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LETTER OF COMMENT NO. 230



Northern Trust

August 7, 2008

Via email

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

Re: File Reference No. 1600-100

Dear Sir:

We are pleased to have this opportunity to comment on the proposed Financial Accounting Standards Board (FASB) amendment of FASB Statements No. 5 (FAS 5) and 141(R).

Northern Trust Corporation (Northern Trust) is a NASDAQ-listed financial holding company headquartered in Chicago, Illinois, with consolidated assets of approximately \$75 billion as of June 30, 2008. Northern Trust conducts business in the United States (U.S.) and internationally through its banking subsidiaries, trust companies and various other domestic and foreign nonbank subsidiaries.

Northern Trust supports the continued efforts of the FASB to improve the clarity and usefulness of financial statements. However, we believe that the disclosure requirements proposed in the exposure draft will have potentially severe unintended consequences that outweigh the minimal benefit financial statement users might derive from the information provided. As such, we do not support the exposure draft in its current form. Our primary concerns with the proposed disclosure requirements are as follows:

- Loss contingencies are, by their nature, subject to extreme uncertainties and any assessment of potential outcomes is very judgmental. Providing detailed disclosures and estimates such as those proposed in the exposure draft would serve to obfuscate the true uncertainty inherent in most litigation loss contingencies and will convey a sense of precision where precision does not exist.
- We do not believe that the proposed requirements are consistent with the basic concepts underlying generally accepted accounting principles (GAAP) and we believe that this departure will give importance to amounts that would not otherwise be relevant to financial statement users.

- We have significant concerns with regard to the cost to reporting entities of providing such disclosures: the requirements in the proposed standard, as they relate to litigation, will likely financially harm companies and their shareholders in ways that were not anticipated by the FASB.

We have expounded on our concerns within the following responses to certain of the FASB's requests for comment.

1. In response to Question 1, we do not believe that the disclosures required by the proposed statement will provide a benefit to financial statement users that outweighs the incremental costs that will be incurred.

We do not believe that the disclosures required under the proposed statement would be of significant benefit to financial statement users. The disclosure of the amount of a claim can be extremely misleading since initial claims are often grossly inflated and unsupported. Moreover, the assessments or estimates that otherwise would be required by the proposed statement would be inherently inaccurate, very volatile, potentially inflated, and lend credence to exposures that may never materialize. Furthermore, given the vast number of non-economic factors that must be considered by legal counsel to appropriately assess exposure, the estimates and assumptions will not prove useful to the majority of investors who are not intimately familiar with the intricacies of law and the particular matters. They will, on the other hand, prove useful to plaintiffs' lawyers, to the detriment of the company and its shareholders. In short, the estimates produced will not be meaningful to the investing public, but will come at significant cost to reporting entities and their shareholders.

We expect the costs simply to comply with the proposed standard will be significant. Litigation is inherently subject to an almost infinite number of judgments and factors that may influence the estimates of economic exposures that may be required by the proposed statement. The development of these estimates will be time-consuming and very costly, particularly when outside counsel is involved in an advisory capacity, which invariably will be the case.

We are equally concerned by the unintended but potentially serious adverse consequences for reporting entities from the impact such disclosures would have on the resolution of the contingencies themselves. The impacts we can foresee include a potential erosion of attorney-client privilege, incentive to settle for higher amounts regardless of the probability of an unfavorable verdict or judgment, as well as the potential prejudicial effects of disclosing information that will provide plaintiffs insight into a company's case and its settlement strategy. All of these impacts would cause significant economic cost to a company and, therefore, to its shareholders. The expanded disclosure requirements would disproportionately disadvantage defendants that are subject to the standard, while plaintiffs and other defendants that do not report publicly under U.S. GAAP will continue to enjoy the benefits associated with the ability to have free and open exchanges with their counsel about risk and strategy.

We do not believe the above costs and consequences are justified by the additional information of dubious quality that would be provided to financial statement users under the proposed standard.

2. In response to question 3, we do not believe an entity should be required to provide disclosures about loss contingencies where the likelihood of a loss is considered remote, even 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.

