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September 24, 2012

Ms. Leslie Seidman Chairman Financial Accounting Standards Board 301 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-05116

Re: FASB Proposed Accounting Standards Update- Financial Instruments (Topic 825) (File Reference 2012-200) Disclosures about Liquidity Risk and Interest Rate Risk.

Dear Chairman Seidman:

The United States Chamber of Commerce (the "Chamber") is the world's largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are both users and preparers of financial information. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21<sup>st</sup> century economy. To achieve these goals the CCMC has supported the development of robust financial reporting systems and backed efforts to improve standards and reduce complexity.

While the CCMC appreciates the opportunity to comment on FASB Proposed Accounting Standards Update- Financial Instruments (Topic 825) (File Reference 2012-200) Disclosures about Liquidity Risk and Interest Rate Risk (the "Proposal"), we believe that the Proposal is premature at best and should be withdrawn for the following reasons:

- 1. The Proposal is in conflict with existing regulatory requirements and creates duplicative disclosures;
- 2. The Proposal promotes financial reporting complexity;

- 3. The Proposal creates an accounting standard that cannot be audited;
- 4. The Proposal creates divergence with international accounting standards;
- 5. Lack of transparent due process leads to a failure to identify investor needs;
- 6. FASB has failed to provide a cost benefit analysis for review by commenters; and
- 7. The proposal does not improve financial reporting for private companies.

These issues are discussed in greater detail below.

#### **Discussion**

The CCMC is supportive of the development of high quality financial reporting standards. Such standards are a cornerstone of efficient capital markets needed for a prosperous and growing economy. However, the CCMC is concerned that the Proposal lacks the underpinnings needed to support high quality financial reporting and may contribute to a disclosure overload that fails to convey relevant information to investors thereby degrading the efficiency of capital markets. The CCMC cannot ascertain the investor interests that FASB is attempting to address. This is also an example of an accounting standard that may not be auditable and may also promote the divergence of accounting standards. Further, the CCMC has continuing concerns regarding the due process used to develop the proposal, as well as new concerns regarding the process used to identify the needs of private companies and the decision to include them in the Proposal.

1. The Proposal is in conflict with existing regulatory requirements and creates duplicative disclosures

The CCMC has continually advocated that financial reporting development include consultation and coordination between standard setters and regulators. The

Proposal highlights why this coordination is needed and how an accounting standard may be in conflict with existing or proposed regulatory requirements. Failure to coordinate and conflict with regulatory requirements can harm the ability of an accounting standard to provide decision useful information to investors and sow confusion amongst market participants.

First, in the press release announcing the Proposal, FASB states that the Proposal was developed in conjunction with regulators, but no discussion of regulatory coordination is apparent in the actual exposure draft. Furthermore, the Proposal acknowledges that disclosure requirements for liquidity and interest rate risks already are mandated by the Securities and Exchange Commission's ("SEC") Management and Discussion Analysis ("MD&A"). This leads to two primary questions that go to the heart of the Proposal:

- If information regarding liquidity and interest rate risks must already be disclosed in regulatory filings, what additional decision useful information will the Proposal provide to investors?
- As the overseer of corporate filings and financial reporting, the SEC decided that the information covered in the Proposal be disclosed in corporate filings and not in the financial reports under Generally Accepted Accounting Principles ("GAAP"). Therefore, if the primary regulator of both disclosure spheres has made a decision that a disclosure be made in a certain area, how can FASB decide on the need for a duplicative disclosure?

Duplicative and inconsistent disclosure requirements are costly to businesses and may burden their investors with confusing and conflicting information. If the SEC believed new or additional "standardized" information is necessary, it could require it, but the SEC appears content with the current disclosures. Therefore, the need for the Proposal itself must be questioned.

Furthermore, it should be noted that liquidity requirements are going through significant changes and enhancements with the implementation of the Dodd-Frank Act and the Basel III capital accords. This implementation is still in progress and may

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<sup>&</sup>lt;sup>1</sup> Ibid, Page 4.

take years to complete. It is not possible to ascertain if FASB has coordinated with the agencies involved in these issues. It does not seem to make sense to develop financial reporting metrics and disclosures when the regulatory and legal obligations needed to determine the economic activity that will be measured through the proposal, are not finalized and may be in flux for an extended period of time.

### 2. The Proposal promotes financial reporting complexity

In its current form the Proposal will proliferate and not reduce financial reporting complexity. As previously noted, the SEC already requires disclosures on liquidity and interest rate risks in MD&A. The Proposal acknowledges that the FASB's disclosure requirements would be additive for public companies. This is an example of one of the circumstances that the SEC's Advisory Committee on Improvements to Financial Reporting (CIFiR) found contributes to unnecessary financial reporting complexity and should be avoided. CIFiR identified financial reporting complexity as the key factor driving the disconnection between current financial reporting and the information necessary to make sound investment decisions.

