October 12, 2015

Technical Director, File Reference No. 2015-310
Financial Accounting Standards Board
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By e-mail to director@fasp.org

Piercy Bowler Taylor & Kern (PBTK), Certified Public Accountants and Business Advisors, is a regional PCAOB registered accounting firm with offices in Las Vegas, Nevada, and Salt Lake City, Utah. We are pleased to comment on the Board’s Exposure Draft (ED) dated September 24, 2015, entitled Notes to Financial Statements (Topic 235) Assessing Whether Disclosures Are Material.

The ED was issued concurrently with, and is integrally related to, the FASB’s Proposed Amendments to Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting, Chapter 3: Qualitative Characteristics of Useful Financial Information (File No. 2015-300). Accordingly, despite some limited but necessary redundancies, this letter should be read in conjunction with our more general comments contained in our accompanying letter on the other proposal.

For your information, both proposals are generally consistent with the views expressed in an article entitled “Finding the Forest Among the Trees: Overcoming Overload and Achieving Greater Disclosure Effectiveness,”1 authored by the undersigned and published in July 2015 by the New York State Society of CPAs in The CPA Journal. The main premise of that article is that, like a smokescreen, excessive disclosures of immaterial items effectively reduce the value of financial statements and the documents in which they appear by making important disclosures less transparent. Over time, these proposals, and especially this one, should ultimately have the positive effect of cutting through such smokescreens.

In addition to our responses to the nine questions presented by the Board in the ED contained on pages 3-5 of this letter, we wish to comment on the first full paragraph on page 2 of the ED that lists four “often-cited obstacles to the current system [i.e., as a direct consequence of overly restrictive language in the FASB Codification] that may affect an entity’s incentive and ability to omit immaterial disclosures,” as follows:

- Listed fourth in this paragraph are SEC comment letters about omitted disclosures. But conspicuously missing from the list are PCAOB inspection reports, many of which we have observed unduly criticize auditors for permitting their issuer audit clients to omit disclosures without regard either valid arguments often presented based on their immateriality or to the FASB statement in Topic 105 setting forth that provisions of the Codification need not be applied to immaterial items. These reported inspection results frequently cause auditors to insist on immaterial disclosures or inappropriately force issuers unnecessarily to restate their previously issued financial statements and amend SEC filings to add such immaterial items and thus, effectively impair the credibility of management, the audit firm and the financial reporting process.

Also omitted conspicuously from the list are attorneys who advise their clients to disclose immaterial items as a means of protection from the risk of such regulatory and legal action, as discussed extensively in the article cited in the third paragraph of this letter.

“Litigation concerns” are listed second. We note that although one cannot protect oneself against litigation risk, since anyone can sue most anybody for anything, protection from exposure to liability can be obtained, and, in our view, the actions described in the ED and the related proposal (File No 2015-310) would provide a measure of such protection.

We believe the foregoing three bullet points should be addressed by the Board in a revised version of this paragraph in the final Accounting Standards Update that results from this process.

Also, since FASB concept statements are characterized as nonauthoritative, we believe the reference to the 1976 U.S. Supreme Court definition as the source of guidance for materiality judgments that would appear in an amended Statement of Financial Accounting Concepts No. 8 (CON 8) also should be incorporated, where appropriate, directly into (or referenced from) FASB’s Accounting Standards Codification, including the final version of proposed paragraph 235-10-50-9. Such a reference is omitted in the ED.

Based on the preceding paragraph and our comments in response to Question 7 (Q7) on page 4 of this letter, we believe the proposed amendments to Topic 235 are a bit too brief.

The foregoing notwithstanding, we applaud the Board for taking the forward step in issuing this ED. We strongly encourage it, however, to extend the proposal to cover immaterial misstatements, as well as omissions, and to continue along this path and address assessing the materiality of departures from its measurement standards relative to the financial statements, themselves.

Thank you for the opportunity to comment on this ED. We hope the FASB staff and the Board will consider our views and find them useful in their deliberations on these issues. We acknowledge our awareness that the Board will make our comments publicly available online.

Any questions about our comments may be directed to the undersigned at 702/384-1120 or hlevy@pbtk.com.

Very truly yours,

PIERCY BOWLER TAYLOR & KERN,
Certified Public Accountants and Business Advisors

[Signature]

Howard B. Levy, Principal and
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Responses to Specific Questions Presented by the Board

Q1: Would assessing materiality subject to the proposed changes to paragraphs 235-10-50-7 through 50-8 be any easier than under current GAAP? If yes, please explain why.

We believe that materiality assessments will continue to require the exercise of considerable professional judgment and that the language in proposed paragraphs 235-10-50-7 through 50-8 will not make the application of such judgment any easier than is the case under current GAAP.

Q2: Would applying the amendments in this proposed Update significantly increase or reduce costs of preparing the notes to financial statements? Why or why not?

We believe that those preparers whose financial statements are typically laden with “required” disclosures that can be readily judged as immaterial will likely experience a significant cost savings in the form of reduced preparer and auditor time after the initial year of adoption, when such savings would likely be largely offset by the evaluation process. Additional savings might likely be realized periodically in the form of reduced time spent dealing with SEC staff comments about immaterial disclosure items now characterized in the FASB Codification as “required.” For some preparers, however, whose financial statements and disclosures are less complex, cost savings will likely not be so significant.

Q3: Would the amendments in this proposed Update change the information you otherwise would include in the notes to financial statements? Why or why not? If yes, how would that increase, diminish, or otherwise change the notes’ usefulness to investors, creditors, and other financial statement users?

