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Technical Director Financial Accounting Standards Board 401 Merritt 7 Norwalk, Connecticut 06856-5116

LETTER OF COMMENT NO. 38

File Reference No. 1600-100.

Re: FASB Exposure Draft: Proposed Statement of Financial Accounting Standards, "Disclosure of Certain Loss Contingencies"

Dear FASB Technical Director:

Corning Inc. appreciates the opportunity to comment on the Exposure Draft referenced above, (the "proposed Statement"). Corning is a global, technology-based corporation that operates in five reportable business segments: Display Technologies, Telecommunications, Environmental Technologies, Life Sciences, and Specialty Materials.

We recognize and support the need for quality disclosure of information to financial statement users and the impact of such disclosures on the financial statement user's ability to interpret and analyze the likelihood, timing, and amount of future cash flows associated with loss contingencies. While we support the Boards' objective to improve the quality of disclosure for financial reporting for loss contingencies, we believe the proposed Statement creates disclosure requirements that could harm the company and could negatively affect the company's ability to effectively litigate claims due to the prejudicial specificity and descriptiveness of the information made public. We believe the existing disclosure requirements within Financial Accounting Standards Board Statement No. 5: Accounting for Contingencies ("FAS 5") for the disclosure of loss contingencies, with certain modifications to the existing disclosure language, would allow the Board to achieve its objectives for improvement to loss contingency disclosure.

In support of our position, we are providing responses to certain questions the Board has invited for comment included in the proposed Standard.

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 believe requiring disclosure of loss contingencies solely on the basis of near term and severe impact, regardless of likelihood of occurrence, violates the fundamental probable and estimable concepts of Statement 5 and replaces professional judgment and responsible disclosure practices with non-discretionary and arbitrary information that is disclosed simply on the basis of its existence. In addition, disregarding the concept of likelihood of occurrence in the preparation of disclosures is not consistent with the criteria of Financial Accounting Standards Board Concept Statement No. 2: Qualitative Characteristics of Accounting Information ("CON 2") including relevance, predictive value, reliability, representational faithfulness, and consistency.

A prescriptive, rules based disclosure that does not consider the range of loss and likelihood of occurrence removes from company management the ability and fiduciary responsibility to exercise professional judgment in reasonably estimating the amount of loss and assess the likelihood of occurrence of loss as required in FAS 5. The proposed disclosure would also be inconsistent with the elements of stewardship and decision making required for management in the use of judgment in the preparation of "general purpose" financial statements as described under the "Objectives to Financial Reporting" found in paragraphs 21-26 of CON 2. Disclosure of information pertaining to events that are unlikely to occur would be analogous to providing "all purpose" financial statements. Without the element of professional judgment regarding probability and estimation of the loss, there can be no real basis for the financial statement user to form an independent evaluation of the impact for loss contingencies on the financial statements. By definition the financial statement user is external to the decision making process and must rely on management to provide relevant and reliable information to assist the user in interpreting and analyzing the likelihood, timing, and amount of future cash flows associated with loss contingencies.

The requirements for disclosure of factors that "are likely to affect the ultimate outcome of the contingency along with their potential effect on the outcome" would also result in tension between the company, in-house and external legal counsel and external public accountants that does not benefit investors. Attorneys have a professional responsibility to serve the needs of and protect privileged and confidential information shared with them by their clients. The proposed Standard's requirements for the disclosure of facts and circumstances that could impact the severity of such claims and the potential effects of such facts and circumstances could potentially create a situation where an attorney would be forced to violate the attorney client privilege and disclose highly sensitive case assessment information that would be viewed as prejudicial and could potentially cause harm to the client. In this situation, an attorney would have grave reservations about responding to the requests for information relating to certain cases because of the need to protect client interests while performing his or her duties as legal counsel. The limitations of the prejudicial information exemption do not provide adequate relief to address these concerns.

Question 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?

We do not feel this change would result in an improvement to the adequacy of disclosures related to loss contingencies. Maximum loss is not a relevant disclosure concept and will provide extraneous and misleading information to financial statement users. In general, there are no practical limits or restrictions placed on the amount of damages a plaintiff can claim in a court of law. In some circumstances the plaintiffs will file a claim with "unspecified damages" which would require the company to develop a "maximum exposure to loss" in accordance with the provisions of paragraph 7 of the proposed Statement. Under the proposed Statements prescriptive disclosure requirements, the disclosure of a claim or a company's estimate of the maximum loss contingency without regard for professional judgment about probability and estimates found in FAS 5 would amount to a misleading and exaggerated disclosure of the loss contingency.

Initial claims filed by plaintiffs can be for exorbitant amounts, meant to evoke a strong response of sympathy or compassion from the jury. If the company enjoys relative financial health, the amount of claim filed by the plaintiff may be more of an indication of the plaintiff's awareness of the company's "deep pockets" and not necessarily a real indication of the amount of damage actually incurred by the plaintiff and therefore not relevant to the amount of loss which the company could be legally required to provide as compensation.

When compared to the value of most litigation settlements, the initial claim is typically not a meaningful representation of the actual damages awarded related to the loss contingency. Therefore, initial claim amounts typically do not have the representational faithfulness required by CON 2 and should not be taken literally. It is only through the application of professional judgment that reasonable disclosures of potential loss amounts and accruals of probable loss amounts can be calculated and disclosed or accrued in the financial statements. The proposed Standard removes the concepts of FAS 5 and CON 2 from the loss contingency evaluation process and leads to the disclosure of information

that does not reflect the most relevant, reliable, consistent or representationally faithful estimate of the loss contingency.

