ROBERT N. WAXMAN, CPA
866 UNITED NATIONS PLAZA, FL 4
NEW YORK, NY 10017

September 24, 2013

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

By e-mail: director@fasb.org

Proposed Accounting Standard - Presentation of Financial Statements (Topic 205), Disclosure of Uncertainties about an Entity's Going Concern Presumption (the "Proposal"), File Reference No. 2013-300

Dear Ms. Cosper:

My General Comments on the above-cited Proposal and my responses to the Questions for Respondents follow:

General Comments

I believe this Proposal would be very difficult for management to effectively and consistently implement. There are—

(a) too many subjective terms which are subject to varying interpretations by management about whether a future event will occur, i.e., the entity will be unable to meet its obligations (e.g., the thresholds – (i) more likely than not, (ii) probable, (iii) known, (iv) likely to be effectively implemented, and (v) likely to mitigate);

(b) terms that need to be defined (e.g., "in the ordinary course of business"); and

(c) requirements that are very broad and near limitless - "consider all information about conditions and events that exist" as of a specified date.

I recommend the final standard should—

(a) simply define the going concern presumption as an entity that is not in liquidation or whose liquidation is not imminent;

(b) eliminate the requirement for the management of SEC filers to assess whether there is "substantial doubt" about the going concern presumption;

(c) reduce the time and cost burden on management by eliminating their having to peer 13 to 24 months into the future (which is too long) at every annual and interim reporting period;

(d) not change the paragraph 205-40-50-3a requirement ("It is more likely than not that the entity will be unable to meet its obligations within 12 months after the financial statement date…");

(e) require management's mitigation plans made both in and outside the ordinary course of business be (i) included in the going concern assessment under paragraph 205-40-50-3a, and (ii) separately disclosed;

(f) provide sample disclosures as guidance (this enhancement will sharpen the required disclosures which are unclear in certain respects); and

(g) consider how to eliminate management's potential exposure to litigation by excluding certain forward-looking information from the required disclosures;

(h) consider the comments and suggestions in the responses to the Questions for Respondents.

Responses to the Questions for Respondents

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?

No, I do not agree with the proposed definition of the going concern presumption. In addition to the fact that the definition differs in certain important respects from the examples in PCAOB AU 341.01 and AICPA AU-C 570.01 of conditions that fail to meet going concern assumption, the following terms used in the proposed definition need to be either defined or explained –

1. Ordinary course of business

The "ordinary course of business" is currently defined in the ASC Master Glossary, as follows –

> Ordinary Course of Business. Decisions about matters of a type consistent with those normally expected to be addressed in directing and carrying out current business activities, regardless of whether the events or transactions that would necessitate such decisions are expected to occur in the near term. However, it must be at least reasonably possible that those events or transactions that would necessitate such decisions will occur. The ordinary course of business does not include self-dealing transactions.
>
> Ordinary Course of Business (SEC). See paragraph -942-210-S99-1, Regulation S-X Rule 9-03(7)(e)(4), for the definition of ordinary course of business for the purpose of Regulation S-X Rule 9-03. [This Rule states – "Ordinary course of business means those loans which were made on substantially the same terms, including interest rate and collateral, as those prevailing at the same time for comparable transactions with unrelated persons and did not involve more than the normal risk of collectibility or present other unfavorable features."]

Clearly, neither of these definitions applies to the matters discussed in this Proposal.

Paragraph 205-40-50-5 explains the phrase "ordinary course of business" by telling us what it is not. I suggest that "ordinary course of business" be defined or explained in the final standard in a straightforward way; consequently, the final standard would then define "outside the ordinary course of business" as all other business activities carried out by the entity. See Question 13.

Paragraph 205-40-50-5 indicates that only the historical practices of the entity should be considered as "in the ordinary course of business"; however, this definition is too narrow, the phrase should be interpreted to include both the historical practice of the entity (even if there were only one or two prior transactions), and the common (or standard) practice in the entity's industry. See Question 14 on the subject of "ordinary course of business."

