



NEW YORK
CITY BAR

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FINANCIAL REPORTING**

September 24, 2013

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Ms. Susan M. Cospers
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Re: *File Reference No. 2013-300, Disclosure of Uncertainties about an Entity's
Going Concern Presumption (Exposure Draft Issued June 26, 2013)*

Dear Ms. Cospers:

On behalf of the Committee on Financial Reporting of the Association of the Bar of the City of New York, I respectfully submit this letter regarding the June 26, 2013 exposure draft on Disclosure of Uncertainties about an Entity's Going Concern Presumption.

By way of introduction, the Committee on Financial Reporting consists of attorneys representing different roles and perspectives within the financial reporting community, including preparers, users, and auditors. An important objective of the Committee is to enhance the integrity of financial reporting systems in order to foster the objectivity, understandability, and reliability of financial reports. The Committee seeks to improve financial reporting integrity through the enhancement of the rules and regulations of financial reporting as well as the culture in which those rules and regulations are called upon to function.

As a threshold matter, let us first congratulate the Board on its effort to clarify the role of management in evaluating uncertainties about an entity's going concern presumption under U.S. GAAP. We are aware that this project has been a difficult one, and the Board is to be commended for its efforts.

We understand that a number of different companies and organizations will be providing comment on important aspects of the exposure draft. We are prepared to leave those comments to others so that we may focus on one particular aspect of the exposure draft about which we are concerned. That is the use of the concept "probable" as a threshold for providing disclosure. In summary, we are concerned that a degree of confusion regarding the meaning of "probable" under Topic 450 will take on greater significance under the new standard.

We are obviously referring to the proposed definition of "substantial doubt" in the exposure draft's Amendment to the Master Glossary. The proposed definition provides:

Substantial Doubt

Substantial doubt about an entity's ability to continue as a going concern (going concern presumption) exists when information about existing conditions and events, after considering the mitigating effect of all 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 as they become due within 24 months after the financial statement date. The term *probable* is used consistently with its use in Topic 450 on contingencies.

Similarly, the exposure draft provides that an entity shall make specified disclosures if 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 . . ." (Exposure Draft at 11).

We understand that, among experienced preparers, users, and auditors, a consensus has developed that the concept of "probable" (defined in Topic 450 to mean "likely to occur") implies a likelihood substantially greater than 50%. Interpreters of GAAP often refer to a likelihood in the range of 75-80% as the generally accepted meaning of "probable."

In contrast, outside of financial reporting, the conventions of normal English usage are often understood to suggest that "probable," "likely," and "more likely than not" are synonymous, each implying a likelihood of greater than 50%. Our experience is that Topic 450's use of "probable" to mean a *substantially* greater likelihood than 50% often takes less experienced members of the financial reporting community by surprise. See *Dronsejko v. Grant Thornton*, 632 F.3d at 658 (10th Cir. 2011) ("FASB Statement 5 . . . defines 'probable' as 'likely to occur' – a definition that does not, on its face, rule out a 'more likely than not' standard.").

It is true that this risk of misunderstanding has existed for some time under Topic 450 and other topics and that preparers and auditors seem to have successfully navigated the difficulties.

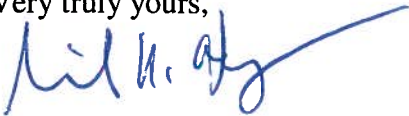
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However, our concern increases as we see the term “probable” being imported into the new going concern standard which we expect to be the subject of much greater focus, and potentially more extensive judicial proceedings, than has historically been the case under Topic 450.

We would therefore propose a modest supplement to the description of the meaning of “probable.” We would suggest adding an explanatory clause to the final sentence of the “substantial doubt” definition so that the final sentence would read: “The term *probable* is used consistently with its use in Topic 450 on contingencies, *and implies an event the likelihood of which is substantially greater than 50%*. We believe this additional language would further the Board’s stated objective of reducing “diversity in practice . . . caused in part by the lack of well-defined terminology and thresholds . . .” (Exposure Draft at 26). We believe an additional virtue of this approach would be its clarification of the meaning of “probable” not only for the purpose of this new going concern standard, but under Topic 450 as well.

We wish the Board continued success and extend our thanks for its willingness to consider these comments.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Michael R. Young", with a long, sweeping flourish extending to the right.

Michael R. Young

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The content of this letter does not necessarily reflect the views of any institution or organization with whom a member of the Committee on Financial Reporting is affiliated.