The disclosure of a maximum claim or assessment amount would also create potentially discoverable evidence from a legal perspective. These disclosures could be admitted as evidence by the plaintiff resulting in inherently uncertain and prejudicial information being presented to a jury. These maximum claim disclosures could put the defendant at a disadvantage in conducting or settling a case or be used for maximum impact by plaintiff attorneys in the court room, arguing on the basis of "admitted exposure" by the company as a result of the disclosure of such amounts in the company's public filings. As a practical notion, any disclosures made by a company in their SEC filing documents can be viewed as "factual" and "audited" by the general public and be treated by a jury as representing the facts surrounding a loss contingency, and not necessarily as an estimate of a reasonably possible outcome, which we consider to be the true intent of the disclosure process. The disclosures required by the proposed Standard will be viewed as a waiver of the attorney client privilege and the attorneys would, based on our discussions with in-house counsel, have grave reservations about responding to the requests for information required by this proposed Standard based on the need of an attorney to hold certain information undisclosed under the attorney client privilege. In our opinion, the proposed disclosure does not enhance the adequacy of information disclosed about loss contingencies due to the inherent uncertainty of a "maximum exposure" and would only lead to overstatement of loss contingencies by the company in the financial statement footnotes.

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 believe disclosing a loss or possible range of loss should be required on the basis of management's assessment of relevancy and reliability in accordance with the provisions of FAS 5. The provisions of the proposed standard which require a higher level of disclosure, including maximum loss claims or estimates is not representative of the actual exposures and would create, in our opinion, extraneous and misleading disclosures.

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 believe the singular weakness responsible for most of the users of financial statements concerns around disclosure of loss contingencies is found in paragraph 10 of FAS 5 and relates to the phrase: "if a loss cannot be reasonably estimated, state that such an estimate cannot be made". Our proposal is to replace the proposed Statement with another exposure draft that will modify the existing disclosure standards found in FAS 5. The modifications would specifically address the weakness of the language found in FAS 5 paragraph 10 as described above. We would suggest that the modification provide clarity around the disclosure requirements for quantitative estimates of loss or range of loss. The language surrounding the disclosure practice to "state that such an estimate cannot be made" should be amended such that it becomes an infrequent occurrence that a quantitative measurement of the loss or range of loss is not given. To make this change clear, we suggest the revised FAS 5 paragraph 10 disclosure requirements be written such that quantitative disclosure of the reasonably possible and estimable amount is required, not optional. In addition, the language should specifically state that instances of exclusion of quantitative disclosure of a loss or range of loss related to the loss contingency are expected to be infrequent. The requirement should also state that when an estimate cannot be made, additional disclosure is required describing the nature of the contingency and a description all relevant facts and circumstances that led to the company's conclusion that the loss contingency cannot be reasonably estimated as a single amount or as a range of loss.

## Question 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.

Yes, such an exemption should be provided. However, we believe that the current proposed Statement does not provide sufficient relief from disclosure. The proposed Statement, as written in paragraph 11 would allow prejudicial information to be aggregated at a "higher level such that the disclosure of the information is not prejudicial". In practice this aggregation will not provide any real relief from the disclosure. If an event is significant enough to warrant disclosure in the financial statements, it is highly unlikely that there will be other claims or cases of similar fact pattern or size that would allow the company to aggregate those claims in such a manner that would allow for non-prejudicial disclosure of the required information.

The proposed Statement allows for the ability to "forgo disclosing on the information that would be prejudicial to the entity's position." However, the proposed Statement's relief is insufficient as it then states that "In no circumstances may an entity forgo disclosing the amount of claim or assessment against the entity (or, if there is no claim amount, an estimate of the entity's maximum exposure to loss); providing a description of the loss contingency, including how it arose, its legal or contractual basis, its current status, and the anticipated timing of its resolution; and providing a description to the factors that are likely to affect the ultimate outcome of the contingency along with the potential impact on the outcome."

In our opinion, the proposed Statements' instructions which purport to give relief from disclosure of prejudicial information would appear to be the same disclosures required by paragraph 7 with the exception of providing "the entity's qualitative assessment of the most likely outcome of the contingency; and significant assumptions made by the entity in estimating the amounts disclosed in paragraph 7(a) and in assessing the most likely outcome." Therefore, we would argue that this exception does not provide sufficient relief from prejudicial disclosures and that our proposal above regarding modification of existing FAS 5 disclosure requirements provides for the required disclosures of facts, circumstances and amounts without disclosure of prejudicial information as required by the proposed Statement.

## Question 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.

The proposed Statement will not be issued as final guidance until at least early in the fourth quarter leaving only a few months to fully understand the final requirements and then develop and integrate a process for identifying and analyzing the increased disclosures required. The implementation of these proposed changes will already be administratively burdensome and costly due to the Sarbanes-Oxley Act disclosure control requirements. The additional burden of a short implementation window would only increase the uncertainty around the reliability of disclosures required by the proposed Statement.

In conclusion, Corning believes the proposed Statement could, in the case of significant loss contingencies, force the disclosure of prejudicial information about loss contingencies and impair the ability of entity and outside legal counsel to effectively litigate the claims against the company. The proposed standard is inconsistent with several of the foundation principles and concepts of FAS 5 and CON 2 as we have described above. We believe that the current Statement 5 loss contingency disclosure requirements, if properly applied and amended per the above responses, would provide for the quality loss contingency disclosures that have been the focal point of the issue with users of financial statements.

We appreciate your consideration of these comments. Should you have any questions or like to discuss in further detail, please contact Mr. Phillip Gorham, Assistant Controller - Accounting Compliance and Reporting at 607-974-7674 or me.

Sincerely,

Katherine A. Asbeck

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