



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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November 19, 2012

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

Re: **FASB Invitation to Comment on Disclosure Framework (File Reference 2012-220)**

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 21st century economy. To achieve these goals the CCMC has supported the development of a robust financial reporting system, as well as efforts to improve standards and reduce complexity.

The CCMC appreciates the opportunity to comment on the *Disclosure Framework (File Reference 2012-220)* (the “Framework”). However, the CCMC believes that the Framework raises more issues than it resolves, specifically:

- 1. The Framework promotes rather than reduces financial reporting complexity;**
- 2. As presented, the Framework fails to provide a practical and workable set of principles for disclosure;**

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3. **The Framework fails to provide a holistic and integrated approach to disclosure, conflicts with existing regulatory requirements and would create duplicative disclosures;**
4. **The litigious nature of the U.S. legal system is not taken into account;**
5. **There is a failure to recognize or address issues related to the auditability of disclosures;**
6. **The Framework may create divergence of U.S. Generally Accepted Accounting Standards (“US-GAAP”) with international accounting standards;**
7. **The Framework explicitly excludes cost benefit considerations from a disclosure framework;**
8. **The proposal does not improve financial reporting for private companies.**

These issues are discussed in greater detail below.

Discussion

As currently drafted, the Framework is long and complex and not principles-based.¹ The Framework is composed as a matrix of yes or no questions the answers to which would lead one to understand how disclosures should be tailored for a particular situation. Instead, the CCMC believes that the FASB should develop a disclosure framework based on a set of core principles allowing judgment to be used. These principles should be developed, under a holistic approach, with the Securities and Exchange Commission (“SEC”) to avoid conflict with existing regulatory requirements thereby preventing unnecessary duplicative disclosures. The Public Company Accounting Oversight Board (“PCAOB”) should also be an active participant in this process to allow for the auditability of those accounting principles.

¹ See Chapter 2 (pp. 14-33) of the Framework.

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To elaborate, the Final Report of the SEC's Advisory Committee on Improvements to Financial Reporting ("CIFiR") recommended that the SEC and the FASB work together to develop a disclosure framework to, among other things:

Integrate existing SEC and FASB disclosure requirements into a cohesive whole to ensure meaningful communication and logical presentation of disclosure, based on consistent objectives and principles. This would eliminate redundancies and provide a single source of disclosure guidance across all financial reporting standards.²

Unfortunately, four years after the release of the CIFiR report, this disclosure framework still needs to be developed.

The proposed Framework, as presented by FASB, applies only to disclosures in the notes to the GAAP financial statements. It does not address other financial reporting disclosures outside of the financial statements such as management's discussion and analysis ("MD&A") as required by the SEC. As such, the Framework fails to take a global and holistic approach to financial reporting disclosure as recommended by CIFiR.

The Framework states that the Board is committed to working with all parties, including the SEC, to improve effectiveness, reduce overlap, and otherwise streamline financial reporting. However, there is no evidence of any joint work with the SEC in the proposed Framework. This undermines the efficacy of the Framework.

For example, information to be included in the notes, as described in Chapter 2 of the Framework, involves a good deal of information already disclosed in MD&A in accordance with SEC requirements. By its very nature, this would create duplicative disclosures that are costly directly impacting the bottom line for investors. Furthermore, the CCMC believes, as a core principle, that duplicative and competing disclosures do not provide clarity or add relevance for investors thereby acting as an impediment to effective and efficient capital markets.

² See *Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission* (August 1, 2008), Recommendation 1.2 (p. 8).

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This one example shows that the costs of the Framework do not outweigh the benefits and insufficient attention has been paid to the interests of investors and the needs of businesses for which they provide capital.

Furthermore, the failure to take a holistic and integrated approach to developing a disclosure framework not only exacerbates problems with duplicative disclosures and disclosure overload and complexity, but raises issues related to litigation. For example, the Framework does not appreciate the forward-looking nature of some information proposed for disclosure in the notes and the fact that similar information currently disclosed in MD&A is subject to a safe harbor. This will change the liability risk for businesses, ultimately harming investors, as well as creating difficulties in the auditability of this information because of the potential increase in litigation.

