



LETTER OF COMMENT NO. 81

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Reply to: P.O. Box 5000, Broomfield, CO 80038-5000

August 7, 2008

VIA EMAIL

Mr. Russell G. Golden
Technical Director
File Reference No. 1600-100
Financial Accounting Standards Board of
The Financial Accounting Foundation
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Dear Mr. Golden:

Thank you for the opportunity to respond to the Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies*, an amendment of FASB Statements No. 5 and 141R (the "Proposed Statement"). Ball Corporation ("Ball" or "we") is a U.S.-based Fortune 500, international manufacturer of metal and plastic packaging products and of aerospace and other technologies. We have many concerns regarding the Proposed Statement, particularly with respect to disclosures regarding litigation, as discussed in our response to your "Request for Comments" below. We believe that the required disclosures under the Proposed Statement would have the opposite effect with respect to the objective of the Board of providing "enhanced disclosures." In addition, the disclosures that entities would be forced to make under the Proposed Statement would be wrought with such imprecision, such disclosures would likely foster undue claims and litigation. We believe that the suggestion made by the senior litigators in Letter of Comment No. 2 to enter into a dialogue with knowledgeable attorneys and to have a professional education session regarding their perspective on the implications of the Proposed Statement are critical considering the impact the Proposed Statement could have regarding contingencies related to litigation. We are hopeful that such measures will be taken prior to the Proposed Statement progressing any further toward finalization.

Responses to Individual Questions

Question 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?

We do not believe the Proposed Statement will meet the Board's objectives. Due to the uncertainty inherent in contingencies, the Proposed Statement would result in disclosures that are long and complex in order to summarize what are often very technical matters, to explain why the disclosures could be unreliable and to disclose the inherent risks with reliance on estimates made in an ever-changing environment. The added complexity of the disclosures will instead cause confusion and provide little certainty or clarity with regard to the contingent matters. The Board says in the Proposed Statement that it believes that these enhanced requirements "will significantly improve the overall quality of disclosures about loss contingencies by providing financial statement users with important information." We believe the opposite is true. The information that will be provided will often be based on conjecture and will easily be misinterpreted by financial statement users given the level of guesswork and qualifications that would surround such disclosures. Significant costs would be incurred for outside counsel fees to assist us in complying with the required disclosures and to ensure such disclosures do not jeopardize court recognized attorney-client privileges.

Question 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 obligation, which are currently subject to the provisions of Statement 5? Why or why not?

Yes, we agree that a separate rule should not apply to such contingencies that are already included within the scope of Statement No. 5.

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?

No. We believe the current disclosure requirements in paragraphs 9-12 are adequate in addressing when disclosures should be made. We live in a litigious society. Many claims are unfounded or frivolous, include exorbitant claims for damages and resolution often occurs beyond one year from the date of the claim. We see no benefit in disclosing such claims when occurrence of the loss is remote. Such disclosures could create undue alarm and confusion to financial statement users and may even confuse current investors. We see no benefit, nor added clarity, to the financial statement users to disclosing an item that had never previously been disclosed with information regarding a hypothetical "severe impact" upon the operations when the company still believes such a loss will never be incurred.

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 the

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?*

No. Contingencies, in particular litigation contingencies, can be very uncertain by nature. As stated earlier, claim amounts are often exorbitant or inflated and many times include claims for which even the plaintiff does not expect to prevail. We do not believe disclosing the claim amount, particularly with respect to exorbitant, inflated or uncertain claims, provides the user with more useful, clear information about an entity's loss exposure. Additionally, an entity's ability to provide any meaningful assessment of such entity's actual exposure may be very limited. Actual awards for particular causes of action can vary greatly depending on the unique facts involved in the case, the arguments of the lawyers, the jury assigned to the case, the judge that is presiding, and many other factors which make it impossible to provide any meaningful disclosure regarding the entity's actual exposure. By requiring entities to provide a best estimate of the actual exposure, the outcome of litigation or settlement would be impacted and would hinder the ability to defend against the claim. Any explanations regarding the claim or exposure would also reveal the entity's strategy or thought process, and could potentially waive the attorney-client privilege that would protect information from discovery in litigation. Additionally, many legally binding contracts with customers and suppliers preclude entities from commenting publicly on claims and/or potential settlements.

- 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?*

As stated in subsection a. above, there are many variables that affect the outcome of such contingences. Therefore, the ability of entities to derive a reliable estimate that would be reflective of the entity's actual exposure will be difficult, thus compromising the intent of the exposure draft. It would be very misleading, and potentially harmful to current investors, if companies were required to disclose loss contingencies in amounts not representative of their actual exposure. Additionally, such disclosures regarding estimates of the actual exposure may

prejudicially impact the outcome of the issue, reveal strategic information, and/or potentially waive the attorney/client privilege.

