



## Investors Technical Advisory Committee

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Via Email

August 15, 2008



LETTER OF COMMENT NO. 229

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

Re: Proposed Statement of Financial Accounting Standards – Disclosure of Certain Loss Contingencies – File Reference No. 1600-100

Dear Board Members:

The Investors Technical Advisory Committee (“ITAC”) fully supports and applauds the efforts of the Financial Accounting Standards Board (“FASB”) to improve the quality of loss contingency disclosures provided to investors and other users of financial statements.<sup>1</sup> We believe the exposure draft (“ED” or “Proposed Statement”), as written, makes a significant improvement in that regard. Our comments on how it can be further improved follow.

We note in the attached Appendix B examples of disclosures made that appear to run counter to transparent financial reporting and current accounting standards. Some have suggested that greater transparency with respect to loss contingencies can have a negative impact on the value of investor’s holdings. However, we note the occurrence of contingency resolution events – often catching investors by surprise – upon which serious questions are raised about the completeness and timeliness of past disclosures. Contingency related disclosures are critical to investors (both current and future) in making buy-sell or hold decisions because frequently they are associated with material amounts or events that have the potential to greatly affect a company’s liquidity, capitalization, or business prospects. When investors are not provided timely, information regarding future losses and the resulting cash outflows, it can result in investors buying a security whose price is shortly thereafter negatively impacted by a “surprise settlement or disclosure.” As a result, we believe there is strong justification for the FASB’s project.

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<sup>1</sup> This letter represents the views of the Investors Technical Advisory Committee (“ITAC”) and does not necessarily represent the views of its individual members, the organizations by which they are employed, or the views of the FASB or its staff. For more information about the ITAC, including a list of the current members and the organizations in which they are employed, see [http://www.fasb.org/investors\\_technical\\_advisory\\_committee](http://www.fasb.org/investors_technical_advisory_committee).

ITAC believes that, consistent with FASB Concept Statement No 2, *Qualitative Characteristics of Accounting Information*, "...the primary concern should be the relevance and reliability of the information that results, not the effect that the new rule may have on a particular interest." We believe the disclosures currently proposed create a standard that is consistent with this concept, unlike the existing disclosures, and in particular, how those standards have been applied in practice. While some believe an entity should not have to disclose information that may be negative to it, such an approach would be in direct conflict with the FASB's own conceptual framework.

ITAC strongly agrees with the basic principle set forth in the ED that states "An entity shall provide disclosures to assist users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies that are (or would be) recognized as liabilities in a statement of financial position." Such disclosures should ensure investors are not "surprised" by previously undisclosed settlements that are material to the earnings, cash flows, equity or financial condition of the entity.

Broadly, we believe the FASB should focus on a framework pursuant to which a company would be required to disclose the following with respect to contingencies including litigation and similar claims:

1. The maximum potential exposure stated in the claim made by the other party, or that can be calculated by management based on the claim and relief requested, and where relevant, similar past cases or advice of counsel.
2. The size of the range of exposure the management of the company believes is most plausible the contingency will fall within.
3. If it can or has been estimated, the amount(s) within the range that are considered more likely, or a best estimate, by management.
4. Key assumptions used in determining the above amounts.

ITAC agrees with the proposed quantitative and qualitative disclosures set forth in paragraph 7, and believes that with some recommended modest modifications those disclosures would be consistent with our framework, and would be beneficial for investors. Our views on the proposed disclosure standard are discussed further in our responses to the individual specific questions posed by the FASB (see Appendix A). In summary, we believe that:

- Investors should receive timely, relevant, complete and reliable information as to the potential magnitude of liability and losses, and timing of cash outflows arising from contingencies. If management has access to information they would want to know before investing in their own company, then investors too should be recipients of such information. Investors should not be suddenly informed about large settlements of contingencies that have existed

for some period of time, such as settlements with the Internal Revenue Service or other claimants, when information available to management indicated at an earlier date that a material loss could occur. Disclosures to investors should not be withheld merely because a precise estimate of amounts and/or timing of the ultimate payout cannot be currently made. We believe investors are capable of tolerating reasonable imprecision that normally accompanies and estimates in financial reporting – provided that the estimates are adequately explained. We believe that often the challenge to investors with contingency disclosures is associated with the fact that estimates are made in the “dark” and seldom are accompanied by informative disclosures. We believe the Proposed Statement will promote much needed transparency and improved disclosures in this area.