2. Realize its assets

This is another phrase whose meaning is unclear and somewhat confusing. The going concern presumption definition can be read as (a) "realize its assets" and "meet its obligations" (two separate requirements), or (b) a going concern in the ordinary course of business having to realize assets in order to meet obligations (one integrated requirement). This interpretation is problematic since obligations are not always settled by the conversion of an asset to cash and the use of that cash to meet (or extinguish) the obligation. For example, obligations may be paid "in the ordinary course of business" in-kind through the exchange of services or goods.

Further, "in the ordinary course of business" may be read to modify "meet its obligations" and not "realize its assets." The definition should clarify that ordinary course of business applies to both assets and obligations.

Two questions: 1. Considering valuable but unrecorded intangibles, does "realize assets" mean only those assets recognized in the balance sheet or does it also include unrecorded assets?

2. Does realize assets mean all, a material portion, or just certain assets (e.g., inventory and receivables, but not goodwill, deferred tax assets, prepaid amounts, etc.)?

For the above reasons, I suggest the term "realize its assets" be clarified.

3. <u>Obligations</u>

The definition says "meet its obligations in the ordinary course of business"; however, the definition of "obligations" found in the Master Glossary does not apply nor is it defined in this Proposal. This term ordinarily includes all liabilities both on and off the balance sheet. Thus, it would include (a) both contractual executory contracts (e.g., operating lease payments) and constructive obligations, as well as (b) unconditional and conditional obligations (see further discussion under Question 11(d)).

Question 12, paragraphs 205-40-05-2 and 205-40-50-1 use the phrase "obligations as they become due," as does the proposed definition of "substantial doubt," which further clouds the meaning of "obligations" as used in the presumption definition. There is a substantial difference between <u>unable to pay</u> liabilities (implied in the presumption definition) and not paying them <u>when due</u> (that is, payment is delayed or late).

Also, there is a question as to whether some (as opposed to all or a material portion of the) obligations may not be met (or paid) as they become due enters into the presumption. It would seem that some materiality factor should enter into the presumption determination (for example, a material percentage of total liabilities will not be paid (or extinguished).

For these reasons, I suggest that "obligations" be either defined or further explained in the final statement.

4. <u>Going Concern Presumption</u>

In sum, it may be simpler to define going concern as an entity that is not in liquidation or whose liquidation is not imminent (ASC 205-30-25-1 and 25-2). This simplification will eliminate the need to define or explain "realize its assets," just what liabilities are included in "obligations," and the overall uncertainty created by the use of the phrase "ordinary course of business."

<u>Question</u> 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? 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?

Yes, management should be the party responsible for both the assessment of uncertainties and the going concern disclosures, and US GAAP should provide the guidance regarding such evaluation and "core" disclosures (defined in this letter as paragraphs 205-40-50-1 to 50-8, excluding paragraphs 205-40-50-9 and 50-10).

Regarding the exclusion of paragraph 205-40-50-10, I agree with the Alternative Views (paragraphs BC45 – BD52) expressed by two Board members regarding the expression of "substantial doubt" by management. To summarize their persuasive arguments, a substantial doubt assertion by management –

- increases complexity in U.S. GAAP
- does not significantly increase decision-useful information

- is of little incremental benefit to investors
- would be difficult to implement and audit
- is inherently biased
- would not improve financial reporting
- is the legal responsibility the auditor (not of management)

And the benefits do not justify the costs

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?

Yes, I believe that this proposal (after the modifications suggested in this letter) should work to provide important and relevant "early warning" information to users of financial statements, and reduce – to some degree – diversity in disclosure and its timing.

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?

I do not believe the disclosures required in the financial statements by this Proposal would be more meaningful than those disclosures now provided by SEC registrants in MD&A and elsewhere in SEC filings. As noted in the response to Question 2, I agree with the alternative views expressed in the Proposal.

As to the proposed disclosures for SEC registrants, without any empirical data and aside from the "early warning," there is no way to tell (other than to guess) if there would be any measurable incremental benefit to users of SEC filed financial statements.

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.

