



# Associated Wholesale Grocers, Inc.

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August 7, 2008



LETTER OF COMMENT NO. 226

Mr. Robert Herz, Chairman  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

**RE: Response to Proposed Standard – Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)**

The Board has requested that constituents provide comments on the following questions (*with responses italicized*) as follows:

1. **Q. Will enhanced disclosures about loss contingencies justify the incremental costs?**  
*A. We agree that most information to provide the necessary disclosures is already available; however, we have reservations that the trustees of some multi-employer plans, for example, will be able to timely furnish estimates of withdrawal calculations. Our experience indicates that the turnaround averages about 4 months from the date of request to fulfillment. Therefore, the date to measure the obligation would have to allow earlier reporting by approximately 90 days prior to year-end. In the broadest sense, additional costs will be incurred for preparation, review and external audit of schedules and narrative descriptions to accomplish this new set of tasks. The gathering of the information will put additional pressures on management to meet timely deadlines for the release of financial information.*
2. **Q. Do we agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multi-employer plan for a portion of its unfunded benefit obligations?**  
*A. We do not agree with the Board's conclusion that a multi-employer's proposed withdrawal liability is a true contingency since it is not "triggered" unless the sponsoring employer makes an election to withdraw. It is a snapshot in time, which has no bearing whatsoever on the usual and customary contractual commitments of the sponsoring employers who make contributions to the trust nor does it take into account the actions of other employers who are making decisions to enter into or exit the multi-employer plan. Actual contributions are based on a rate per employee for each hour worked. We believe a company should review and analyze the likelihood of withdrawing on an annual basis. Once a decision is made to withdraw or to engage in a potential triggering event (formal negotiations begin in earnest), then the process of disclosure outlined in question #3 can be applied.*
3. **Q. 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?**  
*A. With respect to pending or threatened litigation, if the claimant has made a dollar-specific demand, it may make sense to disclose the potential loss in a fashion that does not compromise a company's ability to negotiate and/or disclose information that may put it at an economic disadvantage managing its defenses.*

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.” 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. **Q. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?**  
*A. No. The change proposed in paragraph 10 would include disclosing unfavorable outcomes, even if management believes it is only a remote possibility that the outcome will be unfavorable. However, if the disclosure jeopardizes a company’s negotiations or worse, puts it at a disadvantage by appearance of acknowledging that such a claim may have merit, then a company should not be forced to disclose any specific details or amounts. This type of over-disclosure forces our hand in order to avoid being targeted later as less than forthcoming with potential claims.*
- b. **Q. 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?**  
*A. No. If a loss contingency is not representative of the reporting entity’s actual exposure, it should not be required to be disclosed. However, we have less to disagree with on the disclosure of a plaintiff’s demands and more concerns about estimating/disclosing the maximum possible exposure.*
- c. **Q. 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?**  
*A. We believe the current standards strike the proper balance of quantitative disclosure without prejudice. Usually a plaintiff makes a demand of a company in a legal dispute. We have made efforts, in the past, to disclose both the existence of disputed claims and their upper limits, but a company’s management should not be obligated to disclose, other than general statements, what they believe will be the range of possible outcomes.*
5. **Q. 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?**  
*A. No, because it will force management to enter into a potential conflict of interest. We are comfortable offering our opinion of the likelihood of a favorable or unfavorable outcome, however, we do not want to be forced into disclosures that would be largely composed of probabilities.*
6. **Q. 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?**  
*A. We agree that any tentative offers or preliminaries to actual settlement do not provide users any meaningful information toward a final result. In some instances, those disclosures could become highly prejudicial towards reaching a final settlement advantageous to the company’s interests.*

7. **Q. 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 agree with the conclusion that a tabular reconciliation will help to assess future cash flows. For example, estimates of the future disposition of bad debts are plagued with uncertainties. Non-cash reserves are established immediately once a sale occurs and seasoned judgment suggests collection losses are likely to occur. The loss recognition is immediate compared to the future timing of the cash flows (years intervening) until such time as a bankruptcy proceeding has fully run its course through the court system. On the other hand, litigation involves positioning to obtain the most favorable outcome (or the minimization of loss). Exposures abound, but most cases are settled out of court. We are concerned that the sea of claims we face on a daily basis; while manageable in the usual business context, carry a far larger price tag when a maximum exposure is attached. It could lead to distortions, overstatements and/or misleading comparisons between actual cash payments and possible losses.*
8. **Q. 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?**  
*A. We are very concerned about disclosing prejudicial information about pending litigation and less concerned about disclosing determinants used to compute bad debt reserves. The prejudicial exemption is mandatory.*
9. **Q. 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?**  
*A. The two-step approach may help to mitigate specific identification regarding prejudicial matters but only to the extent that a company has enough claims, both in terms of amount and types of claims, that an individual claim can actually be shielded from specific identification. It will also require a company to aggregate many immaterial individual claims that have now grown significant due to possible maximum outcomes that could be unfavorable. The final sentence that requires so many specifics ("...providing a description of the loss contingency, including how it arose, its legal or contractual basis, its current status... et al") is just so much over-the-top, as to be overwhelming beyond imagination. We vehemently oppose such detailed disclosures and we cannot imagine many willing parties providing such detail about so many individual contingencies that would have any beneficial effect to the typical reader of financial statements, other than plaintiffs and their attorneys.*
10. **Q. 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?**  
*A. We see the instances when such prejudices occur to be more than extremely rare, and possibly even more frequent than rarely as indicated in the draft of the FASB document. Again, it has less to do with disclosing a contingency or the dollar amounts, and more to do with specifics about what gives rise to the claim, such as contractual disclosures, or information as to how the claim arose. These are clearly in the realm of prejudicial disclosures that could harm the defenses of a company.*

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**11. Q. 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?**

*A. We agree with the description of prejudicial information.*

**12. Q. 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?**

*A. We have no response.*

**13. Q. 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?**

*A. The scope of proposed disclosures is more than adequate, if not too many as indicated in responses to questions #9 and #10.*

**14. Q. 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?**

*A. Like most of the recent changes to existing pronouncements, there is a need for transparency balanced with expediency. We ask the Board to reconsider the implementation date and we suggest that it be delayed until December 15, 2009, especially if the disclosures include the lengthy descriptives mentioned in paragraph 11.*

Thank you for the opportunity to respond to this solicitation for comment. We do appreciate the Board’s efforts to tackle difficult issues and to consideration of input from private sector companies.

Best regards,



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