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LETTER OF COMMENT NO. 105

Russ Golden  
Technical Director—File Reference No. 1600-100  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

Re: Proposed Statement of Financial Accounting Standards, “Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)”

Dear Mr. Golden,

We would like to take this opportunity to comment on the Proposed Statement of Financial Accounting Standards, “Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R).” We appreciate the Board’s efforts to improve transparency in financial reporting; however, we have significant concerns regarding the voluminous new disclosure requirements and the extreme sensitivity of the information that must be disclosed for the following reasons:

- Quantifying hundreds or even thousands of legal contingencies and producing a reconciliation is a complex and time consuming accounting exercise that does not lead to meaningful information for investors.
- Financial statement users are concerned about individual significant (e.g. greater than 10% of current assets as defined by the SEC) exposures and risks that could impact an entity, not detailed reconciliations that are more suitable for auditors.
- Better enforcement of current contingency disclosures would provide investors with decision useful information.
- Detailed disclosure of contingencies that are not probable expose prejudicial information and could have a disproportionately negative impact on how a company is perceived in the market place.

Additionally, we strongly agree with the majority of the views expressed in both the comment letter dated December 4, 2007 from 13 large U.S. corporations and the comment letter dated April 17, 2008 from Financial Executives International.

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 that the proposed enhanced disclosures outweigh the excessive costs associated with providing such disclosures. We also question the basis for proposing this amendment. In paragraph A3, the amendment states that constituents are concerned about the sufficiency and timeliness of disclosures on loss contingencies. How prevalent and to what degree has the Board received these types of comments? Is this really a systemic issue, or more likely, were there just a few companies that did not properly follow the spirit and intent of Statement of Financial Accounting Standards No. 5 (FAS 5)? Why is it that every time there is a surprise the assumption is the accounting and disclosure was not adequate and therefore we need new rules? Business and business decisions are subject to unexpected consequences and risk. This risk is inherent in doing business and investing and does not mean the accounting and disclosure was inadequate.

Perhaps better enforcement of FAS 5 or an embellishment of the disclosures required by FAS 5 would be more appropriate. If only a few companies were not providing adequate disclosures, it does not seem equitable that all other companies should bear their burden by requiring such lengthy and detailed disclosures. With limited resource availability and the ever-increasing list of new pronouncements, it is becoming costly to continually adopt new disclosures.

The nature of the information that is required in this Standard is not easily summarized and would require significant time and resources to make judgments about and disclose all potential loss contingencies in the various aspects of the business, especially legal contingencies. The nature of asserted or unasserted legal claims is extremely sensitive and confidential. Even if disclosure is made at an aggregated level, an entity with a large loss contingency or one that fluctuates significantly, could be taken advantage of by potential claimants. A claimant could be enticed to make a claim that they otherwise would not. Someone may make an unwarranted claim hoping that the entity would settle to keep from having to disclose it. Or someone could analyze fluctuations in the contingency amounts to see that an entity favors settling, giving them an unfair advantage in negotiations. This could be especially advantageous to non-public entities that are not required to publicly disclose this sensitive information. Additionally, many claims are filed to gain publicity, express a political statement, or pressure an entity to take an action. A company should not be forced to disclose and thereby give credence to these types of baseless claims.

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?

No, we do not agree with the inclusion of obligations that may result from withdrawal from a multiemployer plan. If a company is considering withdrawing from a plan it is probably because the arrangement with the current plan is not satisfactory. Disclosing that a withdrawal is possible is prejudicial information and would negatively affect an entity's ability to successfully withdraw from the plan. It also does not seem practical to include this type of obligation in the reconciliation if a withdrawal is not probable. In

addition, if this proposal is adopted, the scope should only include pending or threatened litigation and all other loss contingencies identified in paragraph 4 of FAS 5 (e.g. collectability of receivables, product warranties and defects, guarantees of indebtedness of others, etc.) should be excluded from the scope of this proposal.

