these proposed amendments.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Chris Smith, National Accounting and Auditing Professional Practice Leader at (310) 557-8549 or Adam Brown, Partner in the National Accounting Department at (214) 665-0673.

Very truly yours,

A handwritten signature in blue ink that reads "BDO USA, LLP". The letters are cursive and somewhat stylized.

BDO USA, LLP

Appendix

Question 1: The proposed amendments would define *going concern presumption* as the inherent presumption in preparing financial statements under US 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?

We agree with the definition of the going concern presumption as set out in the proposed amendments.

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. Should management be responsible for assessing and providing footnote disclosures about going concern uncertainties for SEC registrants and other entities? Why or why not?

We support providing guidance in U.S. GAAP for preparers as it relates to management's responsibility to assess and provide footnote disclosures about going concern uncertainties for both non-public and SEC registrants. Currently, such guidance is only included within the auditing literature that requires auditors to assess the possible financial statement effects, including the adequacy of disclosures on uncertainties, about an entity's ability to continue as a going concern for a reasonable period of time. Including this guidance in the accounting standards clearly emphasizes that management, not the auditor, has primary responsibility for assessing and, when appropriate, disclosing matters relating to the entity's ability to continue as a going concern in the financial statements.

Question 3: Would the proposed amendments reduce diversity in the timing, nature, and extent of footnote disclosures and provide relevant information to financial statement users? 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?

We believe the proposed amendments would help standardize practice as it relates to footnote disclosures of going concern matters and provide relevant decision-useful information to financial statement users. While there may be some overlap in the nature of the information currently provided under other sections of U.S. GAAP and the SEC's disclosure requirements, we believe that the proposed amendments would provide incremental benefits by introducing an enhanced degree of rigor around management's process for identifying and evaluating going concern uncertainties and thereby improve the timeliness and quality of disclosures.

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. 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? 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.

We do not believe that the proposed amendment that requires management to evaluate going concern uncertainties or, for an SEC filer, to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern significantly differs from other evaluations and judgments already required of management in the preparation of the financial statements. Accordingly, we believe that an entity's management has the appropriate degree of objectivity to assess and provide disclosures of going concern uncertainties.

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?

We agree with the proposed frequency of management's evaluation at each reporting period, including interim periods.

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. Do you agree? Why or why not? What differences, if any, will exist between the information provided in the proposed footnote disclosures and the disclosures required by the SEC? Is the redundancy that would result from this proposal appropriate? Why or why not?

While some redundancy exists between the proposed footnote disclosures and the SEC disclosure requirements, specifically as it relates to liquidity and risk, we believe the proposed footnote disclosures have a narrower focus on going concern uncertainties compared with the SEC's broader requirements. However, we believe redundancy in disclosures could be mitigated, for example, through a collaborative effort between the FASB and SEC staff that would permit and encourage a reference within the MD&A and risk factors to the footnote disclosures, as applicable.

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)

See our response to Question 6 above.

Question 8: The proposed footnote disclosures about going concern uncertainties would result in disclosure of some forward-looking information in the footnotes. 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? Do you foresee any limitations on the type of information that preparers would disclose in the footnotes about going concern uncertainties? Would a higher threshold for disclosures address those concerns?

The proposed footnote disclosure requires management, where applicable, to include its plans intended to address the entity's potential inability to meet its obligations. The auditor's opinion does not extend specifically to the likelihood that management will be able to execute the plans; whether, if executed, the plans effectively address the going concern uncertainty that management has identified; or other similar forward-looking matters, but rather to the financial statements taken as a whole. In this capacity, the auditor is required to assess the adequacy of disclosures that management provides about going concern uncertainties.¹ To avoid unjustified, and potentially costly, litigation against auditors alleging failure to "audit" management plans, we suggest that FASB and the SEC staff collaboratively make clear that disclosures regarding management's "plans to address the entity's potential inability to meet its obligations" are necessarily forward-looking, potentially contain projections subject to significant estimation uncertainty, and are subject to business and other contingencies. Specifically, we recommend including language in the final amendments similar to the consensus reached in Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*:

An assessment of whether a disclosure is required should not be found to be in error simply as a result of future events. For example, reporting a concentration not followed by a severe impact does not imply that the disclosure should not have been made, because something that has only a reasonably possible chance of occurring obviously might not occur. Similarly, the occurrence of a severe impact related to a concentration not disclosed in the prior year financial statements would not suggest noncompliance with this SOP's requirements if an appropriate judgment had been made that a near-term severe impact was not at least reasonably possible at the prior reporting date. In addition, a severe impact may arise from a concentration of which management did not have knowledge at the time the financial statements were issued.²

Providing language to this effect in the final amendments would significantly enhance its operability.