- With respect to litigation and similar contingencies:
  - If a complaint has been filed in the courts, it is reasonable for the FASB to require disclosure of the key elements of such actions including (1) a description of the contingency, (2) the relief requested and the amount of monetary damages if stated, (3) the current status of the complaint, and (4) anticipated timing of its resolution. As the complaint is a public document, the information in it is not prejudicial.
  - Disclosures should include a summary of any arguments or defenses the entity makes in a response to a complaint, including why it is not liable for a loss contingency, in whole or in part. Again the filed response is a public document and the information in it is not prejudicial.
  - We understand that an initial complaint or claim may not always include a specified amount for damages, but would include a discussion of the relief asked for. If a legal filing has specifically stated an amount for damages in the initial or subsequently amended filings, the amount of damages or relief requested should be disclosed, as such a filing would be a public document. Likewise, we believe that if taxing authorities have issued a demand for payment, such as a determination letter, with relief or an amount due specified, we believe that should be disclosed upon receipt of the letter.
  - Disclosures should include whether the company has in mediation or otherwise offered a settlement to the plaintiff that would be material to the financial statements and whether the company was offered a material settlement by the plaintiff, even if the company plans to reject the settlement. As indicated, we believe that such a disclosure would be an important piece of information for an investor to consider when making an investment decision.

- As legal filings are amended, changes in the status of the contingency, including requests for damages or relief should be included in updated disclosures.

We understand some in the legal community have voiced opposition to the quantitative information required by paragraph 7. We also understand that any disclosures made pursuant to this requirement could be admitted as evidence in a court of law. Accordingly, we understand why those defending the claims would not want to see such disclosures made, regardless of their benefit for investors. However, we believe that when a contingency is material, such information is necessary for investors to be able to make an informed investment decision. Accordingly, to ensure the trust and confidence in financial disclosures, important to the integrity of the capital markets, we believe the proposed disclosures should be required.

Having investor's needs in mind, ITAC clearly recognizes the potential adverse effect of disclosure of certain events. Nonetheless, we believe it must be balanced against broader transparency objectives. The role of financial statements is for management to present information as they see it, consistent with generally accepted accounting principles. We believe that disclosures containing potentially adverse information should be presented together with those that are favorable to a company. For example, should a company be exempted from disclosing to its investors a material shortcoming in its manufacturing process or a significant labor-related dispute when the disclosure can meaningfully benefit a competitor's marketing and pricing efforts? Further, a future investor who considers the purchase of securities or the extension of credit to a company while not being informed about a material event that could "harm" the company if disclosed, will clearly lack material information which we believe in many cases may be critical to its investment or lending decision. Accordingly, although ITAC is cognizant of the potential negative implications in some litigation cases, we believe this should not negate the overriding principle of transparency to current and future investors and creditors which underpins the credibility and merits of financial statement disclosures. Finally, we believe the "first step" of the "two step" exemption from disclosing prejudicial information contained in paragraph 11 of the proposed statement adequately addresses many of the concerns raised by the legal community.

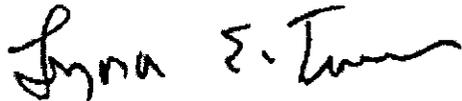
Contrary to what some have argued, we believe that additional disclosure will not be confusing or misleading to investors. Rather we believe that when investors fail to receive timely disclosure of pending material contingencies, such as may have occurred in the examples we have provided, it is not only confusing to investors to understand why relevant disclosures were not provided at an earlier date, but it results in a loss of investor confidence in the company, and in those in management responsible for providing clear, complete and timely information to their capital providers.

Some have also argued that contingencies involving litigation is "different" and should be excluded from the scope of any final standard. However, that would in essence "gut" and make meaningless an essential disclosure standard as a substantial portion of loss contingencies already involve litigation including contingencies related to patent and

copyright litigation, product liability, governmental proceedings, environmental claims, contractual matters, shareholder securities law violations, etc. When such matters are material to the current or future earnings or cash flows of an entity, we believe investors will be misled by omission, perhaps severely so, if they are not provided such information. Likewise, we believe it would be inconsistent with the Sarbanes-Oxley Act of 2002 if such information was not provided on a timely basis by management to the independent auditors, thereby enhancing, not detracting from auditor client communications. And while some argue litigation outcomes can not be foreseen by management, examples provided in Appendix B raise questions as to the timeliness and transparency of the disclosures made.