When it comes to the determination of going concern issues, evaluations and disclosures by management (who are intimately knowledgeable of the day-to-day workings of the company's business) should be considered by auditors as inherently biased.

This is not any different than other evaluations and assessments made by management in the preparation of financial statements – most auditors believe that management cannot have an unbiased objective opinion about their own financial statements. Moreover, management's bias is exacerbated by the extreme importance of any information about whether or not the entity is healthy or its opposite – disclosure that indicates a fork in the road – with one signpost pointing to a "more than likely" or greater probability of bankruptcy and liquidation and the other signpost (that is, no disclosure) pointing to "alive and well."

Management's fear of the so called "self fulfilling prophecy" creates a strong bias in favor the going concern presumption. The downside of such going concern disclosures have been much discussed, for example, the disclosures may be detrimental to the ongoing survival of the entity since its competitors will then aggressively fight for market share, and its vendors consider limiting the amount of credit to extend to this now self-confessed "iffy" entity. In addition, going concern disclosures will likely increase the entity's vulnerability to general economic and industry conditions; limit the entity's ability to obtain additional debt or equity financing for working capital, capital expenditures, product development, etc.; expose the entity to the risk of increased interest rates as credit "dries up"; and limit or curtail the entity's ability to make strategic acquisitions or cause it to make nonstrategic divestitures.

<u>Question</u> 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?

In theory, I agree with the proposed frequency of the assessment in that going concern information is near worthless to certain users without it being assessed and updated at each annual and interim reporting period.

On the other hand, for those entity's which are close to or in the "more likely than not" threshold, the proposed frequency will impose on management a substantial time and cost burden considering (a) that this Proposal applies to every entity using US GAAP (small and large, local and international, private and public, emerging growth and large accelerated, and operating in every SIC code including not-for-profit entities); (b) the difficulty in assessing exactly when it is "more likely than not" or when it is probable (a 70 to 80 percent confidence level) or known, and the likely disagreements with auditors as to the borders of these probabilities; (c) for public companies, the disclosure overlaps with many of the SEC's requirements; and (d) the continuous involvement (i.e., every month or quarter) of management in making the required assessments using "all information about conditions that exist at the date the financial statements are issued (or for a nonpublic entity the date that the financial statements are available to be issued)."

In my experience, the management of smaller or less sophisticated entities cannot have an unbiased view of the future prospects of their enterprise (see Question 4); ordinarily do not have sufficient resources to review "all information about conditions and events that exist" pertaining to their entity; and due to the proposed frequency, the resultant substantial time and cost burden will fall disproportionately on these smaller or less sophisticated entities. For these reasons, the Proposal will likely not fully achieve its intended purpose, i.e., "reduce diversity in the timing, nature, and extent of footnote disclosures and provide relevant information to financial statement users."

I suggest that the burden on the management of <u>all</u> entities resulting from the proposed frequency would be substantially offset by using a threshold of "more likely than not" with a horizon of 12 months after the financial statement date in place of the requirements currently in the Proposal.

<u>Question</u> 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?

Yes, the disclosures would have a narrower focus. However, the SEC's disclosure requirements (in Items 303 and 503 of Regulation S-K) are much more detailed and encompassing in that the SECs disclosures are required at a "reasonably likely" level (that is, a 20% to 40% range of likelihood), which is much lower threshold than the "more likely than not" test.

The FASB should work with the SEC in a review of the Proposal and the current SEC rules and regulations regarding going concern, risk and liquidity issues to eliminate any unnecessary duplicative disclosures, and provide for any additional disclosures (in addition those in paragraph 204-40-50-7) the FASB believes would improve financial reporting and be of benefit to users, and the SEC believes are necessary to implement the Federal securities laws.

<u>Question</u> 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.

I would expect the only change in SEC filings would be the incorporation of any new language used in complying with the paragraph 204-40-50-7 financial statement disclosures. Nevertheless, there is no evidence that I know of concerning what (if any) impact the proposed going concern disclosures would have on the timing, content, or communicative value of related disclosures in the non-financial statement portions of a registrants public filings with the SEC.

