Honeywell International Inc.
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1840-100
Comment Letter No. 44

August 19, 2010

VIA E:MAIL: director@fasb.org

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
of the Financial Accounting Foundation
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: File Reference No. 1840-100 - Exposure Draft – Proposed Accounting Standards Update – Contingencies (Topic 450) - Disclosure of Certain Loss Contingencies

Dear Mr. Golden:

Honeywell International Inc. (Honeywell) appreciates the opportunity to provide comments regarding the above-referenced Exposure Draft. Honeywell is a large, diversified global company which addresses a broad range of complex loss contingencies in the normal course of its operations. We provided comments regarding the 2008 Exposure Draft on this topic. While we believe the current Exposure Draft is an improvement over the previous proposal, we also believe that in several areas the changes are not sufficient to address the concerns previously raised by companies, auditors and attorneys. While the concerns raised in this letter pertain primarily to litigation, they are equally applicable to other types of loss contingencies within the scope of the Exposure Draft.

1. **The proposed changes to Topic 450 would lead to an increased volume of disclosure that would be transitory in nature, require an unworkable level of refinement to prepare, and present a confusing and potentially misleading picture of a company's risk profile.**

   - The Exposure Draft calls for increased disclosure over the life cycle of a contingency. A wide range of factors impact the outcome of loss contingencies, including facts that come to light during the course of discovery, quality of witnesses and experts, venue, judge, jury pool, particular circumstances regarding the adversary, and general economic and industry conditions. Because most contingencies are resolved over long periods of time, potential liabilities are subject to change over the course of proceedings due to new developments, changes in settlement strategy or the impact of evidentiary requirements. Consequently, sequential disclosure of arguments asserted and information obtained and provided over the course of a litigation matter, especially at the early stages of proceedings, would in most cases be premature, subject to great variability from quarter

to quarter, and present an incomplete, confusing and potentially misleading assessment of the matter.

- Even more troubling would be the required disclosure of contingencies which "could have a potential severe impact" on the company's operations, regardless of the likelihood of loss. It is difficult to understand why disclosures and estimates of the maximum amount of loss which could be incurred in connection with matters which the company expects to win and where the likelihood of loss is deemed to be remote would be of interest to a reasonable investor. The fact that these disclosures would include lengthy and sometimes very technical discussions of why the company does not feel that the disclosed risk is likely would only serve to create confusion. This approach also runs counter to well-established concepts of materiality which take into account both the likelihood and impact of a contingency.

- The qualitative disclosures called for by the Exposure Draft would be based upon open-ended principles that would be extremely difficult to apply. The details to be provided regarding individual matters would undercut some of the purported benefits of the aggregated disclosure permitted under the Exposure Draft. While, on the surface, the ability to make aggregated disclosures by class or type appears to address comments raised regarding the prior draft, the implementation guidance suggests a detailed level of refinement (e.g., must consider the "nature, terms and characteristics" of contingencies, including the timing of expected future cash outflows or whether there are jurisdiction-specific legal characteristics that could affect the potential timing or magnitude of loss) that would compel a time-consuming, judgment-driven analysis and call for matters to be classified at a level of detail that would significantly limit the value of aggregation.

- The Exposure Draft would preclude companies from considering possible insurance or indemnification recoveries in determining whether contingencies should be disclosed. We believe that this will significantly expand the number of loss contingencies subject to disclosure (as well as the time burden of evaluating these matters and preparing the disclosures) without enhancing the investor's understanding of the true risk presented by a company's loss contingencies. It is counterintuitive to exclude the consideration of key mitigation factors due to their uncertainty when the loss contingencies themselves are inherently uncertain; in most cases, the likelihood of insurance and indemnification recoveries is less uncertain than the outcome of the contingencies themselves. The inability to consider insurance and indemnification recoveries also is a significant constraint on the flexibility we believe the Exposure Draft intended to give companies in evaluating the need to disclose matters that could have a potential severe impact.