ITAC would be pleased to have a member of the committee participate in any roundtable the FASB holds to discuss this proposal. Should you have any questions or would like to further discuss any of our comments in more detail, please contact Neri Bukspan, Jeff Mahoney or Lynn Turner.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn E. Turner". The signature is fluid and cursive, with the first name "Lynn" being the most prominent.

The Investors Technical Advisory Committee  
By Lynn Turner, Member

cc: Alan Teixeira, Director of Technical Activities, IASB

## APPENDIX A

Below are responses of ITAC to the specific questions asked by the FASB.

- 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?**

FASB Concept Statement No 2, *Qualitative Characteristics of Accounting Information*, states that neutrality of information affects the usefulness of information. It goes on to state that "Neutrality means that, in formulating or implementing standards, the primary concern should be the relevance and reliability of the information that results, not the effect that the new rule may have on a particular interest." We believe the disclosures currently proposed creates a standard that is closer to meeting this concept, than has existed in the past. While some believe an entity should not have to disclose information that may affect it negatively, such an approach would seriously conflict with the FASB's own conceptual framework and as more fully discussed in the body of our letter, will diminish the utility of financial statements to investors.

If properly enforced, we believe the Proposed Statement with the above disclosures will meet the objective of the project, as set forth in the stated principle. Our experience indicates that in legal actions, internal general counsel as well as external counsel monitor the status of loss contingencies as do risk management personnel. Material risk exposures are also often discussed at the corporate board level, or should be, as a part of sound corporate governance and in fulfillment of the board members' responsibilities. Accordingly, we do not expect companies to incur significant additional costs in making such disclosures to their shareholders and owners. However, we do ask the Board to consider the benefits investors would receive from timely and informative disclosures that will allow them to avoid making misinformed investment decisions. Indeed, we believe that the potential benefits to investors must always be weighed in the consideration of new financial reporting standards.

- 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?**

We agree that when a company withdraws from a multiemployer plan, it results in a loss contingency that should be within the scope of the disclosure requirements

of the ED. Such a withdrawal can result in an impact on cash flows and earnings of the entities, and if material, should be disclosed. Therefore the proposed standard of the FASB is consistent with the stated principle of the standard. In addition, we believe the disclosure requirements should be expanded to include the potential adverse effect that may arise from a possible withdrawal of another employer participant if such a withdrawal could adversely affect the obligation of the company.

In addition, we also agree with the FASB's expansion of the population of loss contingencies required to be disclosed. That is, any loss contingency, regardless of its source or nature, should be required to be disclosed if it may result in a material loss.

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?**

Yes. However, we would modify this requirement to change the wording "severe impact" to "material impact." We believe the "severe impact" language of SOP 94-6 should not be adopted within a FASB standard. That is because SOP 94-6 has not resulted in timely disclosures of such events as we have seen during the corporate scandals such as at Enron or the more recent sub prime crisis where severe impacts of losses were not disclosed in a timely fashion to investors. Since SOP 94-6 has failed to result in adequate and transparent disclosures, we do not believe it is in the best interests of investors or the FASB to repeat this shortcoming. We believe these disclosures in the proposed statement will go a long way to minimize the 'surprise' factor while allowing management to explain why it believes the likelihood of occurrence may be de minimis or remote. With the passage of time, the proposed standard will provide investors greater indication of which companies tend to be more transparent as investors will have the ability to compare the actual results of loss contingencies with managements' disclosures and estimates.

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?**

As set forth in Appendix B, the Board is correct in noting that disclosures under Statement 5 have in most cases not provided investors adequate or timely information. We believe that if the “severe impact” language is modified as noted above in our response to question 3, and a new standard is appropriately enforced, the ED would result in significantly enhanced information regarding contingencies. Please note also our discussion on this issue in the main body of our letter.

- 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?**

FAS 5 and Financial Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss* (“FIN 14”), provide guidance on how to account for a loss that is within a range of possible loss. They also require disclosure of additional loss within the range, when that amount has not been accrued for and there is at least a reasonable possibility of loss. We support this disclosure requirement and believe it should continue to be mandatory as it has been in the past., and should be enforced.

