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July 30, 2008



LETTER OF COMMENT NO. 18

Submitted via email (to director@fasb.org) and ordinary mail

Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Reference: File Reference No. 1600-100

Dear Sir/Madam:

United Technologies Corporation (UTC) welcomes the opportunity to share its views on the Financial Accounting Standards Board (FASB) proposed statement "*Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R).*" UTC is a \$60 billion global provider of high technology products and services to the building systems and aerospace industries, operating in 186 countries around the world.

Currently, under FASB Statement No. 5, "*Accounting for Contingencies,*" (FAS 5) we disclose litigation-related loss contingencies where we judge the likelihood of a loss that a reasonable investor would consider material to a decision on whether to invest in UTC is reasonably possible, which we understand to mean more than "slight" or "remote." We believe, with other commenters that these requirements are "well understood by all constituents, including investors, and are capable of high quality application and audit."¹

We are deeply concerned that the additional disclosure requirements regarding claim-specific details under the proposal would have a substantial prejudicial impact on our ability to protect UTC's and its current investors' interests with respect to ongoing and threatened litigation. In this regard, we do not believe that the Board's effort to mitigate this prejudice by permitting aggregation of claims for disclosure purposes or the proffered exemption from disclosing prejudicial information are workable or sufficient.

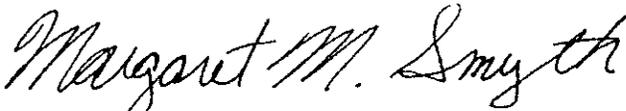
¹ Letter, Sandra L. Phillips, et al. to Robert H. Herz and Sir David Tweedy, December 4, 2007 at 2.

We also believe the additional disclosures would not be meaningful and would be potentially misleading for our current investors and the investing public. Finally, the proposed disclosure requirements would also impose an extraordinary administrative burden, without any perceived commensurate benefit to investors.

For these reasons, as further explained in our attached responses to the specific questions raised by the FASB, we believe the proposal is manifestly contrary to the interests of UTC and its investors. Therefore, we strongly urge that the FASB not amend FAS 5.

We would be happy to further discuss our view on this proposal with the FASB members or its staff.

Sincerely,



Margaret M. Smyth
Vice President, Controller
United Technologies Corporation



Chester Paul Beach, Jr.
Associate General Counsel
United Technologies Corporation

ATTACHMENT: Observations and responses on the questions raised by the FASB on this proposed Statement:

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 project's objective of providing enhanced disclosures to investors about loss contingencies. Depending upon how it would be interpreted and applied, it would impose an administrative burden on UTC ranging from significant to staggering, with no commensurate benefit to investors.

As a U.S.-based multinational corporation with operations in more than 180 countries, UTC entities are subject to a considerable volume of litigation and claims beyond the very few which require individualized disclosure under current rules. For example, as discussed in our Form 10-K for the fiscal year ended December 31, 2007, we and our subsidiaries were named in approximately 3,100 lawsuits alleging personal injury as a result of exposure to asbestos integrated into certain of our products or premises, involving approximately 14,400 individual claimants. In addition, as of March 31, 2008, UTC business units had identified over 2,300 pending non-asbestos-related litigation matters worldwide. In this respect, we doubt UTC is different from its peers. These claims span many countries and an extremely broad range of issues, some of which are sufficiently common to support aggregation (e.g. hundreds of individual, small-value labor-related claims in one business unit in a single foreign country), but many of which are sufficiently individual in nature to resist meaningful aggregation. The very few that involve a reasonable possibility of a material impact on UTC are disclosed to investors.

The Proposal restates the provision of the existing FAS 5 that "[t]he provisions of this Statement need not be applied to immaterial items." Therefore, we assume that only material claims are subject to the proposed new requirements. But if we seek to protect UTC's interests in particular litigation by aggregating quantitative information required under Paragraph 7a pertaining to a matter with other matters as to which the "nature of the loss contingency" is similar "(e.g. product liability or antitrust matters)," would we only be required to aggregate with other such matters that are themselves material (of which there may be none or only a very few), or *all* such matters (of which there may be dozens, if not hundreds, depending upon the nature of the matter)? In the first case, we have a lesser administrative burden, but may have little or no benefit from aggregation in protecting the company's legal interests. In the second case, the administrative burden of centrally aggregating the required data on a quarterly basis would be extraordinary, and for what benefit to investors? The qualitative information required under Paragraph 7b is equally problematic. If it is only required with respect to material matters, then the opportunity to aggregate matters where the nature of the loss contingency is similar may be a very hollow opportunity; conversely, if aggregation need consider *all* such matters, the magnitude of the reporting and review required to

support our quarterly disclosures would dwarf the extensive efforts we already make, and the level of abstraction needed to make the required qualitative information common to all cases within an aggregated class would render it effectively useless to investors. Such a requirement would impose enormous costs on UTC to monitor, evaluate and update information regarding matters in which there is no reasonable possibility of an adverse outcome that could ever be material to UTC.

