LETTER OF COMMENT NO. 125

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From: Charles Michaels [mailto:charles.michaels@laaco.net]
Sent: Friday, August 08, 2008 1:04 PM
To: Director - FASB
Subject: File Reference No. 1600-100 Exposure Draft - Disclosure of Certain Loss Contingencies

Mr. Robert H. Herz, Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856

Re: File Reference No. 1600-100; Exposure Draft – Proposed Statement of Financial Accounting Standards (Disclosure of Certain Loss Contingencies)

Dear Mr. Herz:

The proposed amendments (the "proposal") significantly increase the scope of disclosure currently required for contingencies and shocked me as the corporate risk manager and general counsel of a publicly traded limited partnership.

The proposal harms a company's litigation position. It changes the claims process and will eventually alter the outcome of many claims by limiting the ability of companies to protect themselves and to assert defenses that have long been part of the historical legal process of America.

The proposal changes the playing field in favor of corporate adversaries by providing significant informational advantages that will, in many, instances, be the roadmap to the company's legal analysis of a claim. The proposed standards appear to have been written by the plaintiff's bar.

We urge the FASB to carefully review these sweeping changes, and to discuss them further with the investment, legal, accounting and corporate communities before initiating any changes. In short, we believe these sweeping changes are highly inappropriate and should be significantly scaled back.

Additional Comments

Additional Disclosure Requirements. The proposal would require the disclosure of all loss contingencies unless a company has determined that the likelihood of a loss is remote.

In many cases, a company is unable to initially assess whether the likelihood of a contingency is remote because it does not have sufficient information to form an opinion. After a claim is initiated, it may take weeks or even months of investigation and discovery before a reasonable

opinion can be formed. I recently had a case in which it took over six months to determine whether if there were any reasonable basis for the claim.

Mandatory Quantitative Disclosure. Under the proposal, a company would be required to disclose its "best estimate" of the maximum exposure to loss where the loss contingency cannot be reasonably estimated.

This is a significant departure from the current standard, which provides for a "reasonably estimated" loss or no estimate of loss. If a corporate officer cannot make a reasonable estimate based on current facts, why would you force a decision based on the knowledge on a contingency that is incomplete, not accurate, and not yet ripe. You would require a company to provide a potentially speculative and misleading estimate to investors, possibly violating state or federal securities law.

The best disclosure is to for a company to apprise investors of the existence of the claim and to state that it is unable to make a reasonable estimate of its maximum exposure at this time, but that a reasonable estimate will be provided at an appropriate later date. This proposal fails the common sense "smell test."

The concept of requiring disclosure of liabilities that are unasserted but probable of assertion if the loss likelihood is more than remote is also troublesome. Take the example of where a company may be aware of potential property contamination due to historic site use, however no claim has been made and the site is not subject to regulatory action. The property may never be subject to environmental review and remediation, but the company will now be required to prepare an estimate of maximum liability on a basis of a potential assertion in a possibly distant time frame for an amount of loss which is uncertain.

Mandatory Qualitative Disclosure. The proposal significantly expands the current disclosure requirements and upsets the careful balance established by law between information that must be disclosed and information that may be withheld from an adversary.

For cases that go to trial, the outcome of litigation is notoriously difficult to predict, particularly at the early stages of a claim or proceeding when the facts are often unknown or uncertain, and frequently change during the course of litigation. Providing a qualitative assessment of the most likely outcome of the contingency is difficult to predict at most stages of litigation. The qualitative disclosures contained in the proposal will provide a valuable roadmap for plaintiffs, significantly prejudice a company's litigation position, and encourage other potential plaintiff's to follow file suit.

We believe that the unintended consequences of the proposed standards will probably be greater litigation and will, in fact, harm investors.

Because of the magnitude of these changes, and their potential effect on the litigation process, FASB should extend the period for comment and actively seek the input of the American Bar Association and other bar groups. Most companies and their legal counsel are unaware of these sweeping proposals and additional dialogue should be held prior to any decision.

I would also encourage well-publicized roundtable discussions on these issues in a number of geographic areas, including, at a minimum, in New York City, Chicago, and Los Angeles. I would like to be informed of the date and location of any roundtable discussions on the proposals.

Thank you for your consideration of my views.

Sincerely,

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