September 23, 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

Re: Proposed Accounting Standards Update –
Presentation of Financial Statements (Topic 205): Disclosure of Uncertainties about an Entity's Going Concern Presumption

File Reference No. 2013-300

Dear Ms. Cosper:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 29,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned exposure draft.

The NYSSCPA's Financial Accounting Standards Committee deliberated the proposed accounting standards update and prepared the attached comments. If you would like additional discussion with us, please contact Robert M. Rollmann, Chair of the Financial Accounting Standards Committee at (914) 421-5605, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

NYSSCPA
NYSSCPA

J. Michael Kirkland
President

Attachment

NEW YORK STATE SOCIETY OF

CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON

PROPOSED ACCOUNTING STANDARDS UPDATE –
PRESENTATION OF FINANCIAL STATEMENTS (TOPIC 205): DISCLOSURE OF UNCERTAINTIES ABOUT AN ENTITY'S GOING CONCERN PRESUMPTION

FILE REFERENCE NO. 2013-300

September 23, 2013

<u>Principal Drafters</u>

Deepak Doshi
Robert A. Dyson
Craig T. Goodman
Renee Rampulla
Robert M. Rollmann
Margaret A. Wood

NYSSCPA 2013 – 2014 Board of Directors

J. Michael Kirkland, *President*
Scott M. Adair, *President-elect*
F. Michael Zovistoski, *Secretary/Treasurer*
Ian J. Benjamin, *Vice President*
Adrian P. Fitzsimons, *Vice President*
Barbara A. Marino, *Vice President*
Warren Ruppel, *Vice President*
Joanne S. Barry, *ex officio*

Anthony T. Abboud
William Aiken
Gregory J. Altman
Barbara E. Bel
Shari E. Berk
Christopher G. Cahill
Anthony S. Chan
John F. Craven
Harold L. Deiters
Timothy Hedley
Douglas L. Hoffman
Scott D. Hosler
Scott Hotalen
Gail M. Kinsella
Eric M. Kramer
Elliot A. Lesser

Kevin Matz
Michael E. Milisits
Barbara L. Montour
Steven M. Morse
Michael F. Rosenblatt
Arthur J. Roth
Cynthia A. Scarinci
John S. Shillingsford
Stephen T. Surace
Tracy D. Tarsio
Yen D. Tran
Mark Ulrich
Richard T. Van Osten
Beth van Bladel
Mark Weg

NYSSCPA 2013 – 2014 Accounting & Auditing Oversight Committee

William M. Stocker III**,** *Chair*
Joseph Caplan
Neil Ehrenkrantz

Sharon S. Fierstein
Kenneth Gralak
Julian E. Jacoby
Renee Mikalopas-Cassidy

Rita M. Piazza
Karina Pinch
Robert Rollmann

NYSSCPA 2013 – 2014 Financial Accounting Standards Committee

Robert M. Rollmann, *Chair*
Agwu Agwu
Kenneth Bosin
Christina Catalina
J. Roger Donohue
Deepak Doshi
Robert A. Dyson
Roseanne T. Farley
Sharon Sabba Fierstein
Jennifer George
John Georger
Jo Ann Golden
Fred R. Goldstein

Craig T. Goodman
Kenneth Gralak
Abraham E. Haspel
Edward P. Ichart
Grace Kaczorowski
Tamar Kadosh
Craig L. Kanzel
Michael D. Kasperski
Ari Lasker
Joseph Maffia
Joseph Magri
Sean Martell
John J. McEnerney

Joseph Montero
Stephan R. Mueller
Mark Mycio
Lingyun Ou
Renee Rampulla
Ahmed Shaik
Daniel Shea
Mark Springer
Elvira Tsvetanov
Matthew Uryniak
Margaret A. Wood
Silvia S. Yehezkel

NYSSCPA Staff

Ernest J. Markezin
William R. Lalli

New York State Society of Certified Public Accountants

Comments on

Re: Proposed Accounting Standards Update –
Presentation of Financial Statements (Topic 205): Disclosure of Uncertainties about an Entity's Going Concern Presumption

We welcome the opportunity to comment on the Financial Accounting Standards Board's (the Board's) Proposed Accounting Standards Update – *Presentation of Financial Statements (Topic 205): Disclosure of Uncertainties about an Entity's Going Concern Presumption* (the Update).