<u>Question</u> 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?

Under specified circumstances, forward-looking statements are eligible for safe-harbor protection from private litigation under the Private Securities Litigation Reform Act of 1995; however, forward-looking statements made in GAAP financial statements are not protected, and thus management will be subject to liability under the federal securities laws (even if the very same disclosure is made outside of the financial statements). Accordingly, all forward-looking information relating to management's mitigation plans (or other matters) made both in and outside the ordinary course of business that is disclosed in the GAAP financial statements might expose management to private litigation alleging material misstatements or omissions.

Surely this is not a desirable outcome for management. The solution would be to exclude specified forward-looking information from the Proposal's disclosure requirements.

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

To comply with this Proposal, I anticipate that the management of every entity will actively assess the need for going concern disclosures at each annual and interim reporting period, even if the entity has historically high and stable cash flows. This assessment would be documented and would include a review of the Conditions and Events in paragraphs 205-40-50-4 and 205-40-55-3, in addition to the unique risks specific to the entity. When it is evident that the entity has reached the "more likely than not" or higher threshold (i.e., the going concern "zone") then this proposal requires management to "consider all information about conditions and events that exist" at a specified date.

Assuming the entity is in the "going concern zone," the challenges to auditors include their agreeing with management concerning the meaning and application of the various subjective terms and phrases used in the Proposal at every annual reporting period. These terms and phrases include –

- ordinary course of business (see discussion under Question 1)
- "more likely than not"
- probable (and the border separating "more likely than not" and "probable")
- just when a future event is "known" (that is, confirmed)
- "likely to be effectively implemented" (paragraph 205-40-50-4(f))
- in the ordinary course of business v. outside the ordinary course of business

Further challenges to the auditor include verifying –

- that management actively assesses the need for going concern disclosures at each annual and at each interim reporting period
- that the assessment included a review of the Conditions and Events in paragraphs 205-40-50-4 and 205-40-55-3 as well as the other unique risks specific to the entity
- management's consideration of all information about conditions and events that exist (at the date the financial statements are issued or the date that the financial statements are available to be issued)

  Here the challenge to auditors is verifying that "all information" that exists on a fixed date has been considered.
- that management has documented their assessment
- the mitigating conditions and events in the ordinary course of business and outside the ordinary course of business
- the "substantial doubt" threshold

  This threshold would require the auditor to determine the reasonableness (among other things) of management's plans that are outside the ordinary course of business. See comments regarding management's assessment of substantial doubt under Questions 2, 11(b) and 16.
- forward-looking statements included in the GAAP financial statements

  Here, the auditor must determine that the significant underlying assumptions used in forward-looking disclosures are reasonable and are persuasively supported.
- If cash flow forecasts are used in the going concern assessment, the auditor should determine that they are not at variance with other cash flow forecasts that are used to establish the carrying value or impairment of assets.
- the potential impact a going concern disclosure has on carrying amounts in the balance sheet

3. While desirable it may not be possible for auditors to recognize and adjust for management's bias in making the various threshold tests and disclosures.

4. For SEC registrants and others, reconciling any differences there may be in disclosures made both in the financial statements and outside of the financial statements.

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

The expected benefits are not quantifiable in dollars and for that reason it is not possible to say that the incremental dollar costs will, in fact, be offset by any immediate or future benefits.

Accordingly, I agree with the statement in paragraph BC40 which says – "The Board's assessment of the costs and benefits of issuing new guidance is unavoidably more qualitative than quantitative because there is no method to objectively measure the costs to implement new guidance or to quantify the value of improved information in financial statements."

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?

