

August 8, 2008



LETTER OF COMMENT NO. 142

Technical Director – File Reference No. 1600-100
Financial Accounting Standards Board
Of the Financial Accounting Foundation
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Comments on Exposure Draft on Proposed Statement of Accounting Standards, Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)

To Whom It May Concern:

On behalf of our clients (each a “**Company**” and collectively the “**Companies**”) listed on Exhibit A hereto, all of whom are co-signatories to this letter, Wilson Sonsini Goodrich & Rosati appreciates the opportunity to respond to the Exposure Draft on the Proposed Statement of Accounting Standards, *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)* (the “**Exposure Draft**”).

While the Companies recognize the objective of the Exposure Draft to improve the overall quality of disclosures about loss contingencies, the proposed amendments relating to contingencies arising from pending or threatened legal claims raise a number of concerns. In general, the Companies submit that compliance with the proposed qualitative and quantitative disclosure requirements will likely prejudice their ability to conduct and resolve litigation and entail substantial monetary and other costs that significantly outweigh the potential benefits, as outlined below:

1. The Companies believe that the required qualitative disclosures would force them to reveal privileged information, including confidential or competitively sensitive aspects of their strategies for dealing with pending or threatened claims. Where disclosure is required, it must include a qualitative assessment of the most likely outcome of the litigation, the anticipated timing of the resolution, and the significant assumptions made by the Company in estimating the amounts disclosed. This would necessitate that the Companies reveal elements of their dispute resolution strategy that are very carefully protected in adversarial proceedings, which would provide significant advantage to opposing parties and counsel and cause prejudice to the Companies. Moreover, this information typically is based on confidential communications between a Company and its counsel or on counsel’s work product, which are covered by the

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attorney client privilege and/or work product immunity. Disclosure of this information may constitute a waiver of the privilege, eroding the protection of these doctrines and leading to a chilling effect on communications between a Company and its attorneys. In addition, since a Company's independent auditors likely will want to test these disclosures and estimates as part of their audit work, there may be increased pressure for them to seek detailed information from counsel, which may also pose waiver risks.

2. The Companies submit that complying with the required qualitative and quantitative disclosures under the Exposure Draft will be costly, time consuming, and subject to substantial risk of error. This burden will particularly affect companies that are involved in large, complex litigation, such as class action lawsuits, consumer complaints, antitrust litigation, intellectual property disputes, and regulatory matters, which often involve unasserted claims. The substantial attorney time required to analyze these matters and provide qualitative disclosures and loss estimates means that companies will incur greater legal fees for responding to the auditors' requests for information. The Companies will have to spend considerably more time evaluating, and reevaluating, often regardless of the merits of a particular matter, each of their respective litigation matters and third-party disputes and the related loss exposures in connection with each periodic filing. This will be particularly burdensome and costly for matters in early stages of litigation where discovery has not yet started. In the case of large, complex litigation, such as class action lawsuits, the risk of exposure will likely need to be assessed by commissioning expensive and time-consuming damages reports. In addition, it will be difficult, costly, and time-consuming for auditors to audit the resulting quantitative disclosures and loss estimates.

3. The Exposure Draft indicates that the proposed changes "will significantly improve the overall quality of disclosures about loss contingencies by providing financial statement users with important information." To the contrary, the Companies believe that, given the inherently variable nature of litigation, the net effect of the Exposure Draft requirements is more likely to result in disclosure that is not meaningful or, even worse, inaccurate or misleading. The eventual outcome of a particular claim can be subject to many factors that are difficult to predict in advance, including discovery and evidentiary issues, the number and nature of disputed facts and legal issues, witness availability and credibility, motion outcomes, uncertain or evolving applicable law, the conduct and resources of opposing counsel and parties, amount and viability of counterclaims or offsets, strategic considerations, defense and other costs, publicity, impact on business operations, effectiveness of alternative dispute resolution efforts, damage analyses, settlement posture, insurance coverage, and factfinder or judicial bias. Particularly for litigation in early stages that involves critical disputed issues, this uncertainty will lead to disclosure that is necessarily conditional, with a broad range of potential loss that may fluctuate significantly over the course of the litigation. Furthermore, given the substantial securities litigation risks associated with underestimating the exposure for a particular claim, the Companies believe that the resulting qualitative disclosure and loss estimates are likely to be overly conservative and not necessarily representative of a Company's actual exposure.

4. The Companies believe that the requirement to provide information about remote contingencies, regardless of the likelihood of loss, is likely to result in immaterial disclosures that would not be helpful information for investors, and indeed could prove to be misleading. The Exposure Draft requires the disclosure and discussion of remote contingencies 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 Company's operations. The Companies submit that this materiality threshold is too low, and would place legal counsel and financial advisors in the impossible position of having to accurately assess and opine on something – a remote event – that is inherently uncertain and unknowable. The Companies submit this is likely to result in disclosures about pending and threatened litigation that are more misleading than informative, which could cause serious prejudice to the disclosing Company. In addition, the absence of a likelihood threshold may create additional problems for the Companies by providing unfair leverage to claimants who assert unfounded, overstated or frivolous claims as it gives such cases far greater prominence than is warranted. Further, the Companies believe that the requirement to disclose remote loss contingencies may make the settlement of these often questionable or dubious cases less likely. The Companies submit that the existing materiality standard (*i.e.*, a fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important) should continue to govern remote loss contingencies.

