



LETTER OF COMMENT NO. 88

7915 Xavier Court
Dallas, Texas 75218-4513

August 7, 2008

Financial Accounting Standards Board Via email to director@fasb.org
Technical Director
401 Merritt 7
P. O. Box 5116
Norwalk, CT 06856-5116

Re: Proposed Statement of Financial Accounting Standards – *Disclosure of Certain Loss Contingencies* - an amendment of FASB Statements No. 5 and 141(R) – File Reference No. 1600-100

I am writing to express my opinions regarding the above referenced Proposed Standard. In balance, I believe the Proposed Standard would not result in an improvement in financial reporting, would result in preparers incurring significant costs to implement without a corresponding incremental benefit in financial statement disclosure and would result in required disclosures that in many instances would be prejudicial to the entity and which would not be subject to independent audit. The Proposed Standard should not be adopted, as I do not believe the Board has provided persuasive evidence that the existing disclosure framework of SFAS No. 5 and its various interpretations is inadequate.

If the Board proceeds with the issuance of the Proposed Standard, the following changes to the Proposed Standard should be adopted:

- The requirements of paragraph 6 to provide disclosure regarding loss contingencies with a remote probability of loss are excessive and not meaningful, and should be deleted. I find it difficult to believe any preparer would conclude that any loss contingency with a remote probability of loss would also be expected to be resolved in the near term with a severe financial statement impact. The current requirement to provide disclosure about loss contingencies with the potential for a severe near term financial statement impact only if probability of loss is at least reasonably possible is sufficient.
- The requirements of paragraph 7(a)(2) to provide a quantitative disclosure of the entity's best estimate of the maximum exposure to loss if there is no claim or assessment amount, and the requirements of paragraph 7(b) to provide qualitative disclosures regarding the anticipated timing of resolution of the contingency and factors that are likely to affect the ultimate outcome of the contingency, should both be deleted as they would require the preparer to speculate and provide forward-looking information that in all likelihood would not be subject to audit, would require significant legal costs to comply, would in some instances result in the disclosure of information that is currently

subject to attorney-client privilege and could expose the entity to additional subsequent litigation.

- The paragraph 8 tabular reconciliation should only be required on an interim basis when there has been a material change in the aggregate amount recognized for all loss contingencies of an entity since the end of its prior fiscal year. The existing interim disclosure requirements of APBO No. 28 and Article 10 of Regulation S-X are adequate.
- It is unclear to me how the requirement to disclose qualitative information regarding significant activity in the paragraph 8 tabular reconciliation can be accomplished in any meaningful way when such tabular reconciliation is permitted to be aggregated for all loss contingencies of an entity; such qualitative disclosure requirement should be deleted.
- The subsequent event guidance of paragraph 10 should be conformed with the existing guidance of AU Section 560.05, in that disclosure of the impact of a subsequent event through supplementing the historical financial statements with a pro forma disclosure (possibly through the use of a pro forma balance sheet along side the historical balance sheet) should only be required when such subsequent event would have a significant impact on the historical financial statements.
- The language in paragraph 11 in which the Board indicates use of the prejudicial information exception is expected to be rare should be deleted. Use of such exemption should be determined on a case-by-case basis in conjunction with the advice of an entity's expert legal counsel. The Board should permit an entity and their counsel to determine, without any limitation other than as indicated below, the information that, if disclosed, would prejudice an entity's position in a particular matter, including without limitation the tabular reconciliation requirements of paragraph 8 (which, for example, could be prejudicial if an entity only had one loss contingency matter requiring disclosure). The Proposed Standard should indicate that the prejudicial exemption would not be available only with respect to information that is part of the public record (e.g. court pleading, proceedings, motions and briefs).
- The paragraph 12 proposed effective date does not provide a sufficient amount of time for preparers and their advisors to comply with the expanded disclosure requirements, or for auditors to audit such disclosures. The American Bar Association's Policy Statement Regarding Lawyer's Responses to Auditor's Requests for Information will likely have to be revised if the Exposure Draft is adopted, and the PCAOB will have to revise its auditing guidance in this regard. Effectiveness of the Proposed Standard will have to be coordinated with the publication of revised guidance of these two other entities.

Technical Director
August 7, 2008
Page 3

Thank you for your consideration of these comments and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Swalwell". The signature is written in a cursive, flowing style with a large initial "G".

Greg Swalwell