As mentioned in Question 9, to comply with this Proposal, I would expect that the management of every entity will actively assess the need for going concern disclosures at each annual and interim reporting period, even if the entity has historically high and stable cash flows and the ability to pay all its liabilities. This assessment would be documented and would include a review of the Conditions and Events (paragraphs 205-40-50-4 and 205-40-55-3), and the unique risks specific to the entity. Then, the major challenges for management will be determining –

- the judgments and assumptions used in making the going concern assessment
- determining whether or not the thresholds have been met
- the appropriate disclosures
- that the assessment, thresholds and disclosures are convincingly supported and documented
- that all information about conditions and events that exist at the date the financial statements are issued (or for a nonpublic entity the date that the financial statements are available to be issued) have been properly considered
- they have implemented forecasting models that work and are understandable
- the consistent application of the various terms used in and requirements of the Proposal at every annual and interim period

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?

Overall the state of an entity has many more variables and moving parts than found in a "transaction." In a going concern assessment, the entire company and its various businesses operating in many different economic and business environments must be studied and evaluated, along with all of management's future plans (both in and outside of the ordinary course of business).

The going concern assessment is made more complex in that it impacts <u>every</u> financial statement account over a long time period, whereas the variables in the context of transactions are decidedly much less complicated and ordinarily impact very few financial statement accounts over a discrete and short time period.

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

Yes, the qualitative considerations outlined in paragraph 205-40-50-4 are sufficient and the guidance is both helpful and appropriate; however, see the response to Question 11(d) immediately below.

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?

Paragraph 205-40-50-2 requires –

> "In assessing an entity's potential inability to meet its obligations, the entity shall consider <u>all</u> <u>information</u> about conditions and events that exist at the date the financial statements are issued ...." (emphasis added)

Whereas paragraph 205-40-50-4 states –

> "An entity shall assess <u>all relevant information </u>about conditions and events in the aggregate to determine their potential effect on the entity's potential inability to meet its obligations within 24 months after the financial statement date:" (emphasis added)

I would expect that the wording of these paragraphs be similar (except for the dates), but they are not. I suggest adding to paragraph 205-40-50-2 the word "relevant" (similar to the wording in paragraph 204-40-50-4) and inserting the phrase "in the ordinary course of business" as follows –

> "In assessing an entity's potential inability to meet its obligations, the entity shall consider all **<u>relevant</u>** information about conditions and events **<u>in the ordinary course of business</u>** that exist at the date the financial statements are issued (or for a nonpublic entity the date that the financial statements are available to be issued)."

I suggest that paragraph 205-40-50-4 (second sentence) be revised as follows –

> "In assessing the likelihood of its potential inability to meet its obligations, an entity shall consider information about the following conditions and events **<u>in the ordinary course of business</u>**, among others:"

I recognize that certain of the terms and phrases in paragraph 205-40-50-4 may have been in general use for some time; however, I have the following questions and comments –

a. Sources of liquidity, including available liquid funds ….

To eliminate any doubt, I suggest that liquid funds be either defined or clarified. Should it be assumed that "liquid funds" are comprised only of unencumbered cash plus cash equivalents? Or in applying this Proposal must management decide just which assets to include in liquid funds (or near liquid funds) using their best judgment?

c. Conditional and unconditional obligations due or anticipated within 24 months after the financial statement date.

The term "conditional obligations" is one that depends on the occurrence of a future event which may or may not be within the control of management. Thus, "conditional obligations" should be clarified or defined so that its meaning in the context of this disclosure means only those liabilities that are within the control of the entity. If it also means liabilities dependent on the occurrence of an event that is not under the control of the entity, then this should be so stated.

d. Conditions and events that could adversely affect the entity's ability to meet its obligations. Examples include the anticipated loss of a major customer, the impending maturity of significant debt, or the upcoming expiration of a key patent. See paragraph 205-40-55-3 for additional examples of adverse conditions and events.

Since the word "anticipated" is equivalent to "probable" (i.e., likely to occur), I suggest that "probable" (as defined in Topic 450) be inserted and the word "anticipated" be deleted.

f. The effect of management's plans that are in the ordinary course of business. Those plans that are deemed to be within the ordinary course of business shall be considered only if they are likely to be effectively implemented and likely to mitigate the adverse conditions and events.