- 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?*

The current rules adequately address when a quantitative estimate is required and how it is disclosed.

Question 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?

As stated in response to Question 4.a above, too many variables determine the actual exposure, such that any such estimates would not be reliable. The distinctive facts surrounding a case, as well as the particular attorneys, judge, jury, witnesses, experts, evidence, and many other items can cause a wide range of outcomes that are simply not foreseeable to a degree of certainty that would be reasonable for including in financial statement disclosures.

Question 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?

No, for the reasons set forth by the Board in the question as well as the prejudicial impact they could have on pending settlement negotiations. Further, settlements often contain confidentiality clauses to protect the parties from future claims and disclosure of confidential contract terms. Disclosures about such settlements could prejudice an entity with ongoing, similar claims with other current or future claimants.

Question 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 will provide meaningful information about loss contingencies. While the proposed standard requires a tabular reconciliation on an aggregated basis, significant changes in the balances would require qualitative disclosure, which could jeopardize the entity's settlement, mediation or litigation results. The qualitative disclosure requirement also conflicts with the rationale for an aggregated basis format. Though the focus of most of the comment letters is on litigation, there are many other types of losses to which contingencies apply such as product warranty

reserves, worker's compensation liabilities, environmental obligations, employee and customer claims, among others. We do not see any enhancement of information provided to users of financial statements when these more ordinary types of loss contingencies are included in the aggregated tabular presentation with larger claims, usually involving litigation. Additionally, such tabular reconciliations may be reviewed by users without considering the supporting narrative disclosures, because those disclosures are likely to be lengthy and confusing. As such, amounts included in the reconciliation will more likely than not be both misleading and misinterpreted.

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?

We agree that such an exemption is required under the Proposed Statement; however, the exemption that is set out is not sufficient. Situations where information in disclosures could be prejudicial will not be limited to "rare" instances. In fact, such scenarios will be very common; therefore, the exception would necessarily need to be expanded should the Proposed Statement be implemented.

Question 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?

No, we do not agree with the approach provided in paragraph 11. For the reasons stated in response to question 7, we are opposed to the tabular reconciliation as it will not provide useful information. As we discuss in our response to question 8, we believe the instances of prejudicial information will be more frequent than contemplated by the Board. Consequently, the frequency with which entities exclude the prejudicial information in step two will be more than rare. The real impact is that the information remaining in the tabular reconciliation after removal of prejudicial data, particularly with an expanded definition, will not be meaningful.

Question 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 stated in response to Question 8, we do not believe that these situations will be "rare," much less "extremely rare." So, although the Board's prejudicial standard is a slight improvement over the IAS standard, it is still not sufficient. We reiterate also that the current disclosure requirements are satisfactory and permit a broader exemption from disclosure. Additionally, this raises the broader issue of the future convergence of U.S.

Generally Accepted Accounting Principles with International Financial Reporting Standards. As convergence is likely inevitable and near term, we believe issuance of new guidance prior to agreement between the Board and the International Accounting Standards Board should be deferred.

Question 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?

No. As discussed previously, we believe a broader standard is required as more than just the outcome of the contingency could be impacted by disclosure of certain information, such as litigation or settlement strategy or possible waiver of the attorney/client privilege.

Question 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?

No, we believe that only qualitative disclosures should be provided for material claims on an interim basis similar to that required under the current standard. Quantitative disclosures should only be required on an interim basis to the extent there have been material changes to an existing accrual, not changes in estimates of potential exposure. We have already commented on the potential increased costs to be incurred by the new standard. Interim reporting will only exacerbate the situation. As previously discussed, we do not believe that tabular reconciliations would be useful, but if ultimately required, they should only be required on an annual basis with only material changes requiring disclosure on an interim basis.

Question 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?

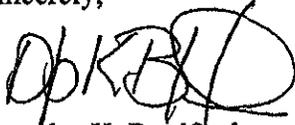
No.

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?

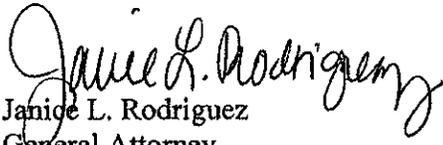
No. If, despite our comments, the Board decides to proceed, we believe the Board should consider deferral until there is agreement between the FASB and IASB. It is also not reasonable to expect that the Proposed Draft could be adequately deliberated and implemented in 2008 in sufficient time for entities to prepare the required disclosure information. Consequently, implementation should be required no earlier than for years beginning after December 15, 2009.

We appreciate the Board's consideration of our comments. Again, we strongly endorse further discussion regarding the implications of the Proposed Statement from a legal prospective.

Sincerely,

Handwritten signature of Douglas K. Bradford in black ink.

Douglas K. Bradford
Vice President and Controller

Handwritten signature of Janice L. Rodriguez in black ink.

Janice L. Rodriguez
General Attorney