

HEADQUARTERS

3601 VINCENNES ROAD INDIANAPOLIS, INDIANA 46268 TELEPHONE. (317) 875-5250

WASHINGTON OFFICE

122 "C" STREET, NW

WASHINGTON, D.C. 20001 FAX. (317) 879-8408 TELEPHONE: (202) 626-1558 FAX: (202) 628-1601

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Technical Director File Reference No. 1600-100 Financial Accounting Standards Board 401 Merritt 7 Post Office Box 5116 Norwalk, Connecticut 06856 By E-Mail



LETTER OF COMMENT NO. 170

Dear Technical Director:

NAMIC is a trade association representing approximately 1,400 mutual property and casualty insurers in the United States and Canada that write more than 40 percent of the property and casualty insurance premium in the United States. Mutual insurers are subject to the statutory accounting principles prescribed by the National Association of Insurance Commissioners (NAIC) and its member states. Although separate from GAAP, statutory accounting principles are parallel to, and heavily influenced by GAAP, since FASB pronouncements are regularly considered for inclusion, in whole or in part, in statutory accounting.

For reason of this connection between statutory accounting and GAAP, NAMIC's membership of mutual insurers has a direct interest in deliberations of the Board on the Exposure Draft "Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R). We therefore offer our comments for the Board's consideration in revision of the guidance cited.

With understandable intentions the Board seeks in the Exposure Draft to serve the interests of users of financial statements. Yet we believe content of the Exposure Draft would extend both qualitative and quantitative disclosure into a realm where such information may not have true utility to users in assessing potential liabilities originating in contingencies facing a reporting entity. Further, and of gravest concern, the Exposure Draft invades and potentially constrains the reporting entity's capacity to assert and defend its interests during legal process.

With respect to the latter reservation, i. e. disclosure to the detriment of the reporting entity's rights and viability in legal process, we observe the Board's sensitivity to this problem in stating that

The [reporting] entity may forego disclosing only the information that would be prejudicial to the entity's position. [Par. 11.]

However, we observe that this acknowledgement of the existence of data that, if disclosed, could be prejudicial, is closely followed by the unqualified dictum that

an entity shall disclose the fact, and the reason why, the information has not been disclosed. In no circumstance may an entity forego disclosing the amount of the claim or assessment against the entity ... [Par. 11.]

This very requirement betrays in large part the Exposure Draft's potentially unreasonable invasion of what is the substance and strategy of the reporting entity's legal position and leaves great burden on the reporting entity to repeat preposterous amounts that may be claimed by a litigant. Subsequent language of the same paragraph reinforces the burden on the reporting entity to compromise its case in relation to the adverse party, including the remarkably invasive prescription for

a description of the factors that are likely to affect the ultimate outcome of the contingency along with the potential impact on the outcome. [Par. 11]

Similarly, and further addressing what we believe are the quantitative excesses of the Exposure Draft, the tabular reconciliation sought in Par. 8. generates what might appear to adverse parties as a trove of discoverables to be used to lever a court toward amounts those adverse parties may find convenient for their positions. The increases and decreases of amounts recognized and the changes in estimates or derecognition are also tempting items of information for adverse parties.

Moreover, we would reflect that the Exposure Draft's substance appears to gravitate to a highly undesirable rules-based formulation for disclosure, when a position based more in the principles-based side of that spectrum might better serve reporting entities and users. All understand that the burden for truthful, reasonable disclosure lies with the reporting entity. Those that choose to dissemble or underestimate still can do so via the undesirable elements of the Exposure Draft's requirements.

If we posit two dimensions of contingencies—their amount and timing—we believe the Board can sanction an approach that leaves reasonable burden on reporting entities to yield information to investors and other statement users that allows rational decision—making. We find that SFAS 5 in its current form is a wholly useful and reasonable model. To achieve those objectives found in Paragraphs 1. and 2. of the Exposure Draft, we believe the Board should not stray far from SFAS 5 in its current form..

In conclusion, the content of Paragaphs 8. and 11. is wholly unacceptable in potentially causing fanciful amounts to be disclosed and in unequivocally laying the foundations for prejudice to reporting entities' positions in legal process. That these central components of the Exposure draft are eminently unreasonable suggests to us that the Board's best course of action is to withdraw the Exposure Draft.

NAMIC notes that it has also joined a letter of comment to the Board on this subject matter from other representatives of the insurance industry, many of which report on a GAAP basis and face direct and presumably immediate effect of the Exposure Draft.

Respectfully,

Financial Regulation Manager