In this context, we do not foresee significant limitations on the type of information a preparer would disclose in accordance with paragraph 205-40-50-7. However, we are aware that certain safe harbor rules only apply to disclosures provided outside of the financial statements in an SEC filing. Therefore, preparers may be subject to additional liability if forward-looking information is incorporated into the audited footnotes for the first time. Additional input from preparers may be useful on this point.

Lastly, we believe the following drafting improvements in sub-paragraphs 7(b) and 7(e) would assist practitioners by avoiding unnecessary ambiguity. Added text is underlined and deleted text is ~~struck out~~:

- b. The reasonably possible effects those conditions and events could have on the entity
- e. Management's plans ~~that are intended~~ to address the entity's potential inability to meet its obligations.

¹ See FRR 607.02, *Uncertainty about an Entity's Continued Existence*

² See paragraph 25 of SOP 94-6.

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

While we recognize that the use of the more-likely-than-not threshold is applied in other areas of U.S. GAAP, we believe that the sensitivity of the going concern disclosure introduces complexities into the assessment, particularly in close call situations. To help in this regard, we suggest elevating guidance currently in the basis for conclusions into the final amendments. We note paragraph BC24 states:

The Board also considered introducing a likelihood range (for example 40 to 60 percent) but decided against it because any likelihood-based threshold, whether within a range or at a precise point, would have close-call situations at the low end of the range. The Board acknowledged that calculating the exact likelihood of an entity's inability to meet its obligations in a future period is inherently impracticable. Therefore, similar to its use in other areas of U.S. GAAP, the more-likely-than-not threshold was intended as a benchmark for determining whether disclosures are required, not as a formula-based likelihood calculation.

This language is key because it provides meaningful context for the phrase "more-likely-than-not" in a going concern analysis. In current practice, it is commonly understood by some constituents to convey a more precise threshold of slightly greater than 50%. Retaining language to this effect in the Accounting Standards Codification will emphasize that the more-likely-than-not threshold is intended to be qualitative when determining whether disclosures are required and not a precise measurement.

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

We agree that the expected benefits of the proposed amendments outweigh the incremental costs of application.

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 the disclosure thresholds are appropriate, however, we believe that the term "known" should be deleted from the phrase "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" in paragraph 205-40-50-3b. since this term is subsumed within the term "probable."

See also our response to Question 9.

- 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?

Since the unit of account for a going concern assessment encompasses the entire set of financial statements, it is inherently more judgmental than most individual transactions. We believe this situation underscores the importance of elevating the guidance in BC24 into the final amendments, as we recommend above.

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

We believe the proposed amendments adequately contemplate qualitative considerations. We believe that the conditions and events listed in paragraphs 205-40-50-4 and 205-40-55-3 are representative of the types of conditions and events that auditors generally consider and discuss with management currently when assessing going concern situations. Judgment will be required in specific situations as to what, and to what extent, other qualitative considerations will have bearing on the going concern analysis. We believe the proposed standard provides a sufficient platform from which to make these judgments.

- 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?**

We believe the guidance in paragraph 205-40-50-4 and its related implementation guidance within the proposed amendments provide sufficient guidance about matters an entity should consider in assessing the likelihood of its potential inability to meet its obligations. We note that this guidance is largely consistent with the examples of conditions or events described in the auditing standards on going concern, AICPA Section AU-C Section 570 and PCAOB Interim Standard AU 341, and believe incorporating such guidance within U.S. GAAP will assist management in making their separate evaluations.

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

Our views are the same for SEC registrants and non-SEC registrants.

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 agree that it is appropriate to 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. Moreover, we believe the proposed amendments appropriately distinguish the first 12 months from the second 12 month period in recognition of the importance of providing financial statement users information about going concern uncertainties sooner than when a condition or event is probable.

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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. Is this distinction relevant to determining if and when disclosures should be made? If so, explain how management's plans should be considered when defining the two different disclosure thresholds.

We believe the distinction between in and outside the ordinary course of business is relevant to determining whether disclosures are needed because the going concern presumption, on which the proposed amendments are based, is defined as the ability of the entity to "continue to operate such that it will be able to realize its assets and meet its obligations in the *ordinary course of business* [emphasis added]." Providing disclosures when this threshold is met would provide users of the financial statements with timely information about going concern uncertainties.