Unless it refers to the elimination of immaterial disclosures, which will obviously result in change for most preparers, even if only over time, we do not understand the first part of the question. The second part seems to fail to give proper recognition to a reasonable understanding of the meaning of materiality. No matter what definition one uses, if an item is judged to be immaterial, it is a judgment that its disclosure would make no difference to a reader. “Usefulness,” per se, is a far broader notion that has never been, and should not be, a factor (perhaps unless limited to that which is necessary to prevent the financial statements from being misleading, a concept which is already embodied in materiality).

Q4: Do you expect regulatory, legal, or audit consequences that would affect your ability to consider materiality when selecting information to be disclosed in notes to financial statements? Please explain.

As implied in our response to Q3, we believe that the regulatory, legal and other obstacles to removing immaterial disclosures from financial statements (discussed in the fourth paragraph of this letter) will persist for some time until preparers, their auditors and lawyers, regulators and adjudicators have time to get comfortable with the more permissive language in the standards, but that over time, such obstacles will diminish.

Q5: How would you disclose information in comparative financial statements if your assessments of materiality differed in different years?

We do not see this as an issue. Consistent with what we see currently as common practice for comparative financial statements, we believe that when a disclosure item is material in one period only, generally, it should be disclosed for all periods presented unless expressly characterized as immaterial when applicable.

Q6: Should the Board eliminate from the Accounting Standards Codification phrases like “an entity shall at a minimum provide” and other wording that could appear to limit an entity’s discretion to omit immaterial
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disclosures? Are there particular Topics or Sections in which those changes should not be made? Are there
additional paragraphs within the Accounting Standards Codification in which the wording is particularly
restrictive and is not identified in Appendix B of this proposed Update? If so, please identify them.

We firmly support the elimination of phrases such as “an entity shall at a minimum provide,” as well as other
words now commonly used throughout the Codification that tend to restrict or prohibit the use of materiality-
based, discretionary judgments as to matters of disclosure, such as “required” or “requirements.” We do not
believe any particular Topics or Sections should be designated as exceptions to this principle.

As for the last part of the question, we will not undertake to review the entire Codification to find paragraphs
not identified in Appendix B of the ED as we trust that the FASB staff is best equipped to do this.

Q7: Do you agree with the proposed amendment that would explicitly state that the omission of an
immaterial required disclosure is not an accounting error? Why or why not?

In essence, yes, but we prefer it would be worded more differently. First, as noted in our response to Q6, to
convey more clearly the message that all disclosures are subject to materiality considerations, we believe the
word “required” should be purged from the Codification in substantially all, if not all, instances in relation to
disclosures. In addition, we believe the language in proposed paragraph 235-10-50-9 should be modified in the
final standard to state, not that immaterial disclosure omissions are not accounting errors, per se, but rather
more precisely that “omission of immaterial disclosures and misstatements are not to be treated as
accounting errors pursuant to the provisions of Topic 250 and, therefore, are not GAAP departures.”

Q8: Are there considerations other than those discussed in this proposed Update that would apply to not-
for-profit entities?

We see no reason that would justify singling out not-for-profit entities for different treatment with regard
to any aspect of this proposal.

Q9: Should the proposed amendments be effective upon issuance?

Absolutely. These proposed changes are long overdue, and since they would be permissive rather than
prescriptive, we see no significant obstacles to their implementation. However, in the context of auditor
communications with lawyers, as explained below, we do see a possible practical problem with proposed
paragraph 235-10-50-7 and the related underlying proposed amendment to CON 8. Nevertheless, we do
not believe this should delay the implementation of these proposed changes.

Auditors are required under standards promulgated by both the AICPA’s Auditing Standards Board (ASB) and
the PCAOB to request audit evidence in the form of a written communications from each audit client’s legal
counsel to support disclosures about potentially material litigation, claims, and assessments.2 Lawyers’
responses are guided by the Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for
Information issued in December 1975 by the American Bar Association (the ABA Statement).3

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2 ASB AU-C Sec. 501 and PCAOB Interim Auditing Standard AU Section 337 (or Reorganized AS 2505).
3 Reproduced in ASB AU-C Sec. 501.A70 and PCAOB Interim Auditing Standard AU Section 337 (or Reorganized AS 2505,
Exhibit II.)
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Although not required by any of the foregoing cited documents, according to paragraph 3 of the ABA Statement, “it is appropriate for the lawyer’s response to indicate that the response is limited to items which are considered individually or collectively material to the presentation of the client’s financial statements.” Over the last 40 years, it has become common practice for audit-related requests for information from lawyers to contain a lower limit for materiality (agreed to between management and the auditors) below which limit the lawyer may (and generally does) exclude information without such exclusion constituting an audit scope limitation under the applicable auditing standard.\(^4\) Probably as a result of the guidance to lawyers in paragraph 3 of the ABA Statement and 40 years of practice, lawyers tend to view materiality judgments, at least for this purpose,\(^5\) as an accounting matter for which they take no responsibility, rather than a legal matter. Consequently, we believe the shift represented by the proposed paragraph 235-10-50-7 and the related amendment to CON 8 may likely cause some backlash from the legal community, which may take some time to work out, perhaps with negotiated assistance from the ABA.

\(^4\) See ASB AU-C Section 501.A56 and PCAOB Interim Auditing Standard AU Section 337.12 (or Reorganized AS 2505.12).

\(^5\) As discussed extensively in the article cited in the third paragraph of this letter, in other contexts, such as for disclosure documents containing the financial statements, lawyers tend to be highly conservative in judging materiality and frequently advise their clients to disclose clearly immaterial items as a means of protection from risk.