To overcome the problem of financial reporting complexity, CIFiR recommended a comprehensive and holistic approach. Specifically, to avoid duplicative and inconsistent disclosure requirements under GAAP and SEC regulations, CIFiR recommended that the SEC and FASB work closely together to consider placement of disclosures to reduce complexity. CIFiR recognized that the result of this collaboration may require, for example amendment of SEC guidance.<sup>2</sup> However, as will be discussed in more detail, there is no indication any amendments in SEC guidance would occur here. Moreover, if the SEC's disclosure requirements are deemed inadequate, they should be revised rather than overlaid with FASB requirements.

Frankly, the FASB appears to be "tweaking" the SEC's disclosures to make the case for stepping into a perceived disclosure breach. But this too only adds to financial reporting complexity, as the proposed tweaks for GAAP footnote disclosures will likely become a source of confusion for financial statement users vis-

<sup>&</sup>lt;sup>2</sup> For example, see the Final Report of the Advisory Committee on Improvements to Financial Reporting (August 1, 2008), p. 37.

à-vis entities' MD&A disclosures. To illustrate, the SEC requires that public entities include a table disclosing their financial liabilities at their *contractual* obligations. The Proposal substitutes *expected* for *contractual*. For example, the Proposal would require entities that are not financial institutions to disclose in a table their *expected* cash flow obligations disaggregated by their *expected* maturities. So, financial statement users are left to sort out differences between the two sets of disclosures addressing the same issues.

### 3. The Proposal creates an accounting standard that cannot be audited

It is unclear if the Proposal is auditable and the degree to which FASB has coordinated with the Public Company Accounting Oversight Board ("PCAOB") on the subject. In essence, auditors will be asked, under the Proposal, to audit projections of future activity and events, which would be challenging to do at best. Imposing a new accounting standard that cannot be audited will degrade financial reporting.

It is also worth noting that the PCAOB has had little and only isolated support for extending auditor attestation to other information in MD&A.<sup>3</sup> Nonetheless, with this Proposal the FASB is ignoring this lack of support and "cherry-picking" one type of information out of MD&A to duplicate it in the GAAP footnotes and, thereby, to encompass that information within auditor attestation.

### 4. The Proposal creates divergence with international accounting standards

In addition, the Proposal contributes to financial reporting complexity by failing to serve the cause of convergence of U.S. GAAP with International Financial Reporting Standards ("IFRS") as promulgated by the International Accounting Standards Board ("IASB"). The CCMC has been a strong advocate for a single set of global accounting standards and has supported efforts to improve standards and reduce complexity through the convergence of U.S. GAAP with IFRS. The CCMC continues to support the creation of a single set of high quality global accounting standards.

<sup>&</sup>lt;sup>3</sup> See comments on Concept Release on Possible Revisions to PCAOB Standards Related to Reports on Audited Financial Statements and Related Amendments to PCAOB Standards and Notice of Roundtable (PCAOB Release No. 2011-003, June 21, 2011, Rulemaking Docket Matter No. 34).

IFRS has certain disclosure requirements related to liquidity and interest rate risk (in part because there are no equivalent MD&A disclosure requirements for companies not filing with the SEC). However, the Proposal differs in important ways from IFRS. For example, IFRS 7, *Financial Instruments: Disclosures*, bases liquidity disclosures on the earliest possible payment date (rather than expected maturity dates that are contractually possible) and under IFRS 7 an entity uses its own judgment to determine the appropriate time intervals (while the Proposal would prescribe the time intervals under U.S. GAAP used to segregate the financial instrument). This lack of convergence will be yet another source of added financial reporting complexity.

### 5. Lack of transparent due process leads to a failure to identify Investor needs

The proposal does not identify how investor interests could be advanced through its adoption—or even what investor interest it seeks to advance. The CCMC has previously urged the FASB to conduct a more open and transparent consultation process as it develops proposed financial reporting standards.<sup>4</sup> While FASB and the Financial Accounting Foundation ("FAF") have made important transparency and due process strides this proposal illustrates the need for further progress. A more open and robust process prior to proposal would help all commenters understand the specific investor interests being considered and would help ensure all investor interest are brought to the table.

At best, it would seem that outreach may have been limited and not extensive. As a result, it is impossible to ascertain the investor interests FASB is attempting to address. The lack of broad based transparent procedures approach for standard development may allow for accounting standards that do not accurately reflects economic activity over a broad and diverse economy. Rather than trying to resolve an issue, which is itself unclear as this information is already disclosed, the Proposal may create problems all of its own making.