The requirement to disclose loss contingencies that are considered remote would be entirely inconsistent with the definition of a liability under U.S. GAAP and the concept of materiality. Liabilities are defined as “probable future sacrifices of economic benefits,” which does not encompass loss contingencies that are considered remote. Risks that adverse judgments could occur are business risks that we believe are appropriately addressed by existing disclosures required within the Management’s Discussion and Analysis section of Securities and Exchange Commission filings.

Presenting disclosures about such contingencies in the notes to financial statements in the same manner as potential probable losses gives the impression that the company has a liability when, in fact, under U.S. GAAP it does not. In addition, if a potential loss from a lawsuit is considered by management to be remote, despite the possibility that it could have a severe impact if it were to occur, the information should not influence financial statement users’ decisions and is therefore immaterial. Requiring disclosure of immaterial information is not consistent with current U.S. GAAP, international standards, or SEC reporting requirements and, again, will represent to financial statement users that the information is considered by management to be more important than it is.

3. In response to questions 4 and 5, we disagree with the proposed requirements to prescribe the quantitative information that must be disclosed. We do not believe this will result in an improvement in the reporting of information about loss contingencies, and will in fact serve to be misleading, as entities will be unable to provide reliable estimates that are meaningful to users.

Decision-useful information is defined by the FASB’s Statements of Concepts as having, as primary qualities, both relevance and reliability. Furthermore, U.S. GAAP has historically relied on the judgment of management, in combination with adequate disclosure of the uncertainties regarding estimates and assumptions. Requiring the disclosure of amounts that management does not consider relevant, or that management believes it cannot reliably measure, is inconsistent with these fundamental concepts. The provision of such information conveys to financial statement users a relevance and reliability that does not exist, and conveys certainty and objectivity about the situation that does not exist.

As discussed above, disclosure of the amount of a claim or of the assessment of potential litigation damages can be very misleading and its relevance should be left to the discretion of management in consultation with counsel. Moreover, we do not believe that management will be able to produce reliable estimates with respect to the broad universe of litigation matters required by the proposed amendments and, as a result, the proposal will not provide meaningful information to financial statement users. Particularly in the early stages of litigation, there is simply too much uncertainty inherent in the legal process to be able to provide an accurate estimate of exposure. The current provisions of FAS 5 already provide for disclosure when reliable information is available, and we do not believe that mandating additional disclosures would be helpful or outweigh the potential adverse impacts.

Also, the type of prescriptive requirements in the proposed standard would not serve the objective of convergence with International Financial Reporting Standards. The International Accounting Standards Board's deliberations on contingent liabilities continue to focus on reliable measurement and on management's responsibility to adequately convey the uncertainties surrounding the situation, which are concepts that we believe are undermined by the proposed statement.

4. In response to questions 7 and 12, we do not believe that the tabular reconciliation of recognized loss contingencies would provide useful information about loss contingencies for assessing future cash flows. If such a reconciliation were required, it is most appropriate to present the information annually only, and not in interim reporting periods.

Contingencies are inherently unpredictable and subject to many factors that can change significantly from period-to-period before a resolution is eventually reached. Disclosures about minor changes in the recognized contingencies will not necessarily provide any better indication of future cash flows and could be very volatile and misleading. We believe that disclosure of significant, or material, changes is already adequately addressed within current standards and the additional tabular disclosure would not provide significant additional benefit and may, in fact, be misleading. Were the reconciliation to be required, however, we do not believe that providing it on an interim basis is cost justified.

5. In response to questions 8 and 9, we agree that an exemption from disclosing prejudicial information is essential. However, we do not believe that the limited exemption provided in the proposed statement is adequate.

As discussed above, we believe that many of the additional disclosures that would be required by the proposed statement, specifically the information regarding a reporting entity's expectations, assumptions, and estimates, would inherently have prejudicial effects. As such, we do not believe that use of the prejudicial exemption will be "rare."

We appreciate the opportunity to comment on the proposed statement. If you have any questions, please contact Richard Kukla, at (312) 444-7408.

Sincerely,

/s/ Steven L. Fradkin

Steven L. Fradkin
Executive Vice President and
Chief Financial Officer

/s/ Kelly R. Welsh

Kelly R. Welsh
Executive Vice President and
General Counsel