3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingency 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, entities should not be required to provide disclosures about loss contingencies, including unasserted claims, which have a remote possibility of loss, regardless of the when the contingency is expected to occur. Paragraph 6 of the proposal should be removed because an event that has a significant chance of not occurring should not have a disproportionately negative impact on how an entity is perceived in the market place. An event that is highly unlikely to occur, but harmful in nature, would likely negatively affect an entity's stock price or ability to generate capital. Considering the nature of the United States' very litigious society and the tendency of claims to be unwarranted or egregious, it does not seem rational that an entity should be required to include these potential loss contingencies in their filings and consequently have their perception in the market place suffer as the result of an event that has not occurred and has a high probability of never occurring. In addition, due to the extreme uncertainty associated with litigation, it is very difficult to ascertain exactly when a case may or may not be resolved and thus when or if it should be disclosed.

Additionally, our concern is this will become yet another detailed accounting exercise of tracking and analyzing meaningless minutia. Contingency disclosures should deal with very material individual exposures and not a collection of hundreds or thousands of minor issues on accounting roll forwards of provisions and payments that will never amount to anything. The information should simply explain the company's exposures to very material unrecorded potential losses at the end of the period as already required by FAS 5. FAS 5 requires disclosure of individual material items and we strongly believe the Board should not require aggregated and detailed accounting reconciliations for items that have no meaning or usefulness to investors.

4.) 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, we do not believe this change would improve the reporting of quantitative information about loss contingencies because it will place too much emphasis on losses that are not likely to occur and the process of estimating potential legal contingencies produces unreliable information that is not relevant, understandable or decision useful. Loss contingencies that are only "at least reasonably possible" should not have the same level of prominence as loss contingencies that are probable. In addition, forcing an entity to arbitrarily select a dollar amount when a legitimate estimate cannot be made does not lead to decision useful information and will likely result in volatile swings in the potential exposure.

Legal cases are very intricate and involve complicated subject matters which are very facts and circumstances based, resulting in potential disclosures that would be difficult for the average financial statement user to properly interpret and use to make wise investment decisions. It would also be difficult for auditors to opine on these enhanced disclosures as they don't have the proper legal background to analyze the cases and determine if the disclosure is proper.

b. Do you believe that disclosing 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?

No, an entity should not be required to disclose its best estimate of the possible loss. If an entity has sufficient reliable information to determine that their exposure is more or less than the actual claim or the maximum exposure, the entity should have the option to disclose that information. Such a disclosure would be prejudicial information, particularly if the best estimate is higher than the claim amount.

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 do not believe that additional quantitative disclosures are necessary. Disclosures are only useful if they provide important information that would have a significant impact on a company. Requiring very detailed disclosures and a reconciliation does not lead to more decision useful information. Instead it provides an excess amount of data that does not clearly express the overall exposure. Emphasis should be placed on these items that are likely to have a material, severe impact on an entity and more robust enforcement of the current disclosure rules in FAS 5.

If a company has significant cases then that fact should be disclosed but recurring immaterial exposures should not require a detailed roll forward. The widely publicized cases, particularly in the pharmaceutical industry, are different from the small cases that most companies incur each year. The materiality of exposures should be measured against the size of the company. For example, the disclosures for a company with a market capitalization of \$50 billion should be different than a company with a market capitalization of \$50 million. Unfortunately, we have seen that once a reporting disclosure is adopted auditors and regulators expect to see such disclosure for all such items and not just material cases. We believe the materiality threshold for such items should be for amounts greater than 10% of current assets, consistent with SEC Rule S-K, Item 103. Whereby, only cases that are expected to have a material impact on the financial condition and future earnings prospects of the company need to be disclosed.

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?

No, estimating and providing the maximum exposure does not lead to meaningful information for users. First, estimating or even defining "maximum exposure" is

extremely difficult and unpredictable given the complicated nature of legal cases. Second, providing the potential maximum exposure does not provide an accurate perspective of what is likely to actually happen and would mislead investors.