Today nothing would prevent a company from making the optional disclosure proposed in the ED if they chose to. It would be useful information for investors to be able to “see the company through the eyes of management” and such proposed disclosure would help in achieving this goal.

While we support the disclosures proposed by the FASB, we believe they can be enhanced by requiring:

1. The maximum potential exposure stated in the claim made by the other party, or that can be calculated by management based on the claim and relief requested, and where relevant, similar past cases or advice of counsel.
2. The size of the range of exposure the management of the company believes is most plausible the contingency will fall within.

3. If it can or has been estimated, the amount(s) within the ranged that are considered more likely, or a best estimate, by management.
  4. Key assumptions used in determining the above amounts.
- 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 believe the quantitative proposed disclosures are useful and an improvement upon current disclosure requirements. However, we also believe any final standard should also incorporate the requirements of paragraph 85 of International Financial Reporting Standard No. 37, *Provisions, Contingent Liabilities, and Contingent Assets* ("IFRS 37"), that companies disclose "(a)...the expected timing of any resulting outflows of economic benefits..." and "(b) an indication of the uncertainties about the amount of or timing of the outflows. Where necessary to provide adequate information, an entity shall disclose the major assumptions made concerning future events..."

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 an entity could provide their best estimate, based on the damages and relief asked for in the complaint, and disclose any key assumptions that go into that estimate. Such an estimate should be based on what is asked for in the complaint or claim. Disclosures should not be curtailed merely because a precise estimate of amounts and/or the timing of the ultimate payout cannot be made. We believe investors are capable of tolerating the type of imprecision that normally accompanies estimates in business and financial reporting – provided that those estimates are adequately explained. We believe that often the challenge to investors with contingency disclosures is associated with the fact that estimates are made in the "dark" and seldom are accompanied by informative disclosures. Companies should clearly provide further insight as to how "reliable" an estimate might be – for example, by providing ranges and greater insights on what are the variants that may cause the estimated amount to vary.

We note that when a company chooses to defend a lawsuit, it is common practice that the defendant makes an assessment of the potential damages, and the costs to defend against those damages. The costs of defending against the action, including legal costs, costs of experts, and costs to settle are then weighed given the various probabilities of outcomes, against the amounts claimed. This data is then used to determine how best to address and resolve the litigation.

If subsequent to the initial filing of a claim or complaint in which the amount of monetary damages is not specified, an amended complaint is filed in which the quantitative amount of damages is specified, we believe it should be required to be disclosed.

- 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?**

Settlement offers should be required to be disclosed. Such offers usually represent the low end of the range of potential outcomes, and consistent with the industry practice noted in our response to question 5 above, are not made if it is expected there will be a lower amount that can be achieved through further negotiations in mediation or other form of settlement. Similarly, if the reporting company was offered a settlement by the plaintiff, even if it plans to reject it, this should be disclosed as it can provide insights into a potential upper bound of the obligation.

- 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 believe that the information the ED proposes to be required in tabular disclosures will be of great benefit to those who analyze financial statements, and ITAC supports the disclosures. We do note however, that paragraph 84 of IFRS 37 also requires disclosures of “(d) unused amounts reversed during the period...” We believe disclosure of this information should also be required by the FASB because it would bring about greater convergence in the accounting standards and more importantly, greater transparency. We further recommend that the FASB consider requiring that the loss contingencies “ whose underlying cause and ultimate settlement occur in the same period” be included in the reconciliation. Currently, paragraph 8 of the Proposed Statement suggests that these would be excluded. In addition, we believe that the FASB should also clarify that contingencies whose underlying cause occurred in a past period but were settled in the current period be included in the tabular presentation, even if not accrued in the prior period. We believe that such information will also serve to allow investors (if coupled with appropriate disclosures) to evaluate the robustness of management estimation and disclosure practices.

We also support the FASB requiring that loss contingencies recorded in business combinations be included in the reconciliation. This is consistent with our earlier

remarks indicating that all loss contingencies should be reported, regardless of their source or nature. We do not believe contingencies should be disclosed differently just because they arose as a result of an acquisition.

- 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?**

While ITAC prefers that there be no prejudicial exemption consistent with the notion of neutrality, we believe that if such an exemption is granted, it be consistent with that set by the IASB in IFRS 37, in paragraph 92 in which the language “extremely rare” is used. We believe this will result in a higher quality standard that is more likely to achieve the desired objective and results. In addition we note the FASB has not provided any basis to conclude, or demonstrated the IFRS standard and approach has not worked in practice.

