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LETTER OF COMMENT NO. 224

VIA EMAIL AND REGULAR MAIL

Technical Director – File Reference No. 1600-100
Financial Accounting Standards Board
Financial Accounting Foundation
401 Merritt 7
Norwalk, CT 06856-5116
director@fasb.org

RE: Amendment of FASB Statement #5

Dear Sir:

We strongly recommend against the proposed statement of Financial Accounting Standards "Disclosure of Certain Loss Contingencies, an Amendment of FASB Statement No. 5 and 141 R. ", in its entirety.

In answering the fourteen questions specified by the FASB request for comment materials, we submit the following:

1. No. We believe the objectives cannot be met in a meaningful manner. The costs of and the time deadlines in making the disclosure are also significant problems. See General Comments below.
2. This question is not applicable to our company.
3. No. It will be difficult to predict the date of resolution as being within "one year from the date of the financial statements". We are not sure a selection of this time period can be meaningfully done. We have no problem with the general concept disclosure affecting the twelve-month period.
4. a). No. We do not believe this change will result in an improvement in reporting of quantitative information because the information itself will not be meaningful. See General Comments.
4. b). No, disclosure of the amount of the possible loss and range of loss should not be required or suggested as optional. See General Comments.
4. c). No, while a worthy goal, we do not believe quantitative disclosures can be made that are meaningful, reasonably accurate and truly informative to the user of the financial statements.
5. No. In many cases, we doubt an entity can provide a reliable estimate of the maximum loss if there is no specific claim amount.

6. No. Disclosing the amount of settlement offer made by either party is not a responsible action on the part of the entity. The amount is also subject to change in a short period of time.
7. No. A tabular reconciliation would also be subject to changes and would result in misleading information in a short period time.
8. No. The proposed exemption from disclosing prejudicial information is not limited as much as it should be, in our view. See General Comments.
9. No. We do not agree with the effectiveness of the “exemption”.
10. No. We do not believe using the wording “rare” is that much more significant than using the words “extremely rare”. It is more helpful.
11. We are not able to improve on the definition given for “prejudicial information”.
12. We believe that, if this amendment is done, it would be preferable to require that the disclosure be made only on an annual basis.
13. No. We do recommend any other disclosures.
14. No. We do not believe the proposal as a whole should be adopted.

GENERAL COMMENTS:

We do not believe the prejudicial exemption is as helpful as it may first seem. The aggregation of the claims will still make it possible in many situations for the plaintiffs to learn information that applies to their lawsuit. The plaintiffs may learn the company’s estimate of the amount of maximum exposure, as well as an estimate by the company of the amount of the likely outcome of the case. This could be damaging to the defense of the case by the company.

As is well known, many lawsuits are filed for amounts that include treble damages and are otherwise set at amounts that are totally out of proportion with the probable loss. Many lawsuits involve multiple counts alleged against the company. Many file with unstated amounts. Still many others have pleas for punitive damages. Many claims are open for five or more years.

In general, the Amendment will require a company to disclose the amount of the claim. (For these purposes, let us use an example of \$50.0 million). Or, if there is no claim amount, the company will be required to give its best estimate of the maximum amount of exposure to loss (in this example, say \$ 5.0 million). If either the claim amount or the estimate of maximum loss is not representative of possible exposure, the company would be permitted to disclose its best estimate of the possible loss or range of loss (in this example, say \$1.0 million).

Qualitative factors will also be required. These will include a description of the factors that could affect the ultimate outcome of the contingency along with their potential effect on the income. Also, a qualitative assessment is required of the most likely outcome and the significant assumptions made in estimating the amounts disclosed – and assessing the most likely outcome.

Some attorney firms have commented on the Amendment disclosure as representing evidence that could be damaging to the company in the court case itself. Such disclosure could also lead to waivers of attorney-client privileges. The disclosure could become a source of securities litigation should the “most likely outcome” disclosures, etc. prove to be materially inaccurate.

Requiring the disclosure of insurance coverage - the qualitative and quantitative terms – could be another damaging piece of information if provided to the plaintiff. Based on such knowledge, a jury may be more generous in its awards in a lawsuit.

Respectfully submitted,

A handwritten signature in black ink that reads "Max Crisp". The signature is written in a cursive, slightly slanted style.

Max Crisp

MC:jdc