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, settlement offers made between counterparties should not be disclosed because of the sensitivity of the information and the high probability that the offer will become stale by the time it is disclosed.

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?

No, absolutely not. The tabular reconciliation is excessive and would not provide additional useful information that would outweigh the costs to produce such information. For large companies with many contingencies or potential contingencies, the process of reporting these changes would be quite time consuming and close to impossible. Instead, a brief narrative of major fluctuations and exposures would be just as useful to financial statement users and less burdensome for financial statement preparers. Detailed accounting reconciliations do not equal quality financial reporting. Accounting reconciliations do not provide investors meaningful information, and certainly not about the risk. Today's rules already require disclosure about meaningful and material individual risks and this should simply be enforced. We strongly believe that if the disclosure requirements of this proposed Statement are ratified, the tabular reconciliation should not be included in those requirements.

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

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?

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?

For questions 8, 9 and 11, we believe the concept of prejudicial information has a much broader definition than what is set forth in the proposed Statement. As discussed throughout this comment letter, the detailed disclosures required in the proposed Statement are inherently prejudicial and would negatively affect not only the registrant itself, but also the outcome of the contingencies. We believe that aggregating the disclosures at a higher level does not eliminate the risks associated with disclosing prejudicial information. Also, the proposed Statement only allows for aggregation in "rare" instances which is impractical as we believe that the disclosure of almost all

contingencies are expected to force a company to expose prejudicial information. Furthermore, the proposed disclosures significantly increase the potential erosion of attorney-client privilege and related protection. Due to the extremely sensitive and prejudicial nature of loss contingencies, the proposed expanded quantitative disclosures should be eliminated from this Statement because of their detrimental affect on companies and indirectly their shareholders.

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 noted above, we believe the disclosure of almost all loss contingencies represents prejudicial information and it would not occur on a rare or extremely rare basis. While the Board notes that *rare* is not synonymous with *never*, in reality, the exemption under prejudicial information would be so hard to implement that it would develop into a definition of *never*. In addition, we believe that the Board should not issue this proposed Statement while the IASB is still under deliberations for the same concept. The perceived improvements associated with this Statement are not great enough to warrant additional differences, and therefore reduced comparability, between US GAAP and IAS. If a convergence between US GAAP and IAS is to occur, new US GAAP standards should not be implemented until the existing differences between US GAAP and IAS are resolved.

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, absolutely not, we strongly believe that if the disclosure requirements of this proposed Statement are ratified, they should only be required for annual reporting periods. The purpose of the Form 10-Q is to provide an update on any significant developments since year end. Requiring interim disclosures of loss contingencies is excessive and places undue burden on financial statement preparers. Interim disclosures should be limited to discussion of material developments, if any.

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, we do not believe additional information about loss contingencies should be disclosed. We strongly oppose the lengthy quantitative requirements in this proposed Statement and instead favor enhanced qualitative disclosures when necessary. Disclosure should be based on materiality to the company's financial position, not the income statement.

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, due to the wave of new accounting pronouncements that will become effective during the same time period (Financial Accounting Standards Nos. 157, 158 (measurement date), 159, 161 and EITF Nos. 06-4, 06-10 and 06-11), many of which are quite complex, an additional year before implementation is required in order that limited resources can focus on new standards that must be adopted in the next few months.

**Conclusion**

Overall, we believe the proposed disclosure requirements would place undue burden on financial statement preparers due to the excessive time and difficulty required to summarize legal contingencies. In addition, this process would produce estimates that are not reliable, understandable or decision useful for financial statement users and instead provide sensitive information to existing and potential claimants. Due to the costs and complexity involved, if these proposed new disclosures are adopted, we strongly suggest that they are only required on an annual basis and the tabular reconciliation be omitted from the final Statement.

We appreciate the opportunity to respond to the working draft and trust that our comments will be seriously considered in future Board deliberations on this issue.

Sincerely,



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Vice President  
& Chief Accounting Officer

cc: Walter J. Galvin  
Senior Executive Vice President  
& Chief Financial Officer