2. **The proposed amendments would require the inclusion of information that would be far more useful to current and potential claimants than to investors.**

- The U.S. adversarial system of justice is predicated on each side being able to carefully guard its strategy and assessments from the other party. The mandatory quantitative and qualitative disclosures called for in the Exposure Draft would prejudice a company's litigation posture in pending matters and encourage copycat claims. For example, the disclosure of accruals for individual matters would be deemed to fix a floor for settlement discussions or be admissible evidence against the company in determining jury awards, even though such accruals are subject to change over time. A company's characterization of its liability in a particular matter as probable in its financial statements would be portrayed to juries as an admission of liability and would make it virtually impossible to argue to juries that the damages should be less than the amount of the accrual.

- The proposed disclosure requirements regarding (i) amounts claimed and (ii) cases with a potential "severe impact", regardless of likelihood of loss, would incentivize plaintiffs to make baseless and/or artificially high damage claims in order to leverage disclosure obligations into a settlement of otherwise frivolous claims, thereby exposing companies to meaningful additional litigation risk.

- Expert testimony is offered by parties in a litigation matter in order to advocate their respective positions. By requiring the disclosure of expert testimony relating to possible damages, the Exposure Draft would require the inclusion in the notes to the financial statements of an adversary expert's assessment of damages even where that assessment and/or the underlying claim is flawed or baseless. Engaging in a "battle of the experts" in the notes to the financial statements would present, in any given period, an incomplete, confusing and changing perspective about the potential magnitude of a loss. This disclosure requirement would confuse investors in their efforts to ascertain the true risk of the particular matter, encourage plaintiffs to seek experts to provide inflated damage estimates, and impair a company's ability to determine when and how to seek and use its own expert testimony during the course of a litigation matter.

- By requiring disclosure of potential insurance and indemnification recoveries, the Exposure Draft would provide non-public information to both current plaintiffs and third parties who may be considering litigation against the company, thereby leading to a potential increase in the number of claims against the company. Moreover, by requiring disclosure of "discoverable" information regarding insurance coverage, the Exposure Draft would compel companies rather than courts to make the judgment as to discoverability and disclose information that has not yet been sought by plaintiffs or regulators.

- Both the progressive disclosure of qualitative information and tabular reconciliations of accruals will give the opposing parties in litigation matters an insight into a company's ongoing assessment of the potential exposure arising from a particular matter or matters, thereby handicapping its ability to pursue resolution on the most favorable terms for the company and its shareowners. Moreover, to the extent changes in accruals can be traced to a particular contingency, the disclosure would encourage discovery by plaintiffs and could have an undue adverse impact on the ultimate outcome of the contingency.

- The Exposure Draft calls for disclosure of "publicly available" quantitative information, but neither limits this information to that which is available through the relevant proceeding nor provides guidance as to how this requirement would relate to non-litigation contingencies. Moreover, the Exposure Draft calls for disclosure of "non-privileged" information, which could include all information exchanged during the discovery process, even if it is not publicly available. This would lead to a costly and time-consuming review of discovery materials for a purpose other than that for which they were prepared, the resulting disclosure of which is likely to either provide minimal insight into a contingency or be confusing or misleading.

- Although the Exposure Draft removes the requirements in the prior draft that companies provide speculative and predictive disclosures, the disclosure requirements in the current Exposure Draft would still present significant risk of waiver of the protections afforded by the attorney-client privilege and the attorney work product doctrine, and thus would upset the critical balance established under the U.S. legal system between information that must be disclosed to and information that may be withheld from an adversary. While the Exposure Draft purports to address this issue by permitting aggregated disclosure, the description of the legal and factual background of the contingencies represented in the proposed aggregated disclosure are inherently case-specific and are ill-suited to aggregation, and thus could be highly prejudicial to the company in its efforts to resolve contingencies.

3. **The new disclosure requirements set forth in the Exposure Draft would expose the company to additional litigation risk if the amount or timing of the actual charges ultimately proves to be materially different than the estimates in its disclosures or if the company's disclosures regarding the likelihood and amount of loss significantly change over time due to changes in facts and circumstances.**

   - The new required disclosures in the notes to the financial statements would not be protected by the safe harbor provided for other forward-looking statements. Companies would be required to change quantitative and qualitative disclosures based on what may prove to be transient developments. Snapshots of loss contingencies at a particular moment in time lead to disclosures that are volatile, subject to substantial risk of error, and inaccurate when measured against the ultimate resolution of the contingency.