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 believe that obligations resulting from a withdrawal from a multiemployer plan should be subject to the additional disclosure requirements proposed in this statement. Such contingencies are already subject to and would be appropriately recorded under the existing FAS 5 requirements. There are also a variety of circumstances that can impact the calculation of the unfunded obligation, which are dependent upon information provided from the plan's trustees. The timing and availability of receiving such information from the trustees may make it difficult to meet the additional disclosure requirements of this proposed statement on an interim basis.

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. In most legal systems, claimants have broad latitude to bring claims based on speculative theories of liability and/or damages, and the time required to defeat them through the judicial system concerned is difficult to estimate. By requiring disclosure regardless of the entity's lawyers' professional evaluation of the likelihood of loss, the Statement effectively gives plaintiffs the ability to force entities to make disclosure regarding legally or factually spurious claims, no matter how far-fetched, simply by bringing them. This is manifestly not in the best interest of investors, because of the potential for confusion and misunderstanding. Under current rules, such a loss contingency would be required to be disclosed if the likelihood of a material loss is judged to be reasonably possible. We believe the market and existing rules provide ample assurance that registrants and their independent auditors will not lightly conclude that the likelihood of a material litigation loss contingency is remote, let alone one that could result in a "severe impact."

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?*

Under current disclosure rules, we would normally disclose the amount claimed by the plaintiff in a matter where we judge there is a reasonable possibility of a material liability. However, where there is no claimed amount or we have a different view from the plaintiff, UTC's best estimate of the "maximum possible exposure to loss," is often difficult to formulate until very late in the litigation (if at all), and would thus be unreliable if earlier disclosed. Moreover, in most jurisdictions, a plaintiff is not required to allege damages precisely in the complaint, but need only allege generally that they exceed any minimum amount to support the jurisdiction of the court in which the complaint is filed. In such a case, the proposal would require that the defendant entity develop and disclose its own exposure estimate, without the plaintiff having to have taken any position. Such a circumstance could severely weaken the defendant entity's position in mediation or settlement efforts, to the detriment of investors. In fact, if UTC were to aggregate matters of a similar nature in order to mitigate that risk, such disclosure would actually result in less meaningful disclosure to investors. Such "aggregate worst case" amounts or estimates would be necessarily misleading to investors as they would grossly overstate the company's true exposure by essentially and implausibly assuming that every claim pending against UTC would result in an exposure to UTC equal to the claimed or assessed amount or to the company's estimate of the "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?*

If an issuer believes that the amount of the claim or assessment against it or its best estimate of the "maximum possible exposure to loss" is not representative of the entity's actual exposure, disclosure of the possible loss or range of loss should remain optional. Imposing a requirement to disclose claimed or assessed amounts or estimates of "maximum exposure to loss" where such amounts are not representative of actual exposure is misleading to investors as discussed in greater detail in our answer to Question #4(a) above.

- 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 object to requirements to disclose the amount of the claim or assessment, including any exemplary damages that may be available by law; a description of the contingency, including how it arose; its legal or contractual basis, current status and the anticipated timing of its resolution, together with management's non-quantitative assessment of the regulatory basis for the disclosure and its belief regarding the appropriate outcome. However, we believe that the entity's best estimates of the maximum exposure to loss and the possible loss or range of loss, as well as the other qualitative information required by Paragraph 7b of the Proposal are all, generally speaking, privileged from discovery in litigation and would be severely detrimental to the entity and its investors if prematurely disclosed. As previously explained, we do not understand how aggregation of claims can provide practical protection against these risks in most cases.

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 that in the case where a loss contingency is not limited by a specific claim amount, it is often not possible for issuers to provide reliable estimates of the "maximum exposure to loss" until well into the litigation process (if at all), and that attempts to do so would result in less meaningful and misleading disclosures to investors as set forth in greater detail in our answers to Question #4(a) and Question #4(b) above. It would also prejudice the defendant entity's position in mediation or settlement efforts as described above, to the detriment of 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, because they may be misleading to investors as the question itself indicates. More importantly, such public disclosure undermines the evidentiary privilege afforded such settlement discussions under the Federal Rules of Evidence and state law, to the prejudice of the defendant entity in mediation or litigation should settlement not occur.

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 that the provision of recognized loss contingencies on an aggregated basis, as defined under this proposal, would provide the intended benefits to investors. Moreover, requiring such disclosure on a quarterly basis may actively prejudice the entity's position in litigation, if a significant increase in recognized loss contingencies is only or primarily attributable to a single matter. Inasmuch as FAS 5 properly requires that loss contingencies be recognized as nearly as

possible to the time at which they arose, entities would have little or no flexibility to protect such information, which is not otherwise discoverable, from benefitting plaintiffs in litigation, mediation or settlement efforts.