<sup>&</sup>lt;sup>4</sup> While financial reporting standard development due process concerns have been raised numerous times by the CCMC a representative example of those views can be found in a February 1, 2011 letter from the CCMC to the FASB and IASB on the FASB Discussion Paper and IASB Request for Views on Effective Dates and Transition Methods; as well as testimony of Thomas Quaadman before the House Subcommittee on Capital Markets and Government Sponsored Enterprises a the March 28, 2012 hearing on Accounting and Auditing Oversight, Pending Proposals and Emerging Issues Confronting Regulators, Standard Setters and the Economy.

Accordingly, as this flawed process may lead to a flawed standard, the CCMC repeats its request that FASB commit to procedural transparency through adherence to the Administrative Procedures Act and disclosure policies established by U.S. financial regulators in the wake of Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") rulemaking. Such procedures would allow participants a transparent understanding of how the Proposal was developed, what goals the Proposal is intending to meet and if outreach was broad based to encompass a representative cross section of the economy to minimize unintended consequences.

## 6. FASB has failed to provide a cost benefit analysis for review by commenters

While the Proposal does contain a narrative on Benefits and Costs, there is no statement of costs given.<sup>5</sup> Rather an assertion is made by FASB that the benefits outweigh the costs without providing any information or facts. The CCMC disagrees with the blanket assertion that the benefit outweigh the costs on three grounds: First, the outreach program as has been discussed earlier is in our estimation flawed and not transparent; second, the Proposal may have little or no benefit because the Proposal is duplicative, in potential conflict with regulatory requirements and will increase complexity; and third, no estimate of costs has been provided.

Any new Standard or amendment to an existing Standard will have a cost. As it is duplicative, the Proposal will impose additional costs and burdens on companies. Since these costs will ultimately be felt through reduced earnings or lower stock prices adversely impacting investors these costs should be disclosed and made available for comment. Compliance costs of the proposal can be estimated as it can be for any proposed regulation. Additionally, through field testing and outreach, FASB should be able to demonstrate how this new disclosure will impact financial statements. Both of these factors, which FASB should provide for commenters a cost-benefit analysis that can help participants understand the thinking of FASB in proposing the standard and if the models and facts presented are accurate and reflective of reality.

Accordingly, the CCMC believes that the cost-benefit analysis is inadequate to judge the effectiveness and worthiness of the standard. By failing to provide this

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<sup>&</sup>lt;sup>5</sup> Ibid, Page 44 and 45.

information commenters do not have all of the facts necessary to ascertain the impact of the Proposal and provide FASB with the informed comments it desires.

# 7. The proposal does not improve financial reporting for private companies.

Interestingly, FASB has decided the Proposal shall apply to private companies as well as public companies. The CCMC respectfully disagrees.

There are approximately 14,000 public companies and 29 million private businesses within the United States and the needs of users of public company financial statements and private company financial statements are vastly different.

Public company financial statements must be prepared and filed according to law. Public company investors use information to make decisions on how to invest in public companies through the debt and equity markets. Public company investors may either seek to purchase an ownership stake through stocks or provide capital through debt offerings such as bonds. Users of public company financial statements may include management which may use such reports as an internal tracking device and also by trading partners who can use these financial statements to determine the health of a company.

Private company ownership is private and not linked to any public markets and not subject to reports that must be filed by law. Some investors in private companies, such as venture capital or angel investors may find the financial status of a company to be totally irrelevant to their investment decision. Indeed lenders may want to view the financial health of a private company, but in a manner and form that may not conform with public company GAAP because many GAAP disclosures may be irrelevant and impose unnecessary costs upon a private company.

Other than assertions made in the Proposal, there is no discussion or identification of the private company needs the Proposal seeks to address, or what the costs and benefits are for private companies. It doesn't appear that these differing structures and needs were taken into account when considering the Proposal thereby creating a serious flaw.

Congress, in the recent bi-partisan passage of the Jumpstart Our Business Startups Act ("JOBS Act"), recognized that public company accounting may be a costly burden that is not needed by private companies. The CCMC finds it disturbing that this standard, one of the first to be considered under the new system of evaluating public company accounting standards in relation to private company standards, seemingly gives short shrift to private company needs.

The CCMC is extremely concerned that this does not bode well for the development of accounting standards for private companies. The CCMC will expand on these views with our upcoming comments to the private company framework. If FASB decides to move forward with the Proposal, the CCMC recommends that the application of the Proposal be suspended and that the matter be referred to the Private Company Council for deliberation and outreach to determine the needs of private companies and if the Proposal should apply to them.

#### **Conclusion**

We appreciate this opportunity to comment on the Proposal. However, we have serious concerns regarding the Proposal and believe that it should be withdrawn for a full reconsideration of its goals, means of achieving them and the corresponding process for the project itself. The Proposal also demonstrates continued flaws with due process for the development of standards as well as a lack of process for the consideration of those standards in relation to private companies.

The CCMC stands ready to assist in this effort to work on a liquidity and interest rate risk proposal that conveys relevant information for appropriate market participants.

Sincerely,

Tom Quaadman