



August 8, 2008

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



LETTER OF COMMENT NO. 209

Re: File Reference No. 1600-100

Dear Technical Director:

Foster Wheeler Ltd. (FW) appreciates the opportunity to respond to the Financial Accounting Standards Board (FASB) Exposure Draft, Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R)*. FW is a global engineering and construction contractor and power equipment supplier delivering technically-advanced, reliable facilities and equipment. In 2007, we reported revenues of \$5.1 billion and total assets of \$3.2 billion.

While we support the continued efforts of the FASB to improve financial reporting, we do not believe the exposure draft meets the FASB's objective of providing enhanced disclosures about loss contingencies such that the benefits of those disclosures justify the incremental costs. Additionally, we believe the current disclosure requirements under FASB Statement No. 5, *Accounting for Contingencies*, when appropriately applied, provide the necessary information about loss contingencies to allow current and potential investors, creditors, and other capital market participants to make informed and rational investment, credit, and similar resource allocation decisions.

Our responses to the specific questions raised by the FASB are attached.

We hope these comments are useful and would be pleased to discuss them further with the FASB members or its staff.

Sincerely,

Lisa Z. Wood
Vice President and Controller

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1. *Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?*

No, we do not believe the proposed Statement will meet the stated objectives of providing enhanced disclosures about loss contingencies. We believe the additional disclosure requirements will create an administrative burden that would be both costly and time consuming. It will require implementation of a process to capture and analyze the data for all contingencies including those whose risk of loss is considered remote. It will expand the involvement and cost of both outside counsel and the independent auditors due to the complexity of the legal factors and inherent uncertainty in such matters without providing the perceived benefit.

2. *Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?*

We have no comment on this question.

3. *Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?*

We do not believe the disclosure of a loss contingency that has been assessed as remote provides meaningful information to financial statement users. The existing requirement under FASB Statement No. 5 to provide disclosure of loss contingencies that are "reasonably possible" is a more meaningful disclosure requirement and provides more useful information than would providing similar information for those loss contingencies assessed as remote.

4. *Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.*

a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?

Although we appreciate the desire of financial statement users for more quantitative information, it is often not possible to provide a reliable estimate of the possible loss or range of loss given the varying factors involved in any uncertainty. Such factors include, but are not limited, to interpretations of law, jurisdiction, assessments as to actual injury, etc. In many cases, the claims are not estimable since discovery has not yet occurred which means that there are many facts which are unknown, unpredictable or cannot be readily assessed. Requiring companies to enhance the quantitative and qualitative disclosures of loss contingencies without the capability of accurate estimation will not enhance the disclosure currently provided to users; rather such disclosures will simply provide overly speculative information that may vary greatly from one quarter to the next and have little to no actual value. We fully support quantitative disclosure of matters which reach the probable and estimable stage, but not beforehand. As such, we do not believe this change would result in an improvement in the reporting of quantitative information.

We do not support the disclosure of maximum possible loss as this amount is likely to have no basis in reality. Disclosing demands of the plaintiff misleads users into believing they are possible even when management believes them to be remote or baseless.

We do not believe that financial statement preparers should be required to formulate a best estimate of the maximum exposure to loss when the amount of a claim is not given by a plaintiff. Such a circumstance could severely weaken the defendant entity's position in mediation or settlement efforts. Such estimates would effectively establish a "floor" for amounts if negotiation discussions take place. Even if such disclosures were aggregated in order to mitigate that risk, such disclosure would actually result in less meaningful disclosure to users since such aggregated disclosures would grossly overstate the true exposure by essentially assuming that every claim would result in an exposure equal to the claimed or assessed amount or to the company's estimate of maximum possible exposure.

b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?

We do not support a requirement to disclose claimed or assessed amounts or estimates of maximum exposure to loss where such amounts are not representative of actual exposure since such disclosure would be both misleading and confusing to users.

c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

We support the requirements to disclose the amount of the claim or assessment (when it is representative of the entity's actual exposure), a description of the contingency, including how it

arose, its legal or contractual basis, and current status, together with management's non-quantitative assessment of the matter along with its belief regarding the outcome.

5. *If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?*

We believe reliably estimating the maximum exposure to loss will be very difficult, particularly in the early stages of the claim or litigation process. In many cases, the maximum exposure to loss is not estimable since discovery has not yet occurred which means that there are many facts which are unknown, unpredictable or cannot be readily assessed. Further, in cases that may ultimately be settled for a fraction of this estimated maximum exposure, providing such estimates can prejudice a defendant's position.

6. *Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?*

We agree that the disclosure of settlement offers can be misleading, particularly early in settlement negotiations, and would not provide meaningful information.

7. *Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?*

We do not believe the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, will provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements. We believe the current disclosure requirements under FASB Statement No. 5 require entities to disclose material changes associated with loss contingencies which would include material movements in amounts provided for those contingencies in the financial statements.

8. *This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?*

We agree that such an exemption should be provided. However, we believe that given the disclosure requirements set forth in the exposure draft, the circumstances in which such disclosures will be prejudicial to an entity will be more than rare and recommend that a broader exception be considered.

9. *If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?*

We do not agree with the two step approach set forth in paragraph 11 and do not believe it will provide the relief intended due to the requirement to disclose the amount of the claim, description of the loss contingency, its legal or contractual basis, its current status, the anticipated timing of its resolution and the factors likely affecting its ultimate outcome even in the "rare" circumstances that providing the information is prejudicial.

10. *The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, Provisions, Contingent Liabilities and Contingent Assets, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?*

As described in our responses to questions 8 above, we do not believe that the circumstances in which providing the proposed disclosures would compromise an entity's legal position to be rare.

11. *Do you agree with the description of prejudicial information as information whose "disclosure . . . could affect, to the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define prejudicial information and why?*

We believe the description of prejudicial information should be expanded to capture those cases in which the disclosure of some or all of the required information for one claim or loss contingency can be expected to prejudice the position of the entity in a dispute with other parties on the same subject.

12. *Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?*

We do not believe the required disclosures meet the FASB's objective of providing enhanced disclosures about loss contingencies such that the benefits of those disclosures justify the incremental costs. Further, should the proposed requirements move forward, to require all of the disclosures on an interim basis can compromise the financial reporting process given the short time frame between the end of the reporting period and the filing date.

13. *Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?*

No.

14. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

We do not believe it is operational for entities to implement the proposed statement for year end 2008 reporting. Implementing this level of disclosure will require the establishment of a process to effectively capture, accumulate, and report a broader set of data. This is further complicated for multi-national companies.