We agree that in evaluating whether there is substantial doubt about an entity's ability to continue as a going concern and whether disclosure is needed that the entity should consider the effect of all of management's plans that are likely to be effectively implemented and likely to mitigate the adverse conditions and events, including those outside the ordinary course of business. We believe this disclosure threshold is generally understood as it relates to evaluating substantial doubt and would result in reasonably consistent reporting across entities.

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 of *management's plans that are outside the ordinary course of business*, which we believe is consistent with the use of the phrase elsewhere in U.S. GAAP. However, we found Example 1: Determining Whether Disclosures Are Necessary (Debt Matures within 12 Months) of the implementation guidance unclear. Specifically, it was not apparent whether the frequency of refinancing or the significance of the debt—both of which are discussed—is the determinative factor in assessing whether the plan to refinance is considered outside the ordinary course of business. In contrast, the language in BC32 is more understandable. The Board might consider revising the example to be more consistent with BC32 in the final amendments.

Question 15: Do you agree with the nature and extent of disclosures outlined in paragraph 205-40-50-7?

We agree with the nature and extent of disclosures outlined in paragraph 205-40-50-7.

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 agree with the likelihood-based definition and the 24-month consideration period, except as noted in our response to Question 11 regarding the use of the term “known.” Additionally, we believe that linking the substantial doubt assessment to a “probable” threshold in conjunction with the consideration of all of management’s plans within a 24-month consideration period appropriately provides for timely communication of substantial doubt situations. We do not anticipate any significant challenges in making this assessment.

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?

We support the requirement for management of an SEC filer to make the substantial doubt determination and, when applicable, disclose that information in the footnotes. We believe management is responsible for the disclosures in the financial statements and in a better position than the auditor to determine those plans which they intend to take that are likely to be effectively implemented and likely to mitigate the adverse conditions and events identified.

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.

Similar to our response to Question 11(e), we generally believe users would benefit equally from disclosures about substantial doubt for both public and private entities. We note public and private entities are both subject to the initial going concern disclosures proposed in paragraph 205-40-50-7; likewise, both types of entities are subject to the Board’s recent standard on the Liquidation Basis of Accounting. Retaining a substantial doubt disclosure for all companies would preserve a tiered disclosure regime as entities progress from more-likely-than-not, to substantial doubt, and ultimately into liquidation.

We would also encourage the Board to engage in discussions with the Private Company Council to gather their view on the proposed differential in disclosure, particularly if the Board affirms its decision to distinguish between SEC Filers and non-SEC Filers for going concern uncertainties. We note the existing definition of an SEC Filer within the ASC Master Glossary is narrower than the recently proposed definition of a Public Business Entity. In that project, the Board indicated it would use a single definition of a Public Business Entity to specify the scope of future accounting and reporting guidance. If the Board finalizes the going concern project based on the definition of an SEC Filer, only to revisit that scoping decision in Phase II of the Public Business Entity project, that process would be inefficient. Alternatively, if a second phase of the Public Business Entity project is undertaken excluding matters related to going concern, stakeholders may be confused by the difference between an SEC Filer and a Public Business Entity. As such, it may be more useful to evaluate whether to use the definition of a Public Business Entity in the final amendments of the going concern project—if the Board ultimately concludes that a distinction between public and private entities is warranted. Our recommendation to treat public and private companies the same with respect to going concern disclosures would avoid these complexities.

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Lastly, we believe the effective date of this standard should be set in coordination with the auditing standard setters to ensure any necessary changes to those standards are appropriately reflected.

Question 19: The Board notes, in paragraph BC36, that its definition of *substantial doubt* most closely approximates the upper range in the present interpretation of substantial doubt by auditors. Do you agree? Why or why not? 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? 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? Is such a decrease an improvement over current practice? Why or why not?

We do not believe the definition of substantial doubt in paragraph BC36 necessarily represents the upper range of the present interpretation of substantial doubt. In many instances, it appears consistent with the matters we currently consider in assessing the ability of an entity to continue as a going concern, except for lengthening of the auditing standards' 12 month time horizon to 24 months. In most instances, auditors are likely already considering notions of probability into going concern assessments, looking at negative circumstances and mitigating factors. Moreover, we do not believe that this aspect of the definition will give rise to fewer going concern opinions. It may very well be that there are more going concern opinions because of the introduction of the 24 month time horizon. Regardless, we believe the proposed standard will give rise to better disclosures sooner, which is the desired result.