The paragraph 205-40-50-3(a) threshold for disclosure is whether information about conditions and events indicate it is "more likely than not" that the entity will be unable to meet its obligations within 12 months after the financial statement date (including management's plans in the ordinary course of business (as described in paragraph 205-40-50-5).

However, paragraph 205-40-50-4(f) states "Those plans that are deemed to be within the ordinary course of business shall be considered only if they are <u>likely</u> to be effectively implemented and <u>likely</u> to mitigate the adverse conditions and events" (emphasis added).

"Likely" is considered to mean an estimated 70 to 80 percent probability of occurrence. If an entity believes that it has met the "more likely than not" test, for purposes of this example say a 50.1% to 55% probability, then this probability zone will have to be mitigated by plans in the ordinary course of business which management believes whose probability of implementation is ±75 percent. I believe there is a mismatch of probabilities in the situation outlined, and suggest that the final standard clarify the meaning and use of "likely" used in 50-4(f).

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

Yes.

<u>Question</u> 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?

Assuming the entity is in the "going concern zone," management must identify and develop the underlying assumptions supporting their forecast of the entity's operations and cash flows for the next 24 months to buttress their going concern conclusion and support the entity's ability or inability to meet its obligations in the ordinary course of business as they become due. The assumptions must have a reasonable basis and each significant assumption should be adequately supported. The ability of management to forecast with <u>some level of reasonable assurance</u> their entity's operations and cash flows for the next 24 months may be well beyond the resources of a significantly large segment of management – since near endless probabilities and variables are involved. Further, the auditors will annually evaluate both the assumptions used, the support for those assumptions and the models used by management.

Further, it may be very difficult for management to strictly view the 24 month period as two discrete periods where the "more likely than not" threshold will be used for the first 365 days, and the "probable or known" threshold used from 366 days to 730 days. These thresholds will then offset by the ±75 percent probability (i.e., "likely") of implementing management's plans required by paragraph 205-40-50-4(f) – see Question 11(d).

<u>Question</u> 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.

To reduce the implementation burden, the final standard should eliminate the 13 to 24 month period and thus an entity should furnish the required disclosures when information about conditions and events indicate it is "more likely than not" that the entity will be unable to meet its obligations within 12 months after the financial statement date after taking actions (a) in the ordinary course of business, and (b) outside the ordinary course of business.

All of management's plans should then be disclosed (under paragraph 205-40-50-7(e)) separating "in the ordinary course of business" from "outside the ordinary course of business." Assuming the disclosure of management's plans are sufficiently detailed, users will then be able to make their own decisions regarding the entity and its future prospects.

<u>Question</u> 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?

Paragraph 205-40-50-5 explains the phrase <u>outside</u> the "ordinary course of business" but not what activities would be considered "in the ordinary course of business." Modifying the words in the paragraph to determine what the Proposal considers to be in the ordinary course of business I derive –

> "Ordinary course of business includes actions of a nature, magnitude, or frequency that are consistent with actions customary in carrying out an entity's ongoing business activities."

This definition is consistent with the "historical course of doing business" by the entity. It is not clear that this definition includes the usual practice in the entity's industry; therefore I suggest that transactions by an entity that are consistent with the standard practice in the entity's industry should be clearly stated as "in the ordinary course of business." I suggest that paragraph 205-40-50-5 be revised to read –

> "Management's plans that involve actions of a nature, magnitude, or frequency that are inconsistent with actions **(a)** customary in carrying out an entity's ongoing business activities, **<u>or (b) actions that follow standard practice in the entity's industry</u>**, shall be considered outside the ordinary course of business. Therefore, their mitigating effect shall not be considered in determining whether disclosures are necessary."

Alternatively, the definition of in the ordinary course of business (suggested above) should be revised to read –

> "Ordinary course of business includes actions of a nature, magnitude, or frequency that are consistent with actions **(a)** customary in carrying out an entity's ongoing business activities, **or (b) actions that follow standard practice in the entity's industry**."

