new york state society of
NYSSCPA
certified public accountants

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September 28, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

By e-mail: rule-comments@sec.gov

Re: Release No. 33-8836 – Discussion Paper for Consideration by the SEC Advisory Committee on Improvements to Financial Reporting (File No. 265-24).

Dear Ms. Morris:

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned release. NYSSCPA thanks the SEC for the opportunity to comment.

The NYSSCPA's Financial Accounting Standards Committee deliberated the release and drafted the attached comments. If you would like additional discussion with us, please contact Edward P. Ichart, Chair of the Financial Accounting Standards Committee, at 516-488-1200, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

David A. Lifson
President

Attachment

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COMMENTS ON SECURITIES AND EXCHANGE COMMISSION RELEASE NO. 33-8836

DISCUSSION PAPER FOR CONSIDERATION BY THE SEC ADVISORY COMMITTEE ON IMPROVEMENTS TO FINANCIAL REPORTING

September 28, 2007

Principal Drafters

Robert A. Dyson
Edward P. Ichart
John J. McEnerney

New York State Society of Certified Public Accountants

Financial Accounting Standards Committee

Comments on Securities and Exchange Commission Release No. 33-8836

Discussion Paper for Consideration by the SEC Advisory Committee on Improvements to Financial Reporting

GENERAL COMMENTS

The New York State Society of Certified Public Accountants welcomes this opportunity to comment on the SEC Release No. 33-8836, *"Discussion Paper for Consideration by the SEC Advisory Committee on Improvements to Financial Reporting."*

We would like to express our support for the goals outlined in the White Paper concerning the objectives and topics that the SEC Advisory Committee on Improvements to Financial Reporting has identified. Accordingly, we look forward to its future deliberations and formal recommendations. We would like to take the opportunity to reiterate past concerns we have expressed regarding principles-based accounting, fair value accounting and other accounting estimates that we would like the Advisory Committee to continue to consider in carrying out its role in advising on improvements to financial reporting.

SPECIFIC COMMENTS

Principles-Based Accounting

While we agree with the goal of principles-based accounting standards, we understand that a constant threat of litigation compels preparers and external auditors to anxiously seek detailed guidance wherever possible. The SEC should work with the FASB, IASB, PCAOB and AICPA to strengthen the importance of good faith judgments in order to provide both preparers and auditors with an adequate defense against litigation based on "second-guessing" their judgment. The SEC and other regulators should accept some diversity in practice based on good faith judgments of preparers and auditors, while strongly disciplining those preparers and auditors who purposely distort financial reporting. To facilitate a principles-based approach, the SEC should consider whether legal reforms must be implemented, and follow-up as needed to implement such reforms.

Fair Value Accounting

Basic Concepts

In reconciling the conflicting requirements of users, preparers, and auditors, standard setters should assure that any information generated by preparers and attested to by auditors is both relevant and reliable. Information that is theoretically relevant but inherently unreliable has little use to those relying on that information and may actually result in both users and company management making bad business decisions. Relevance and reliability is best achieved when financial information is prepared in conformity with clear accounting principles.

The recent increased use of fair value in measuring assets and liabilities with no active market adds to the complexity of the preparation of financial statements while it decreases the reliability of information provided to decision makers. The reliability of fair value-based measurements of the assets and liabilities might be adversely affected by the differences in techniques in measuring such transactions and by the speculative nature of the input applied in these measurement techniques.

Available Valuation Techniques

A key issue is whether the valuation technique that best approximates the fair value would be available without undue cost or effort. A decision about selecting the approach to be used, together with documenting the reasons thereof, requires a significant amount of time and effort involving many individual calculations. Techniques used to calculate fair value, such as the projection of future cash flows in measuring assets and liabilities (as required by Financial Accounting Standards Board Concepts Statement No. 7, *Using Cash Flow Information and Present Value in Accounting Measurements*), rely heavily on speculation of the occurrence of future events. Differences in expectations of future events can generate materially different results in measuring similar transactions. The guesswork inherent in this decision might result in inconsistencies in practice, depending upon the size of the company, the industry and other factors.