General Comments

For a long time, the auditing literature has required auditors to assess the adequacy of management's disclosures about going concern uncertainties without the benefit of a disclosure standard against which to measure such adequacy. We recognize that this condition is adequate justification for issuing an accounting standard to fill this gap which we believe is long overdue (particularly in view of the economic conditions endured since 2008).

Management is responsible for the contents of its financial statements including disclosure of adverse circumstances that may affect the entity's ability to continue as a going concern. We anticipate management's resistance in asserting a going concern uncertainty because management almost always believes its entity will continue as a going concern and will realize all assets and settle all obligations. Management, particularly entrepreneurs, will likely sell or liquidate the entity if it believes the continuance as a going concern is uncertain.

We have a number of concerns relating to the issuance of this proposed Update that are discussed in detail below and in our response to the questions posed in the Update.

The Update's differentiation of realizing assets and meeting obligations in the ordinary course of business and outside the ordinary course of business will complicate implementation of the Update because it does not clearly define "ordinary course of business" and "outside the ordinary course of business." In our experience, management does not differentiate between the ordinary course and out of the ordinary course of business when addressing financial issues. Instead, it focuses on staying in business, realizing assets and meeting obligations in any circumstances. Entities facing financial difficulties typically take extraordinary steps to stay in business and, in doing so, realize their assets and meet their obligations as they become due.

The proposed definition of the term going concern presumption is too narrow in that it equates an entity's inability to meet its financial obligations when they are due with its inability to continue its operations as a going concern (possibly confusing the accounting concept of a going concern presumption with the legal concept of solvency versus insolvency).

The proposed disclosure requirements should be limited to the conditions that give rise to going concern uncertainties and information that would enable users to make their own assessments of both the severity of the uncertainties and the quality and probability of success of management's plans to overcome them. Requiring management of public companies to make disclosures regarding substantial doubt might expose it to liability for continuing to expend corporate resources on continuing operations when, with the benefit of hindsight, liquidation might have provided more value to creditors and stockholders.

The Board's proposal for a two-step disclosure threshold utilizing "bright line" criteria may be unworkable as a rigid standard and of little or no benefit to users. As discussed above, it is based on imprecise terms such as "ordinary course of business" and "outside the ordinary course of business." It is also based on a prediction of whether an uncertain event is likely to occur in a period of up to 24 months in the future. The Update does not address, in part, competing biases among management, legal counsel and auditors. It would likely be more useful and meaningful if the prescribed forward-looking period for management's evaluation and disclosure of going concern uncertainties were measured from the date through which subsequent events must be evaluated for recognition or disclosure in the financial statements rather than from the balance sheet date and expressed as "not less than" rather than "not to exceed," an appropriate period to be determined based on facts and circumstances, so management is not given the opportunity to use a "bright line" limit in order to avoid disclosing events expected to occur shortly beyond the prescribed forward-looking period.

Entities are more likely to face financial difficulties when the economy is in recession. Basically, the Update proposes similar disclosures from entities appropriately addressing financial difficulties using resources outside their ordinary business with entities in far more serious financial difficulty that are struggling to implement an action plan. The guidance would be meaningless if it includes all entities applying various approaches to address financial difficulties during down periods of the business cycle. Given these circumstances, the Board should require the disclosure of an obvious financial difficulty and explanation of management's plan to address it. Furthermore, we believe the Board should change the substantial doubt disclosure proposed in ASC 205-40-50-10 to state "… there may be substantial doubt to continue as a going concern…" We believe the substitution of the word "may" for "is" will reduce management's resistance to making such a statement. As part of this requirement, we believe that the Update should define substantial doubt with a consideration of events 12 months after the date the financial statements are available to be issued, as we believe that 24 months is too speculative a period to make such a statement.

Specific Comments

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?

Response: No, we do not agree with this definition. As discussed in our General Comments, the proposed definition of the term going concern presumption is too narrow in that it equates an entity's inability to meet its financial obligations when they are due with its inability to continue its operations as a going concern, possibly confusing the accounting concept of a going concern presumption with the legal concept of solvency versus insolvency. We believe that the proposal should focus on the entity's ability to continue operating as a going concern without differentiating efforts between activities and transactions that are within the ordinary course of business from activities outside the ordinary course of business.

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? 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?

Response: We agree. Management is clearly responsible for the completeness and accuracy of its financial statement assertions. However, as discussed in our General Comments and response to Question 4, we anticipate that management will typically disagree that uncertainties are so significant as to affect adversely the reporting entity's' ability to continue as a going concern. Accordingly, the auditors will play a significant role in challenging management's evaluation.