For example, in exploring a possible construct for flexible disclosure requirements that could be applied differently by different entities, the Framework states that reporting entities would assess the relevance of each disclosure using the basic criterion that “information should be disclosed if it has the potential to make a difference in users’ decisions about providing resources to the reporting entity.”³ However, the Framework fails to recognize that this notion of material information differs from that based on court decisions interpreting the federal securities laws and contained in the PCAOB’s auditing standards.⁴ For example, PCAOB Auditing Standard No. 11 states:

In interpreting the federal securities laws, the Supreme Court of the United States has held that a fact is material if there is ‘a substantial likelihood that the ... fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.’ As the Supreme Court has noted, determinations of materiality require ‘delicate assessments’ of the inferences a

³ By way of reference, Statement of Financial Accounting Concepts No. 8 changed the FASB’s definition of materiality to the following: “Information is material if omitting it or misstating it *could* influence decisions that users make on the basis of the financial information of a specific reporting entity” (Par. QC11, Chapter 3). However, Statements of Financial Accounting Concepts are not authoritative under the FASB Codification.

⁴ For a more fulsome discussion of this issue, see “What is Materiality? SEC & PCOAB v. FASB & ASB” by Samuel P. Gunther in *Bloomberg BNA* (May 7, 2012).

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‘reasonable shareholder’ would draw from a given set of facts and the significance of those inferences to him. ...

Accordingly, the Framework’s basic criterion does not appear to be a workable one for reporting entities to apply. At a minimum, such a criterion would create confusion and increase litigation risks for companies and auditors alike.⁵

The Framework is not a joint project with the International Accounting Standards Board (“IASB”), which calls into question how it will be integrated into the accounting convergence efforts. The Framework states that the FASB staff has cooperated with the staffs of the European Financial Reporting Advisory Group (“EFRAG”), the Financial Reporting Council of the United Kingdom (“FRC”), and the Autorité Des Normes Comptables of France (“ANC”). The CCMC understands that EFRAG, the FRC, and the ANC will be issuing a joint discussion paper on a disclosure framework as well. However, the Framework goes on to acknowledge that each discussion paper addresses the issue of disclosure effectiveness using different approaches. Considering these factors, the Framework is likely to create divergence of US-GAAP with the IASB’s International Financial Reporting Standards (“IFRS”) and undermine convergence of US-GAAP and IFRS.

From a domestic perspective, the Framework applies to financial statements of public and nonpublic companies. The Framework acknowledges that efforts underway to develop a framework for evaluating financial reporting issues for private companies may have some effect on matters discussed in the Framework. However, the Framework makes no attempt to consider disclosure issues from the standpoint of private companies or what the needs of private company financial report users are. This highlights the issues raised by the CCMC in our recent comments to FASB on Private Company accounting.⁶

The Framework also explicitly excludes any cost-benefit considerations as part of a disclosure framework. The CCMC and others believe that the use of a cost-benefit analysis is necessary for effective standard setting and providing a better

⁵ For an extensive discussion of other issues related to the audit implications of disclosures, the CCMC recommends that the FASB consider the International Auditing and Assurance Board’s (“IAASB”) Discussion Paper on *The Evolving Nature of Financial Reporting: Disclosure and Its Audit Implications* (January 2011).

⁶ See October 31, 2012 CCMC letter to FASB on *Private Company Decision Making Framework* (File Reference 2012-230).

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means of understanding the consequences of standards as they are developed and in the immediate post-implementation phase. Furthermore, the use of cost benefit analysis has been expanded by Congress in the development of audit standards and emerging growth companies through the Jumpstart Our Businesses Startup Act (“JOBS Act”), as well as through SEC-Self Regulatory Organization (“SRO”) rulemakings, such as the recent announcements by the Financial Industry Regulatory Authority (“FINRA”) and the Municipal Securities Rulemaking Board (“MSRB”) that they will incorporate cost-benefit analysis into their rulemaking process.

Conclusion

In conclusion, the CCMC is supportive of the development of high quality financial reporting standards, which include disclosures. Such standards are a cornerstone of efficient capital markets needed for a prosperous and growing economy. However, the CCMC believes the Framework lacks the fundamental underpinnings needed to support high quality financial reporting.

As currently constituted the Framework may contribute to disclosure complexity and overload, would create new challenges for preparers and auditors and would not provide a workable framework for conveying relevant information to investors. Accordingly, the CCMC believes that FASB should reconsider the Framework in order to address these concerns and insure that financial reporting accurately reflects economic activity. This will assist the decision making process for investors and provide the basis for efficient capital markets.

The CCMC stands ready to assist in this effort to develop a disclosure framework that conveys relevant information for market participants.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long horizontal flourish extending to the right.

Tom Quadman