



August 6, 2008

Filed Electronically

Mr. Robert H. Herz  
Chairman  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
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LETTER OF COMMENT NO. 48

**RE: File Reference No. 1600-100, Disclosure of Certain Loss Contingencies**

Dear Mr. Herz:

Cummins Inc. wishes to share its views on your exposure draft entitled "Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R)". We appreciate the opportunity to comment on this important accounting standard. We are familiar with and have concerns about the significant issues that will be raised through the comment letter process from numerous companies and organizations. Some of those issues are summarized as follows:

- The disclosure of "unasserted claims" may lead to claims and litigation that would otherwise never be pursued.
- The additional disclosures could provide a roadmap to plaintiff's attorneys regarding a company's litigation strategy.
- The additional disclosures could affect the outcome of the proceedings, particularly where a plaintiff purposely withholds a damage claim knowing that a company may have to disclose its best estimate of its maximum exposure to loss.
- The disclosures themselves could actually lead to additional shareholder litigation due to the high degree of uncertainty involved in the estimations required.
- The additional disclosures may encourage frivolous litigation by claiming large damages that could require disclosure.
- The proposals will present a significant problem with respect to attorney-client privilege.
- The proposed protection for prejudicial cases is unlikely to be effective, particularly when a company has a large claim or a group of related claims.

While we agree with issues being raised by others with respect to these matters and share many of the same concerns, we are not going to repeat the details behind these comments in our letter. Rather, we would like to focus on a few operational issues that we believe will be difficult for us and that should be considered prior to issuing any final ruling on this matter.

**Marya Mernitz Rose**

## Estimation of maximum exposure to losses

One part of the proposed standard is the requirement to estimate and disclose the maximum exposure to losses on (1) known claims with no specified damage amount and (2) unasserted claims where the probability of loss is more than remote. We are troubled by several aspects of this particular requirement.

First, we believe this process will require a significant amount of time and effort. By its very nature, litigation exposures are very difficult to estimate and predict even when a claim amount is known. This difficulty is magnified substantially when no claim amount is asserted. Trying to estimate the maximum amount of exposure involves considering many factors including but not limited to (1) the type(s) of exposure involved, (2) the court(s) at which the matter will be heard, (3) the potential for inclusion of multiple defendants and the impact to our individual exposure, (4) the potential for punitive damages, (5) the behavior of a jury if the matter is one that involves a jury trial and (6) the potential for settlement. Even where the claim amount is known, this process can be extremely difficult, but it is exacerbated when the claim amount is unknown or the claim has not yet been asserted. We estimate that roughly 25% of the litigation exposures that we track have no stated claim amount and would require a quarterly update on the estimation of the maximum exposure to loss.

Second, we are uncertain how certain exposures such as discussions with or investigations by regulators would be included in the disclosure. These matters do not always result in monetary penalties, but could result in changes in business practices or other methods of settlement that may not have a definable financial impact. There are likely other kinds of uncertainties that are settled by other than monetary means that would be equally difficult in estimating. If the disclosure obligation remains, we suggest that some guidance be provided as to how to calculate these exposures for inclusion in the aggregate disclosure.

Thirdly, we are concerned about the "auditability" of such information. Litigation reserves, in general, are a challenging area for companies and auditors to reach agreement. We believe this problem will grow exponentially with the increased number of estimates that will be required by the added disclosures.

Lastly, we question the value to investors of such information. The claim amount or the maximum possible loss is rarely the amount of the final settlement. In many cases, the ultimate settlement is usually a fraction of the original claim. While the standard allows for an optional disclosure of the company's best estimate of the loss, we question the value of this information given its limited reliability and the significant effort involved in determining a reasonable estimate. In addition, providing the supplemental disclosures will then require another level of time, expense and effort. In some cases, the disclosure of this information could be misleading if the company has numerous frivolous lawsuits outstanding that had a "more than remote" chance of being settled at a nuisance value.

### Identification of unasserted claims

Another part of the proposed standard is the requirement to include disclosure of "more than remote" loss contingencies related to unasserted claims. By their very definition, unasserted claims are not always known. While in some cases, a company might be aware of the potential for a very significant lawsuit; this is not always the case. We are concerned that by specifying the need for inclusion of these cases, auditors and regulators will expect companies to develop a process for the identification of all possible unasserted claims. We strongly encourage the FASB to clarify that a company only needs to include unasserted claims that it becomes aware of through other processes.

### International jurisdictions

Many U.S. companies have operations outside of the United States that expose them to litigation in those foreign countries. The proposal does not specifically address this variable, which poses a significant obstacle for companies in complying with the new standard. We are concerned that many of the issues noted above are even more challenging in many non-U.S. legal environments. In certain countries, both the timing and amount of the ultimate resolution can be very difficult to predict as these cases can be influenced by political or other issues outside the facts of the case.

### Tabular reconciliation

We agree with the proposal to provide the tabular reconciliation provided it remains at an aggregate level. We believe that this information could be provided with a marginal amount of additional effort. We would suggest only one amount for changes in estimates to assist companies in complying with the new standard. As the table is intended to be an aggregate summary, we do not believe that separating increases from decreases in the liability would be meaningful. This would add a level of detail in recordkeeping and tracking of individual reserves that is not present today and, in our opinion, would not significantly enhance the disclosure.

### Summary

We are very concerned with many aspects of this proposal. While we understand the Board's concerns regarding the current FAS 5, we do not share their opinion regarding the level to which it is broken. We believe that the addition of the tabular reconciliation will provide additional clarity than is currently provided as any material amounts (and changes in estimates) will require explanation since the activity will be more transparent. For the reasons noted above, we fail to see the added benefit to investors of much of the additional information. We also share the concerns expressed by others regarding attorney-client privilege, roadmaps to strategy and frivolous litigation, among others.

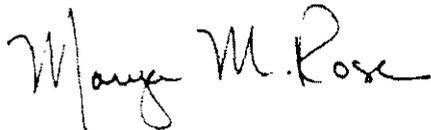
We strongly urge the board to reconsider this proposal in its entirety. At the least, we believe a significant amount of additional study, research, and input from users, preparers and others is required before a final standard is issued. Further, we believe an effective date of 12/31/08 for calendar year companies is extremely aggressive given the number of issues that need to be addressed and the level of effort that would be required for companies to comply with the proposal.

Thank you for your consideration of our recommendations. Please contact Jeff Sisk, Director - Accounting Research and Activities, at 812-377-1293 or via email at [jeff.sisk@cummins.com](mailto:jeff.sisk@cummins.com) if you have further questions or seek additional information.

Sincerely,



Marsha Hunt, Vice President and Corporate Controller



Marya Rose, Vice President, General Counsel  
and Corporate Secretary