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?

Response: Diversity is inherent in consideration of going concern uncertainties. Each reporting entity is different and requires flexibility in describing the relevant facts and circumstances.

The complications inherent in the Update will increase diversity in disclosures beyond that inherent in such circumstances. Proposed ASC 205-40-50-3 requires disclosures when it is known or probable if the entity will be unable to meet its obligations within 24 months of the financial statements without considering actions outside the ordinary course of business. The difficulty of identifying activities outside the course of business would result in diversity in practice. As shown in Example 1 (proposed ASC 205-40-55-5), refinancing of debt could be either part of the ordinary course of business or outside the ordinary course of business (depending on facts and circumstances) which in real life would be less clear-cut than those presented in the Update.

We support an assessment period of 12 months beginning with the date that the financial statements are available to be issued. This would include the disclosure of known and likely events expected to occur within those 12 months. A majority of our drafting committee members believe that this would reduce the possibility of entities not releasing financial statements until after 12 months from the financial statement date or when the 12-month period is substantially completed. However, we will note that a significant minority of our drafting committee members believe that the assessment period should run from 12 months of the financial statement date as proposed in the Update.

As discussed in our General Comments, we do not support the 24-month forward-looking assessment period. The significance of information determined at the beginning of a 24-month cycle regarding events that are not known or likely to occur would be speculative. For example, the obsolescence of a product line could cause a deterioration of revenues that might ultimately create a going concern uncertainty. A reporting entity could be exposed to second guessing when the obsolescence began which would trigger the 24-month period for disclosure and assessment.

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 objective 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.

Response: The proposal requires SEC filers to evaluate their ability to continue as a going concern. Current auditing literature requires the auditors to consider the entity's ability to continue as a going concern on all audits. In our experience, users of non-SEC filers are as interested in going concern matters as those of SEC filers. For example, lenders need assurance that their loans are going to be repaid in full. The Board has not provided support as to why users of non-SEC filers should not obtain such information.

As we noted in our General Comments, management almost always believes its entity will continue as a going concern and, accordingly, will realize all assets and settle all obligations. If management did not believe that, it would sell or liquidate the entity. For this reason, we believe the current interaction between management and auditors is necessary to challenge possible management bias and help to reduce diversity in practice.

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?

Response: An annual assessment is best, unless circumstances cause the need for interim assessments. Going concern assessments should be coordinated with asset impairment assessments because certain conditions can affect both.

Question 6: **For SEC registrants, the proposed footnote disclosures would include aspects of reporting that overlap with certain SEC disclosures (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?**

Response: As noted in our General Comments, the financial statements should discuss any obvious financial difficulties and explain management's plans to address them. Thus, the financial statements should disclose sufficient information on circumstances related to reduced liquidity or going concern uncertainties, regardless of the SEC required disclosure requirements in the Management Discussion and Analysis (MD&A) and other areas.

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 matter affecting and entity's going concern assessment in other parts of its public filings with the SEC (such as risk factors and MD&A)? Please explain.**

Response: No. The information and analysis should be performed as part of management's assessment and updated for any events that occurred during the period after the initial performance, similar to what is currently done for the financial statements, MD&A and internal controls.

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 disclosure address those concerns?**

Response: The issue is the expansion of the forward-looking period from 12 months to 24 months, as it relates to negative trends, and future work stoppages and the definition of what is known and probable is still open to interpretation. There is increased legal exposure regarding who knew the facts and circumstances or should have known them and at what time. Also, there is possible exposure in determining whether a one year decline in results of operations is the start of a long-term negative trend, and should management have been able to predict the start of that trend.

Certain triggers described in paragraph 205-40-55-3 would be reasonably expected for the 24-month period following the financial statement date such as a debt balloon payment or expiration of a credit-line or warehouse line and should be easy to identify. Thus, management's plans to address these matters should be disclosed.

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

Response: We reiterate our concerns expressed in our response to Question 8. We agree with Mr. Siegel's concerns. Auditors would be subject to claims that they missed the significance of events that later manifested themselves into major issues.

Information about forecasted operations is less reliable, more subjective and includes more assumptions in the period 12 to 24 months after the financial statement date. These factors are difficult to audit. The amendments would also increase auditor liability for these projections.

The current proposal does not provide adequate guidance to determine the ordinary course of business and outside the ordinary course of business which may result in significant disagreements between management, auditors and users.