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?*

An exemption from disclosing prejudicial information should be provided. However, such exemption must adequately recognize that the quantitative disclosure of an amount recognized in the financial statements as being identifiable to a particular loss contingency would be prejudicial to settlement negotiations, mediation or other forms of alternative dispute resolution. For UTC, as is generally true in U.S. civil litigation, the vast majority of matters that are not withdrawn, dismissed or decided on summary judgment are settled rather than litigated to conclusion. Settlements are often preceded (and sometimes facilitated) by court-required settlement conferences or agreed mediation efforts. Whether in third-party mediation or direct settlement negotiations, UTC's settlement position would be substantially prejudiced if the other party or a neutral party could determine the amount that UTC has already accrued as a contingent liability. At best, it would undercut our arguments against any liability on the merits, and provide an informal "floor" for further compromise of the claim. The disclosure of such amount in such circumstances is inconsistent with the fiduciary duty of UTC's lawyers to protect the company's confidential information and advocate zealously for the company's interests. It is also manifestly not in the best interest of shareowners. Generally speaking, the cases where this matters the most are not "rare" as the proposal suggests, but are also not so common as to permit them to be reasonably aggregated for a "higher-level" and supposedly less threatening disclosure.

Further, the qualitative disclosures required are inconsistent with the lawyer's duty of confidentiality and the privilege the law affords attorney work product against discovery in litigation. The law recognizes a privilege against compelled disclosure in judicial proceedings for attorney work-product -- evidence embodying the sense and mental impressions, evaluations and judgments of an attorney representing a client in anticipation of litigation. The qualitative disclosures the Statement proposes to require regarding "the factors that are likely to affect the ultimate outcome of the contingency, management's qualitative assessment of the most likely outcome of the contingency, and any assumptions made by management in estimating the amounts in its quantitative disclosures and in assessing the most likely outcome" go directly to the heart of privileged attorney work product, and also separately privileged attorney-client communications through which such assessments are shared with the client. Like the quantitative disclosure of accruals for a contingent liability traceable to an individual matter, such a unilateral disclosure requirement completely unbalances the field for mediation or other resolution of a claim, and may even prejudice resolution on the merits by a judge or jury.

Finally, the proposed FAS 5 revisions require disclosure of a qualitative and quantitative description of the terms of relevant insurance or indemnification arrangements that could lead to a recovery of some or all of the possible losses and disclosures of the amount accrued for recoveries. Disclosure of potential insurance or indemnification is similarly against the best interest of UTC and its shareowners. Disclosure of this kind of information is unprecedented and would be highly

prejudicial. Such claims are usually litigated apart from the underlying dispute and often after the fact. For example, the statute of limitations for indemnity in many jurisdictions does not begin to run until after a judgment is entered in an underlying dispute. Frequently an indemnitee will decide for strategic purposes related to litigation or for business reasons to forego or to defer an indemnity claim. Disclosure of this information would again put litigants in a compromised position by weakening co-defendants' united front against plaintiffs or by straining relationships with customers and vendors, which frequently resolve disputes in a commercial context, avoiding litigation entirely.

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 in paragraph 11. As further elaborated in our answer to Question #1 above, we do not believe that the concept of aggregating disclosures to protect against disclosure of prejudicial information is workable. If aggregation is limited to material matters, there likely will never be enough of a similar nature to provide the intended benefit, and the requirement to provide in any case “a description of the factors that are likely to affect the ultimate outcome of the contingency along with the potential impact on the outcome” will either be so vague as to be meaningless to investors, or a true roadmap and high-caliber ammunition for plaintiffs.

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?***

Please see our response to Questions #4 and 8 above. We do not believe that the prejudicial exemption, properly applied in situations where “disclosure ... could affect, to the entity's detriment, the outcome of the contingency itself” would be “rare.” For the reasons previously stated, we believe it would necessarily be frequent.

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?

Generally speaking, yes, to the extent and for the reasons described in our response to Questions #4 and 8 above. We would not expect these circumstances to be “rare.” We would expect them to be frequent.

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. As reflected in the response to question 1, the proposed Statement will not meet the project’s objective of providing enhanced disclosures to investors about loss contingencies and would impose, both in interim and annual reporting periods and depending upon its interpretation and application, a staggering administrative burden and cost to UTC with no commensurate benefit to investors.

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?*

No. The proposal to implement this Statement in fiscal years ending after December 15, 2008 would require UTC to adopt all of these disclosure requirements by December 31, 2008. This is extremely unreasonable given the fact that the proposal wasn’t issued until June 2008. The implementation of such proposed changes are administratively burdensome and costly even without taking into account the requirement to implement them by December 31, 2008 for calendar year entities such as UTC.