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

Certain of the terms and phrases in paragraph 205-40-50-7 have been in general use for some time; however, I have the following questions and comments –

a. Principal conditions and events that give rise to the entity's potential inability to meet its obligations

I recommend adding "as they become due" after the word "obligations." See this usage on page 2 of the Proposal, Question 12, the definition of substantial doubt, paragraphs 205-40-05-2, 205-40-50-1, 205-40-55-6, and BC27.

b. The possible effects those conditions and events could have on the entity

It is not clear just what forward-looking information the Proposal is asking for, therefore this disclosure should be clarified. This clarification should recognize (as discussed in Question 8) that the safe-harbor provisions would not be available to the management of public companies subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934.

c. Management's evaluation of the significance of those conditions and events

The disclosure the Board is seeking is not clearly stated. Does this require some disclosure about the <u>quantitative materiality</u> of those future conditions and events?

d. Mitigating conditions and events

Again, what is this disclosure asking for? This should read "The mitigating effect of management's plans."

e. Management's plans that are intended to address the entity's potential inability to meet its obligations.

How is this different than (d)? See recommendation at to this disclosure in Question 13.

In sum, these disclosure requirements should be "field tested" by the FASB staff and example disclosures should be included as guidance in the final statement. This process will help in redrafting the disclosures to both clarify them and to meet the needs of financial statement users.

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?

See comments regarding management's assessment of substantial doubt under Questions 2, 9 and 11(b).

Do you agree with the 24-month consideration period? Why or why not?

No, I believe the 24 month period is an unreasonable period of time in which management can reliably forecast (a) its operations and resultant cash flows, (b) the ability of the entity to meet its obligations, and (c) its mitigation and performance of "doable" plans.

I suggest that the 24 month period be deleted from the final statement and that the "more likely than not" threshold be used in the going concern assessment for the 12 months after the financial statement date.

Do you anticipate any challenges with this assessment? If so, what are those challenges?

The substantial doubt assessment is computationally complex in that it involves (among other things) –

- A very long rolling forecast period (24 months)
- A large number of assumptions associated with the forecasting process
- Subjectivity associated with the various assumptions
- A high degree of uncertainty associated with the future occurrence of events and/or transactions underlying the assumptions used
- Subjectivity regarding the application of the terms "known" and "probable"
- Uncertainty in the long-term forecast resulting from any small error in any factor included at or near the beginning of the forecast (i.e., the magnification of small errors over time)

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?

No, see discussion regarding management's assessment of substantial doubt under Questions 2, 9 and 11(b).

A "going concern" determination should be management's responsibility, but not the determination of "substantial doubt." Quoting paragraph BC37 - "[T]he securities laws (Section 10A(a)(3) of the Securities Exchange Act of 1934) specifically require that an SEC filer's auditor evaluate —whether there is substantial doubt about the issuer's ability to continue as a going concern for the ensuing fiscal year. The auditing standards [PCAOB AU 341] also require that an auditor provide an emphasis of matter paragraph in its report when there is substantial doubt about an entity's ability to continue as a going concern and further require that the auditors assess the adequacy of related disclosures in the financial statements." (emphasis added)

<u>Question 18</u>: 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.

Yes, I agree that the management of non-SEC filers should not evaluate and disclose "substantial doubt."

As discussed in Question 17, the "substantial doubt" determination is not management's responsibility nor should it be (see discussion under Questions 2, 9 and 11(b)). Currently, the auditing standards require the auditor to provide an explanatory paragraph in its report discussing (or referencing) the factors that raise substantial doubt about the entity's ability to continue as a going concern and management's plans.

<u>Question</u> 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. Do you agree? Why or why not?

If the provisions regarding substantial doubt survive the FASB's due process, then I agree with the "upper end of the range" that is made operable by "considering the mitigating effect of all of management's plans" including those outside the normal course of business.

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?

There is no information that I know of to support an answer to these five questions and any answers would just be (uninformed) guesses.

* * * * *

I appreciate your consideration of these comments, suggestions and responses to the Questions and would be pleased to answer any questions the Board or the Staff may have about this letter.

Sincerely,

Robert N. Waxman, CPA

(212) 755-3400
rwaxman@mindspring.com