

5 Giralda Farms
Madison, NJ 07940

John C. Kelly
Vice President and Controller

Wyeth

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LETTER OF COMMENT NO. 139

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 08656-5116

File Reference: 1600-100

Proposed Statement of Financial Accounting Standards – Disclosure of Certain Loss Contingencies – An Amendment of FASB Statements No. 5 and 141R

Dear Mr. Golden:

Thank you for allowing me the opportunity to provide comments on the Proposed Statement of Financial Accounting Standards – Disclosure of Certain Loss Contingencies – An Amendment of FASB Statements No. 5 and 141R. I feel it is of the utmost importance to ensure that the Statements of Financial Accounting Standards are always meeting the various needs of the financial statement users who rely on the financial information that we, as financial statement preparers, provide. While I fully support your efforts to ensure that relevant financial information is provided to the public, I don't believe that these proposed Standards add clarity to financial statement users and could potentially result in significant litigation costs for the following reasons:

- In most litigation, it is not possible to ascertain the maximum exposure of the defendant, particularly in the United States, due to the nature of our legal system. This is particularly the case in Mass Tort litigation.
- Where it is possible to ascertain a maximum exposure, it is likely that the amount will fluctuate regularly as facts unfold.
- Significant facts in a case are frequently unknown in early stages of litigation, creating problems in determining the maximum exposure.
- No matter how litigation might be combined, the disclosures could likely give a significant benefit to the plaintiffs.
- The maximum amount in a litigation in most cases has no relation to the amount of the ultimate settlement.
- Disclosure of amounts being negotiated may be the subject of a confidentiality agreement.
- Most importantly, the proposed disclosures would likely confuse the users and in certain cases mislead the users of a company's financial statements.

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Wyeth is one of the world's largest research-driven pharmaceutical and health care products companies with 2007 net revenues in excess of \$22 billion. It is a leader in the discovery, development, manufacturing and marketing of pharmaceuticals, vaccines, biotechnology products, nutritionals and non-prescription medicines that improve the quality of life for people worldwide. Similar to virtually all pharmaceutical companies, given the current legal environment, Wyeth is involved in a variety of legal proceedings, including product liability and patent litigation, that are significant to its business, complex in nature and have outcomes that are difficult to predict. Due to the complex legal environment in which Wyeth operates, I feel that the proposed requirement to disclose the maximum exposure to Wyeth for contingencies, regardless of the likelihood of a loss, that are likely to reach judgment within a year and that could have a severe impact (even if loss is remote) on the company's financial position, cash flows, and/or results of operations, would not provide useful information to the users of our financial statements. Further, such disclosures regardless of how they are combined with other similar cases would undoubtedly lead to higher risks (costs) in litigation or settling such cases.

One example of the complex litigation that we face is the litigation related to our hormone therapy products. Wyeth is a defendant in numerous lawsuits alleging injury as a result of the plaintiffs' use of one or more of the Company's hormone or estrogen therapy products, including Prempro™ and Premarin®. As of July 28, 2008, Wyeth was defending approximately 8,500 actions brought on behalf of approximately 11,500 women in various federal and state courts throughout the United States for personal injuries including claims for breast cancer, stroke, ovarian cancer and heart disease, allegedly resulting from their use of Prempro or Premarin.

As of June 30, 2008, 30 hormone therapy cases alleging breast cancer have been resolved after being set for trial. Of these 30 cases, 24 have been resolved in the Company's favor, several of which are being appealed by the plaintiffs. Of the remaining six cases, three have been settled, two resulted in plaintiffs' verdicts that Wyeth is challenging on appeal, and one resulted in a plaintiffs' verdict that was vacated by the court and a new trial ordered, which the plaintiffs have appealed.

On July 9, 2008, Wyeth announced that one of the two trials that resulted in a plaintiff's verdict which was challenged by Wyeth, resulted in the court vacating the punitive damages award of \$19.36 million, which was rendered by a jury last year. This decision also clears the way for Wyeth to appeal the compensatory damages award in this case of \$2.75 million.

Also, on July 14, 2008, Wyeth announced that a judge has granted Wyeth's motion for summary judgment in two hormone therapy cases that were scheduled to begin later this year. In granting the motions, the judge ruled, among other things, that the plaintiffs "failed

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to provide the specific type of evidence necessary to overcome the adequacy afforded [to] FDA-approved labeling” by New Jersey law and that the warnings were “adequate as a matter of law.”

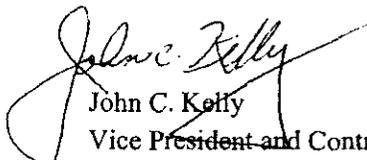
Using our hormone therapy litigation as an example, it is clear to see that if Wyeth had to meet the disclosure requirements of the proposed standard by disclosing the claim amount or the best estimate of our maximum exposure to loss (if there is no claim amount), the results of that disclosure would be clearly misleading to financial statement users, as the exposure is in a constant state of flux as verdicts for cases are reached, and appeals are filed. More importantly, it would virtually be impossible to come up with a maximum exposure based upon the fact that only 30 cases have been resolved. Many companies face similar situations, making such disclosures costly, risky and in many cases misleading.

Additionally, if Wyeth utilized the optional approach discussed in the proposed standard of stating that the claim amount / maximum amount of loss is unlikely to be incurred and then stating what a reasonable range of possible loss would be, the company would be providing a potential “roadmap” to the plaintiff. This roadmap could then be used to the detriment of the company in attempting to settle the lawsuit prior to trial.

Furthermore, disclosure of settlement offers made between the counterparties in a dispute is not appropriate and could bias other related settlements. The disclosure of settlement offers would not serve the needs of financial statement users, as these offers are typically steps in the negotiation process and are not good indicators of the amount of potential loss. Additionally, these offers, which can expire quickly, may not accurately reflect the current status of the negotiations between the parties.

In closing, I certainly appreciate the efforts of the Financial Accounting Standards Board in order to increase the relevance and reliability of financial statements and their related disclosures, but I firmly believe that the current disclosures required under Statement of Financial Accounting Standard No. 5, *Accounting for Contingencies*, and Statement of Financial Accounting Standard No. 141R, *Business Combinations*, result in disclosures to financial statement users that are much more relevant than the proposed standard.

Sincerely,


John C. Kelly
Vice President and Controller, Wyeth