- 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?**

The first step in such an approach allows a company to aggregate information from loss contingencies such that a counterparty would not be able to take advantage of such information. The second step, then gives the company yet another “out” from disclosure by allowing management to again conclude, even after aggregation, that the information is prejudicial. It would appear that such a standard is likely to be subject to abuse, to the detriment of relevant and timely disclosures to investors. Consequently, we would support a simpler and less complex approach that would be limited to a single step merely permitting aggregation. Moreover, we believe the single step approach adequately addresses many of the concerns raised by the legal community about the alleged prejudicial impact of the proposed disclosures.

- 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?**

See our response to question No. 8 above. We support the IAS 37 language, that the exercise of exemption should be “extremely rare.”

- 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?**

We would revise the definition as follows “...disclosure of certain information about the contingency *would* be prejudicial to *both* an entity’s *and its* shareholders’ position (that is, disclosure of the information could *negatively* affect, to the entity’s detriment, the outcome of the contingency itself.)”

- 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?**

Yes. We believe the ongoing monitoring of such risks is an appropriate management practice and making the disclosures in both annual and interim financial statements should not be an added burden to preparers of financial statements. In any event, the benefits of complete and timely disclosure to investors should outweigh any additional costs to the preparer of the financial statements and the entity.

- 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?**

See our responses above. In addition, while the scope of the FASB’s proposed disclosures does not change the measurement principles in Statement 5, we believe the FASB should reconsider whether the disclosure threshold set forth in paragraph 5(b)(1) should be revised from a “probable” threshold to a “more likely than not” threshold, that a claim will be asserted.

In addition, paragraph 7(c) of the ED discusses “...relevant insurance and indemnification arrangements...” We believe this language should be expanded to include all potential recoveries. Consistent with the language in paragraph 7(b) discussing the most likely outcome, we believe disclosures should be made of material factors affecting such an outcome, including disclosure of all gain contingencies.

- 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?**

The answer to this question would depend upon when the FASB completes its deliberations and issues a final standard. The ED has received much attention in the legal, business and financial reporting communities. We believe much of the information required is already gathered. However, if it is late in the year when

the FASB issues a final standard, we would not be opposed to changing the implementation date to "...fiscal years beginning after November 15, 2008."

## APPENDIX B

### Examples of Contingency Disclosures

#### Xerox

Xerox was engaged in securities litigation dating back to 2000 that ultimately was settled through mediation. In its 2007 annual report, filed with the SEC on February 15, 2008, the company disclosed the following information regarding this litigation:

“The individual defendants and we deny any wrongdoing and are vigorously defending the action. In the course of litigation, we periodically engage in discussions with plaintiffs’ counsel for possible resolution of the matter. Should developments cause a change in our determination as to an unfavorable outcome, or result in a final adverse judgment or be settled for significant amounts, there could be a material adverse effect on our results of operations, cash flows and financial position in the period in which such change in determination, judgment or settlement occurs. Based on the present stage of the litigation, it is not possible to estimate the amount of loss or range of possible loss that might result from this matter.”

However, in a press release dated March 27, 2008, just 41 days later, the company announced a settlement and after-tax charge of \$491 million (\$795 million pre-tax) recorded in the first quarter, for which the net loss was \$244 million.

#### Northrup Grumman

In a research report on Northrup Grumman (“NOC”), it was recently noted:

“NOC disclosed on 4/14/08 a significant problem with its LHD-8 which resulted in a pre-tax charge of \$326 million or \$0.61 per share...the Company did not provide any disclosure within its 10-K filed on 2/20/08 noting there may be additional problems with this ship. In the 2007 10-K, the Company noted this ship was scheduled for delivery in late 2008 and that the Company had a \$55 million charge for this project in 2007 due to a schedule extension as a result of manpower constraints. No other disclosure referenced this issue. During its 4/14/08 special call to discuss the guide down, management indicated that it noted problems during its testing in the last few weeks prior to the conference call. What was not disclosed was the timing as to when exactly the Company knew it had a problem which would materially impact its 2008 results. Had the Company known prior to the 10-K filing of a material subsequent event, it should have disclosed this information at that time.”