4. **The new disclosure requirements set forth in the Exposure Draft would result in disclosures that would be very difficult to audit and would put companies in the position of having to waive the protection afforded by the attorney-client privilege and the attorney work product doctrine in order to provide the auditor with adequate validation of required disclosures.**

   - Auditors are likely to seek more detail from counsel to test the estimates and disclosures reported, thereby adding to risk of waiver of the attorney-client privilege. This would disrupt the balance between audit requirements and a company's litigation posture achieved through the "Treaty" between the ABA and AICPA that has governed lawyers' responses to auditors' inquiries since the mid-'70s. Providing publicly available and non-privileged information in the notes to the financial statements may be problematic as references to outside documents are likely to be beyond the scope of auditing financial statements prepared in accordance with U.S. generally accepted accounting principles.

5. **The existing standards under ASC Topic 450 work reasonably well, are consistent with basic accounting and disclosure concepts, and strike the proper balance between protecting the interests of investors through accurate and transparent financial reporting and protecting the ability of companies to defend themselves against and resolve litigation and other loss contingencies (which, in turn, protects the company's shareholders).**

   - The current disclosure standards have the advantages of established compliance processes, cost effectiveness, protection of the legal rights and strategies of the disclosing entity and auditability. The proposed standards fall short in each of these areas and are inconsistent with the objectives of reliable financial reporting and the avoidance of unnecessary volatility. Indeed, the proposed disclosure standards would effectively change the definition of materiality by requiring that certain remote contingencies be disclosed.

   - The Exposure Draft states that the proposed amendments have been developed to address concerns raised by "users of financial statements". We are not aware of any push for these changes by broad sections of the financial community. We are also not aware of any empirical data that the current disclosure requirements are not working (e.g., large volume of litigation, SEC enforcement actions, or other substantial adverse outcome resulting from undisclosed contingencies). To the extent that FASB believes that there are disclosure issues, we would query whether these could be addressed through more detailed interpretation and enforcement of the current standards rather than a complete overhaul of the current system.

   - The proposed changes in disclosure of loss contingencies could lead current or prospective investors to base decisions on an incomplete or flawed understanding of the company's loss contingencies or perceived signals that the company did not intend to

send. The ability of the financial statement user to understand the merits of the qualitative disclosures of a large volume of individual matters, coupled with changing (and perhaps premature) estimates of the anticipated maximum possible loss from these contingencies, will likely lead to confusion and to "risk clouds" hovering over companies that are far broader than the liabilities that those companies will ultimately incur should merit.

For the reasons stated above, we do not support implementation of the changes proposed in the Exposure Draft in their current form. If FASB elects to proceed with changes to the current disclosure requirements under Topic 450, we respectfully submit that, at a minimum, those changes:

- Permit companies to consider potential insurance and indemnification recoveries in the determination of whether disclosure of matters is required (which consideration should take into account the likely timing and magnitude of recoveries) and do not require the disclosure of non-public information regarding the availability of insurance and indemnification coverage;

- Do not require the disclosure of current accruals for individual contingencies or period-to-period changes in these accruals and clarify that matters can be aggregated by general class of contingency (i.e., litigation, environmental, warranties) for purposes of narrative disclosure and tabular reconciliations;

- Limit the reference to "publicly available" information to information which is available through the relevant proceeding;

- Provide an exemption for disclosures that would be prejudicial to the company's litigation posture, including information that is speculative or incomplete in nature or likely to change over the course of the proceedings; and

- Delay the effective date for any changes to the disclosure requirements for loss contingencies to ensure companies have the processes and resources in place to meet the significant additional burdens which these changes would generate.

Thank you for your consideration of the comments raised in this letter.

Sincerely,

David J. Anderson
Senior Vice President and
Chief Financial Officer

Katherine L. Adams
Senior Vice President and
General Counsel