



August 16, 2010

Via Email to director@fasb.org

FASB Technical Director
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116

Subject: File Reference Number 1840-100

Dear Financial Accounting Standards Board,

Thank you for providing us with the opportunity to comment on the Proposed ASU "*Disclosure of Certain Loss Contingencies*."

XenoPort, Inc. is a publicly held biopharmaceutical company focused on developing a portfolio of internally discovered product candidates that utilize the body's natural nutrient transport mechanisms to improve the therapeutic benefits of existing drugs.

We welcome the Board's attempts to improve upon the original June 2008 exposure draft but we continue to have significant concerns in relation to the latest proposals. In particular, there are three areas where we have substantive concerns:

1. Given the FASB's ongoing work with the IASB in relation to the convergence of US GAAP and IFRS and given the IFRS's current deliberations in relation to IAS 37, we believe it would be more appropriate for the FASB to reschedule this project until such time as the two standard setters can work together to produce consistent interpretations,
2. We believe the existing guidance (Topic 450) is a robust example of principles-based accounting literature. Given the ongoing convergence discussed in point 1, and given the potential future adoption of IFRS by US firms we believe it is inappropriate to move in the other direction, towards more prescriptive rules-based standards,
3. Notwithstanding the framework and theoretical issues discussed in points 1 and 2 above, we also believe there are a number of operational issues also precluding the use of this ASU. These issues have been publically discussed over the last two years and we summarize some of the main themes in our response to Question 1 below.

Question1: *Are the proposed disclosures operational? If not, please explain why.*

We believe the proposed disclosures may not be operational. While we support transparent disclosure of information related to loss contingencies, we are concerned about a number of implementation issues including, but not restricted to:

- The disclosure requirements in the proposal could impact the outcome of a contingency or be detrimental to a company's legal defense through the provision of information that may significantly aid the opposing party in a given claim,
- The provision of information could itself lead to an incremental number of 'me-too' claims,
- The provision of information related to suits is inconsistent with the adversarial system of law practiced in the US,
- The inability to offset insurance coverage in the financial statement disclosures could lead to misleading and potentially unnecessarily alarmist disclosures,
- Disclosures arising out of the fairly typical usage of 'reserving of rights' clauses in insurance contracts could also be unnecessarily alarmist,
- Although the disclosure requirements allow similar contingencies to be aggregated, this is of little use to a company that has only one significant contingency or has only one contingency of a specific type.

Question 2: *Are the proposed disclosures auditable? If not, please explain why.*

We believe the proposed disclosures may result in situations that could prove difficult to audit such as those related to individually material contingencies and potentially differing views as to when certain key thresholds have been achieved, claim amount floors, potential insurance coverage or management's best estimate of potential losses etc.

Question 4: *Is the proposed effective date operational? If not, please explain why.*

We believe the FASB should delay implementation of this ASU until after it has had an opportunity to work with the IASB as discussed above.

Question 5: *Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing (if known) of loss contingencies?*

We do not believe the proposed disclosures will enhance and/or improve the information provided to financial statement users about the nature, potential magnitude, and potential timing of loss contingencies. Please see our previous comments particularly those related to the use of principles-based standards.

Question 6: *Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.*

We believe that the proposed and existing XBRL elements are sufficient to meet the SEC's requirements to provide financial statement information in the XBRL interactive data format.

In summary, we believe the costs of implementing this standard significantly outweigh any potential benefits and we believe that conceptually the FASB should be both aligning with the IASB's efforts and with a more principles-based approach. For these reasons we believe the Board should remove this project from its agenda at this time except as it relates to contacting and working with the IASB.

Please feel free to contact us with any questions related to this comment letter.

Yours truly,

/s/ Martyn Webster
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