

VIA E-MAIL – File Reference No. 1600-100

August 8, 2008

Mr. Russell G. Gordon
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06858-5116



LETTER OF COMMENT NO. 122

Dear Mr. Gordon:

On behalf of the California Healthcare Institute (CHI), whose more than 260 members include California's premier medical device, diagnostics, and biopharmaceutical companies, I am writing to address our opposition to the proposed amendments to the Financial Accounting Standards Board (FASB) Statement No. 5, Accounting for Contingencies (FAS 5). The proposed amendments would require disclosures about loss contingencies, regardless of the likelihood of loss, if the contingencies are expected to be resolved in the near term and if the contingencies could have a severe impact on the entity's financial position, cash flows or results in operations.

These proposed amendments to FAS 5 change the standard in significant ways by both lowering the disclosure threshold and increasing substantially the amount of information that must be disclosed for all loss contingencies. In addition, for loss contingencies meeting the disclosure threshold, both quantitative and qualitative disclosures will be required.

While CHI understands that the amendments have been proposed to address certain constituents' concerns that the current guidance does not provide sufficient information to assist users in assessing the likelihood, timing, and amounts of cash flows associated with contingencies, CHI believes that the proposed amendments swing too far in the opposite direction by requiring companies to reveal too much information for which often they cannot even begin to speculate. They also have the potential to place many companies, and those in the life sciences in particular, in a significantly disadvantageous legal position.

Specifically, CHI has the following concerns with the proposed amendments:

- 1) Requiring companies to provide their own estimate of its maximum loss exposure when the claimant has not stated a claim amount.
- 2) Requiring companies to make qualitative disclosures as this may reveal a company's internal strategy when dealing with a claim. Until now, such information has been carefully guarded in adversary proceedings.

- 3) Requiring additional disclosures that can be used as evidence against the companies and could alter the outcome of the proceeding; and
- 4) Eroding the attorney/client privilege. Since the required disclosures will be based on confidential communications between companies and their counsel, there is a risk that the disclosures will constitute waivers of the attorney/client privilege – a foundation of the legal profession.

CHI and its member companies are chiefly concerned with the proposed amendments because the increased disclosures are particularly sensitive to our industry given the prevalence of legal claims around intellectual property positions and the sensitivity around intellectual property litigation, defense strategies and positions. In addition, the life sciences industry is and will continue to be, highly reliant on counsel to frame the scope of these contingences and the likelihood of outcome, even under the current guidance, makes counsel generally uncomfortable with providing such guesses.

For these reasons, CHI is opposed to the proposed amendments to the FAS 5 and we respectfully request that the Financial Accounting Standards Board not adopt them.

Sincerely,



Todd E. Gillenwater
Vice President – Public Policy