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August 8, 2008

Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116



LETTER OF COMMENT NO. 177

File Reference: No. 1600-100

Dear Sir/Madam:

We are pleased to comment on the Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies*, an amendment of FASB Statements No. 5 and 141(R) (the "proposed statement").

Balancing a user's needs for disclosure and the fiduciary responsibilities of preparers is difficult when it comes to contingencies, especially those relating to litigation. Preparers need to provide adequate disclosure; however, they also need to avoid jeopardizing their Company's position and negatively impacting their investors. The proposed statement applies to all contingencies under FASB Statements No. 5 and 141(R), however, our comments that follow relate to concerns we have regarding the application of the proposed statement to contingencies related to litigation.

#### **Exemption from Disclosing Prejudicial Information**

The proposed statement provides an exemption from disclosing prejudicial information as outlined in paragraph 11 in "rare" instances, although certain minimum disclosures are required in all circumstances. It is often difficult to determine what information could be deemed prejudicial against an entity when describing pending or threatened litigation. Given the uncertainty as to what information could be prejudicial, preparers and their legal advisors will usually err on the cautious side and provide the minimum disclosures. While the exposure draft indicates it could be "rare" when information would be deemed prejudicial, we believe this would often be the case due to the subjective nature of contingencies and the concerns of preparers and their legal counsel that they may jeopardize the company's position. For this reason, we recommend that the proposed statement should not use a threshold of "rare".

### **Other Disclosures**

The exposure draft requires a number of disclosures for contingencies that are probable or reasonably possible, and only excludes those that are remote (except in certain cases). Our experience is that many contingencies related to litigation fall into the reasonably possible category. The Board has indicated in the summary to the proposed statement that one of the purposes of the new disclosures is to assist users in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies. It is unclear how certain of these disclosures would benefit a user and would likely be confusing.

A condensed disclosure under present standards for an entity with little litigation and where management and their legal counsel, believe the contingencies are neither probable nor remote might indicate that the company is party to litigation in the normal course of its business and that management believes the resolution of such matters will not result in a material adverse effect on the results of its operations, cash flows, or financial position. In this case management had concluded the disclosure was a true statement based on their knowledge and their legal counsel's knowledge of all the facts known to them at the time the financial statements were issued. If in this example the company had two claims against it for a total of \$2 million, it is unclear how a user could effectively interpret and estimate future cash flows by including the new disclosures, including the gross amount of the claims. It would be highly unlikely that a user would be able to make a better assessment of future cash flows than management and its legal counsel.

Another example would be an entity that has significant litigation given the nature of their business. The company may have historically been very successful in defending itself in court or settling outside of court for negligible amounts in comparison to the amounts of the claims and therefore the amount of the claims are not relevant to the expected loss exposure for the company. The disclosure of the claim amounts would not be beneficial to a user's assessment of future cash flows. We understand the exposure draft would permit a company to disclose the range of loss the company expects when management believes the claim amounts are not representative of the expected exposure. We suggest that disclosure of the nature of the litigation is sufficient and do not believe there is enough benefit to the cost of accumulating and disclosing the claim amount for each and every case. Therefore we recommend not requiring disclosure of the amount of the claim, although it could be included as an optional disclosure.

### **Effective Date**

If the standard is issued similar to the exposure draft, we believe most entities, other than those with few contingencies, would need more time to effectively implement the new requirements. We also believe the new requirements suggested in the exposure draft will require discussion with the legal profession and auditing standard setters, thus also requiring more time to allow for effective implementation. Therefore we strongly recommend the effective date be deferred for at least a year.

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**Other Matters**

Paragraphs 7.b. and 11 require disclosure of the anticipated timing of the resolution of the contingencies. Legal cases can last many years and only when the resolution is expected to occur in the next 12 months would management be in a position to estimate the timing of the resolution with any degree of accuracy. We suggest the disclosure should only be required when the contingency is expected to be resolved in the next 12 months or management is able to reasonably estimate the timing of it.

We understand some contingencies are resolved through settlement agreements that occasionally contain non-disclosure provisions. We believe the Board should consider the implications of these types of provisions in the proposed disclosure standard as this situation could result in a required disclosure that is prohibited by a legal agreement.

Please contact James A. Dolinar, should you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Crowe Chizek and Company LLC".

Crowe Chizek and Company LLC