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

Response: We support the requirement to disclose events up to 12 months after the date the financial statement are available to be issued. Projections beyond that period are highly speculative and not as reliable, and the cost of applying them would not provide cost–effective, decision-useful information to financial statement users.

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?**
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?**
c. **Do the proposed amendments adequately contemplate qualitative considerations? Why or why not?**
d. **Do you believe that the guidance in paragraph 205-40-50-4 about information of 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?**
e. **Are your views the same for SEC registrants and non-SEC registrants?**

Response: As noted in the General Comments, we believe the focus should be on the entity continuing as a going concern, realizing assets and settling obligations. The limitation of such consideration to activities deemed as in the ordinary course of business ignores what management typically does and adds unnecessary complexity and the potential for diversity in practice to financial reporting.

"More-likely-than-not" is an appropriate threshold for the 12 months following the date the financial statements are available to be issued. The known or probable threshold for any period beyond that requires a higher threshold because it is subject to interpretation and questioning with benefit of hindsight on such matters as what was known by whom, when known and what should have been determined to be probable (especially when considering negative trends).

The criteria in paragraph 205-40-50-4 and related examples in paragraph 205-40-55-3 refer to negative trends. We cannot determine whether this guidance refers to a trend existing at the financial statement date or projected to occur in 12 or 24 months. This needs to be further clarified, or an example provided as well as the internal matters such as the effect in 2 years of a labor contract expected to expire within 24 months after the financial statement date.

As discussed in our General Comments, we see the Board's proposal for a two-step disclosure threshold using "bright line" criteria based on imprecise terms and predictions of uncertain events more than 12 months in the future to be unworkable as a rigid standard. While the term "more-likely-than-not" has come to be generally understood to mean a greater than 50% probability, we cannot say with any degree of certainty where to draw the line between more likely than not and probable. Generally accepted auditing standards relative to estimates focus primarily on quantitative measurement values embodied in the financial statements and recognize that certain estimates are inherently imprecise so that a reliable point estimate cannot be made. There is no audit guidance now in place or likely to be developed that would enable an auditor to be comfortable with such a precise qualitative and highly subjective estimate by management of when the company likely will cease to be able to continue as a going concern or will be unable to pay its obligations in a timely manner, as this proposed standard would seem to require. Given a reasonable appreciation of the inherent imprecision of such an estimate, it is doubtful that there could be any user benefit to be had from making them. Accordingly, we recommend the final standard dispense with the proposed two-step disclosure threshold and adopt a more simplified requirement to disclose uncertainty as to whether the entity can continue as an operating entity.

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?**

Response: The information is more reliable for the 12 months after the date the financial statements are available to be issued, but very speculative thereafter. For example, a major problem for entities in financial difficulty is the violation of loan covenants. Banks typically give waivers for 12 months only. The decision not to grant a waiver may suggest the bank wishes to call the loan rather than simply to protect its rights to call it. The hope that a bank will extend the waiver for another 12 months cannot be determined with any degree of certainty. Other highly uncertain events include the amount of insurance recoveries related to a natural disaster or similar catastrophe as well as the loss of revenue and the estimated time to get back to business and potential loss in customers. These matters should be disclosed as uncertainties, but the effect on the entity's continuation as a going concern would be highly speculative.

Events that are known and likely, such as balloon repayments or expiration of credit-line or warehouse line and management's plans to renew or seek alternative financing, are important and should be disclosed.

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.**

Response: As discussed in our General Comments, management's plans should be disclosed, but should include resources available both within and outside the ordinary course of business.

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?**

Response: No, we do not agree. As discussed in our General Comments, we believe this is irrelevant.

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?**

Response: The disclosures are acceptable.

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?**

Response: No, we do not agree. As discussed in our General Comments and responses to Questions 3 and 12, we disagree with the 24-month consideration period.

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?**

Response: Yes, we agree that management should make this assessment, although we have reservations expressed in our General Comments. We believe that the proposed disclosure should state "…there may be substantial doubt about the entity's ability to continue as a going concern." See also our response to questions 4 and 18.

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 statement would benefit from a requirement for management to evaluate and disclosure substantial doubt.**

Response: No, we do not agree. See our response to Question 4. Non-SEC entities should be under the same rules.

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. 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 and improvement over current practice? Why or why not?**

Response: The issue should not be whether there is a decrease, but whether or not entities with a significant uncertainty regarding their continuation as a going concern are making proper disclosures. We are unable to quantify the increase or decrease in substantial doubt determinations.