5. The Exposure Draft provides that a Company must provide its own best estimate of its maximum loss exposure, or possible range of loss, in situations where the claimant has not stated a claim amount. This requirement forces a Company to quantify and disclose its potential maximum exposure where the claimant itself may have been unwilling or unable to quantify the maximum loss. In the case of securities lawsuits in particular, the range of potential exposure can vary dramatically depending on the methodology used to calculate damages. Companies may be incentivized to provide only the most pessimistic estimates given the risk of being sued for underestimating the exposure, which in turn may embolden plaintiffs and make settlement more difficult and/or costly. In addition, the Companies believe that the disclosures themselves may constitute admissible evidence against a Company (*i.e.*, as an admission against self-interest), potentially resulting in higher damage awards. Providing the estimates also may increase pressure on the Companies to create reserves at a time when a particular matter has not advanced to the point where an accurate estimate of a reserve is possible. Lastly, to the extent that disclosures and estimates turn out to be inaccurate or wrong because of factors outside the control of any of the parties, the disclosures themselves may be sources of additional claims and litigation. For these reasons, the Companies submit that the proposed standards will have the unintended consequence of adversely affecting their positions in the very lawsuits that are the subject of the disclosures, which certainly is not in the best interests of their respective investors.

6. The Companies believe that the requirement to value claims at the outset and then periodically reevaluate and update the estimates through a tabular disclosure is likely to lead to

disclosures that are both volatile and misleading. During the course of a lawsuit or other disputed matter, a Company may change its outlook on the possible outcome several times before the final outcome is reached. Presenting these often temporary changes in loss expectations in tabular disclosure could provide a very misleading view of the probable outcome of such matters and their effect on a Company's future cash flows. As such, the Companies submit that such information will not provide useful and accurate information to investors and other users of their financial statements.

7. The Companies submit that the limited exemption from disclosing prejudicial information is not sufficient or useful. The Exposure Draft provides that prejudicial disclosures may be aggregated or reported at a higher level, or in "rare instances," omitted altogether. With respect to aggregation, the Companies submit that this may not provide a meaningful shield for the prejudicial information. Frequently, large claims are publicly known and anyone evaluating the aggregated disclosure is likely to know that a particular claim or group of claims accounts for most of the loss exposure. With respect to the ability to omit prejudicial disclosures, the Companies submit that because the Exposure Draft expressly indicates that the relief is only available in "rare" circumstances, it is likely to have a chilling effect on the willingness of the Companies to utilize the exception.

In conclusion, the Companies submit that the proposed requirements are not likely to result in meaningful improvements in the reporting of quantitative information about loss contingencies or otherwise meet the Exposure Draft's goals, and do not justify the substantial incremental costs and efforts that would be entailed in compliance. The Companies believe that the existing standards under FAS 5 work well. Based on their past experience, the Companies believe that investors and other users of financial statements understand current disclosure practices as they relate to pending or threatened litigation and understand that detailed descriptions and loss estimates about such matters would be imprecise and potentially wrong. The current standards have the advantages of ease of application, cost effectiveness, protecting the legal rights and strategies of the disclosing Company, and auditability. The Companies submit that the new standards in the Exposure Draft fall short under each these measures and are generally inconsistent with the goal of providing reliable and consistent financial statements.

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We would be pleased to discuss our comments and to answer any questions that the FASB may have. Please do not hesitate to contact Mark Bertelsen or Glenn Luinenburg at 650-493-9300 regarding our submission.

Sincerely,

Wilson Sonsini Goodrich & Rosati
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

EXHIBIT A

Co-Signatories

ACTEL CORPORATION John C. East, President and Chief Executive Officer
ADVENT SOFTWARE, INC. Randall Cook, Vice President and General Counsel
ALIGN TECHNOLOGY, INC. Roger E. George, Vice President, Legal Affairs and General Counsel
APPLIED MATERIALS, INC. Joseph J. Sweeney, Senior Vice President, General Counsel and Corporate Secretary
AUTODESK, INC. Pascal W. Di Fronzo, Senior Vice President, General Counsel & Secretary
CATAPULT COMMUNICATIONS CORPORATION Richard A. Karp, Chief Executive Officer and Chairman of the Board
COST PLUS, INC. Jane L. Baughman, Executive Vice President and Chief Financial Officer
EXPEDIA INC. Burke Norton, Senior Vice President and General Counsel
GENENTECH, INC. Sean A. Johnston, Senior Vice President and General Counsel Robert Andreatta, Controller and Chief Accounting Officer
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INFORMATICA CORPORATION Peter McGoff, Senior Vice President and General Counsel Earl Fry, Chief Financial Officer
JUNIPER NETWORKS, INC. Mitchell Gaynor, Juniper Board Member
LINEAR TECHNOLOGY CORPORATION Paul Coghlan, Vice President, Finance and Chief Financial Officer

<p>LOGITECH INTERNATIONAL S.A. Catherine Valentine, Vice President, Legal and General Counsel</p>
<p>MAGMA DESIGN AUTOMATION, INC. Clayton Parker, Vice President and General Counsel</p>
<p>MONACO COACH CORPORATION P. Martin Daley, Vice President and Chief Financial Officer</p>
<p>NIGHTHAWK RADIOLOGY SERVICES Paul E. Cartee, Vice President & General Counsel</p>
<p>PCTEL, INC. Martin Singer, Chairman and Chief Executive Officer John Schoen, Chief Financial Officer</p>
<p>PLANTRONICS, INC. Richard R. Pickard, Vice President-Legal and General Counsel</p>
<p>REALNETWORKS, INC. Bob Kimball, Senior Vice President Legal & Business Affairs, General Counsel</p>
<p>SUN MICROSYSTEMS, INC. Michael A. Dillon, Vice President, General Counsel & Corporate Secretary</p>