In addition to the speculative nature of the projection of future events, the reliability of measuring certain assets and liabilities remains a daunting task because the nature of current markets contains variables. For example, retail markets contain such explicit costs as sales commissions, and are influenced by implicit costs such as market impact (*e.g.*, marketability and block discounts). Both of these costs affect the amount of future cash flows received by the reporting entity and are affected by constantly changing factors such as company policies and market conditions. In addition, the reliability of market information is questionable regarding such assets as investments in private companies and joint ventures, thinly traded public companies and certain other public companies. The differences in available valuation techniques and inadequate evidence raise the risk that the determination of the fair value might be manipulated.

The fair value of investments of private companies and joint ventures, accounted for either under the equity method or as equity investments with no readily determinable values, cannot be measured reasonably without obtaining appraisals or other forms of proof. Besides the related expense, the appraisals themselves may not be reasonably reliable in that appraisers typically use three approaches, each with potentially materially different values, and use judgment to determine the best value. In addition, there is no indication that appraisers are more reliable and competent than CPAs and management in such circumstances.

The fair value of thinly traded public companies is dependent upon the activities of market makers that list on the “pink sheets,” who are only obligated to buy or sell no more than 100 shares at the quoted prices. In reality, the listing is more of an expression of interest to buy or sell, and the prices listed on the pink sheets are not credible. Anyone who desires to buy or sell more than 100 shares will find the pink sheet bid/ask spread to be utterly meaningless. Moreover, if more than one dealer lists on the pink sheets (again, the legal obligation is for100 shares only), prices that are materially different from each other may be quoted resulting in unreliable measurements if one price is unreasonably high.

Large blocks of securities or restricted securities (whether easily marketable or not) are often purchased at a discount reflecting the market impact cost or the restriction. The discounted “per share” values often are materially different from the market value of a smaller number of unrestricted stock.

The fair value of warranty rights and obligations and unconditional purchase obligations are, at best, meaningless. These assets and liabilities are generally the assets and obligations of the reporting entity, and, generally, are not transferable as separable instruments. Most times, investors do not buy or assume a warranty liability, and vendors might not be willing to transfer warranty rights to a third party unless the asset with the warranty is also transferred.

Differences in available valuation techniques and inadequate evidence also raise questions about the reliability of the fair value of other instruments such as warranty and debt liabilities.

The fair value for certain liabilities, such as debt liabilities, could result in confusing results. Typically, the fair value of a debt instrument is based on the present value of the future cash flows using an interest rate applicable to the reporting entity. The drop in its credit rating would result in the application of a higher interest rate, which would reduce the carrying value of the instrument and result in the recognition of a gain (albeit later, higher periodic interest costs). The reduction of the carrying value of the debt would give the impression that the reporting entity is improving its financial condition. Similarly, the entity would recognize a loss upon the improvement of its credit rating when the carrying value of the debt increases due to lower imputed interest rates.

In order to maintain comparability between entities engaging in similar transactions, the FASB has sought to limit the flexibility in applying currently available valuation alternatives by issuing increasingly voluminous and complex rules. Most recently, the FASB issued Statement No. 157, *Fair Value Measurements*, and Statement

No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115*. These pronouncements present a level of abstraction closer to a concepts statement than a statement of financial accounting standards. For example, SFAS 157, paragraph 21, notes the absence of evidence in many fair value measurements by defining "unobservable inputs," which it defines as inputs reflecting the entity's own assumptions about markets. The only guidance on applying these potentially significant inputs is to try to minimize their use. We question the appropriateness of developing GAAP standards first and modifying existing concepts statements afterwards for compliance rather than using the concepts statements as the framework for GAAP.

To date, the FASB has yet to present a convincing case that the fair value measurements are sufficiently relevant and reliable to provide useful information to financial statement users. The FASB has also not completed a project to determine whether fair value measurements are both relevant and reliable. We recommend that this project be completed and exposed for comment with full analysis of the effect on current financial reporting and on the relevance and reliability of such measurements.

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