

August 8, 2008



By Electronic Mail to director@fasb.org

Technical Director – File Reference No. 1600-100
Financial Accounting Standards Board
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LETTER OF COMMENT NO.

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To the Director at FASB.org:

We are greatly concerned by your current exposure draft on certain loss contingencies, specifically your proposed change in existing FAS Statements No. 5 and 141R (the "Proposed Statement"). This Proposed Statement removes the application of professional judgment in assessing a contingent liability which will lead to less meaningful disclosures that could mislead investors and creditors, depress stock and bond prices, encourage unlimited plaintiff demands and create a less competitive U.S. capital market.

Currently, FAS Statement No. 5 relies on organizations to assess the probability of outcome and disclose contingencies that are probable and can be estimated. The guidelines allow the professionals accounting for and evaluating contingencies to work hand-in-hand and use their judgment in recording and disclosing what is appropriate and relevant to investors. This exposure draft eliminates that judgment, resulting in a Proposed Statement that:

I. Significantly Increases Less Meaningful Contingency Disclosures

The risk of implementing this new pronouncement is that corporations disclosing contingency information will bombard readers with disclosures that are not only highly unlikely to happen but will include liability amounts that will never be realized. Since the purpose of reporting is to inform readers of the status of a corporation's business, excessive and inaccurate disclosures could distract the reader from the contingencies with a greater likelihood of impacting the financial health of the company.

By their very nature, contingencies often involve complex issues and judgments that do not lend themselves to summarized disclosures. Broadening the disclosure requirements and the number of issues requiring disclosure would create more confusion than clarity – particularly with respect to the disclosure of a company's maximum exposure to a contingent liability and with respect to quantitative disclosures of remote loss contingencies and unasserted loss contingencies.

The Board is in essence putting a significant amount of judgment around evaluating contingencies into the hands of our investors, who are certainly very distanced from the facts of each particular contingency. It is questionable whether investors have the time and/or experience to appropriately assess the potential impact of each contingency of every corporation in which they invest. The



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unintended consequence of the Proposed Statement could be investor flight away from companies that make lengthy disclosures (to comply with the Proposed Statement) without any true increased risk of loss. This could destroy a significant amount of value for other investors and the companies themselves.

We believe the level of quantitative and qualitative disclosures required under FAS Statement No. 5, as they exist today, are effective and appropriate in meeting financial statement users' needs. In addition, we believe the principles expressed in FAS Statement No. 5 are well understood and both regularly and rigorously deliberated by preparers and users of financial statements and their independent auditors. In addition, for public companies, a disclosure of risk factors is included in SEC registration statements and periodic filings, supplementing the information included in the financial statements.

Within an equitable and clearly defined framework, management must be allowed to apply its judgment to determine the timing and format of financial statement disclosures. We believe it would be detrimental to the emerging concept of principles-based, or objective-based, accounting standards, if the Board issued the Proposed Statement in its current form.

II. Helps Set a "Floor" for Plaintiffs' Lawyers

Public disclosures by an entity of the anticipated loss, or range of anticipated loss, in a given lawsuit can be highly prejudicial to the entity's position in the lawsuit. Providing a definitive number that the reporting entity expects to pay in the suit will embolden the plaintiff's lawyer, give him or her a roadmap to substantial, and perhaps unjustified, recovery and establish a "floor" for settlement negotiations, often at the high end of the estimated range. Certain qualitative statements concerning the merits of the claim, and management's assessment thereof, could imperil or compromise the company's litigation strategy and negotiating posture, as well as create an invitation for future claimants. There is risk that subjective disclosures, at any given time, will be deemed erroneous and give rise to further litigation. Litigation (e.g. discovery) surrounding attorney-client privilege and attorney work-product protection could increase. Financial statement users are often existing investors and creditors of a company and might very well prefer disclosures that do not impair a company's ability to minimize or avoid litigation exposure.

III. Provides Little Benefit vs. Its Costs

Given plaintiffs' propensity to grossly overstate the value of their claims, the number of claims required to be disclosed will be dramatically greater (and will inevitably include frivolous claims), if the Proposed Statement is adopted. It currently takes a significant amount of time and effort to correctly state our position on various contingencies and attempt to assess the maximum possible exposure on each case/contingency. That investment in time and effort will be multiplied by the Proposed Statement. Our organization will incur increased outside expert costs to assist our internal resources with creating the necessary documentation (and self-testing) on a quarterly basis, and independent auditor expense for verification of disclosures will be similarly multiplied. The Proposed Statement will certainly impact the marketplace for access to and cost (e.g. professional insurance coverage) of subject area experts pertaining to contingent liabilities. This will also be a significant logistical burden to our quarterly closing process. Additionally, costs would also include the cost of implementing and maintaining enhanced analysis and disclosure controls of



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all contingencies, including those bearing remote possibilities of loss. We also believe that the Proposed Statement's disclosure standards could result in disclosures that are so long and complex as to be unintelligible to most financial statement users, which is contrary to the SEC's stated disclosure goals of clarity and certainty. The FAS should more carefully consider whether the incremental costs to expand contingency disclosures outweigh the benefits.

Summary

The foregoing are examples of our concerns, not a complete statement of them. We hope you can appreciate our concerns are not unique, and many other companies will be adversely affected by your proposal. Please consider our concern and factor it into your decision making process. Your current proposal will create unnecessary and unreasonable challenges and related costs, which will far exceed any benefits.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey L. Obermayer".

Jeffery L. Obermayer
Vice President – Controller & Principal Accounting Officer