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VIA email (director@fasb.org)

Mr. Russell G. Golden Technical Director Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116

Request for Comments on a Proposed Accounting Standards Update, Contingencies (Topic 450), Disclosure of Certain Loss Contingencies (File Reference No. 1840-100)

Dear Sir:

We are pleased to comment on the Proposed Accounting Standards Update, "Contingencies (Topic 450), Disclosure of Certain Loss Contingencies" (the "proposed Update"). We support the Board's objective to provide information about loss contingencies to enable financial statement users to better understand the nature of loss contingencies, their potential magnitude, and their potential timing.

However, we believe that certain quantitative disclosures set forth in the proposed Update will unfairly prejudice the reporting entity in litigation, giving the plaintiffs in such proceedings an undue advantage. Furthermore, requiring the publication of certain information during litigation could result in providing information that is potentially misleading (see our additional comment following Question 8) and call into question the efficacy of the attorney-client privilege in some circumstances. Moreover, while purporting to benefit financial statement users, these disclosures could have a harmful impact on users who are shareholders of the reporting entity. We elaborate on these points in our response to Question 3 of the issues and questions posed by the Board and in our additional comment following Question 8.

Question 1: Are the proposed disclosures operational? If not, please explain why.

Response: Except as provided in this response, we believe that the proposed disclosures are operational. We firmly believe that the time and effort required to prepare the tabular reconciliation on a quarterly basis, along with the cost for the auditor to review, outweigh the benefit of this information to financial statement users. Additionally, if a reporting entity has only one significant loss contingency or only one contingency in a specific class, we believe that requiring disclosure of the amount accrued during the quarter for new loss contingencies

recognized and increases and decreases for changes in estimates for loss contingencies recognized in prior periods could have at least two highly prejudicial consequences to reporting entities (as described in our response to Question 3).

The proposed Update would require disclosure of remote contingencies that could potentially have a severe impact on a reporting entity. While this proposal is limited to asserted claims, which is an improvement over the 2008 exposure draft, it continues to be problematic. By definition a remote contingency is one that is unlikely to occur. Additionally, the proposed Update provides that "severe impact" is a higher threshold than "material", yet goes on to include the magnitude of the plaintiff's claimed damages, which are often inflated and unreasonable. Moreover, this excludes possible insurance or indemnification recoveries as factors in making that determination. We believe that the current standard requiring disclosure if a loss is reasonably possible results in appropriate information, rather than speculation being provided to users of financial statements.

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

Response: The publicly available facts included in the disclosures may be auditable, but assessing the reasonableness of management's judgment will be problematic. Auditors generally rely on communication from legal counsel to assess the reasonableness of management's judgments and determine the accuracy and completeness of the reporting entity's disclosures. The current ABA Statement of Policy which provides guidance for counsel regarding audit letters does not include provisions for "remote" losses that could have a significant impact on a reporting entity. In light of this fact, it is likely that counsel will be unwilling to provide the necessary precision and detail to auditors to achieve sufficient audit evidence related to contingency disclosures and management's judgment.

Question 3: The June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposed Update would:

- a. Not require any new disclosures based on management's predictions about a contingency's resolution
- b. Generally focus on information that is publicly available
- c. Relate to amounts already accrued in the financial statements
- d. Permit information to be presented on an aggregated basis with other similar loss contingencies?

If not, please explain why.

Response: We respectfully disagree. We believe that reporting entities should be expressly exempted from disclosing information that is prejudicial, especially where it concerns ongoing, unresolved litigation. Items (a) and (b) above effectively address many of the concerns raised from the 2008 exposure draft by eliminating the less factual and more speculative disclosures. However, we believe that the proposed Update falls short in *two* areas in fully addressing concerns that certain disclosures would be prejudicial to the reporting entity:

1. Proposed requirements to disclose the amount accrued and to provide a tabular reconciliation of amounts accrued -

As indicated in item (c) above, the proposed Update requires disclosure of the amount accrued for a loss contingency or classes of similar loss contingencies. This is a significant departure from current U.S. GAAP which only requires this disclosure when omitting it would result in financial statements that are misleading. Additionally, the proposed Update requires a tabular reconciliation, by class, of all loss contingency accruals. These disclosures could have two highly prejudicial consequences to reporting entities: (1) the disclosure could provide litigation adversaries an advantage in settlement negotiations by providing them the amount that the reporting entity has determined to be the probable reasonably estimated loss; and (2) the disclosure could jeopardize attorney-client privilege or work-product protection as the amount accrued is generally estimated based on the advice of counsel. While the option to aggregate similar loss contingencies as indicated in item (d) above helps to mitigate this concern, it does not eliminate it. In circumstances where a reporting entity has only one significant contingency or only one contingency of a specific class, aggregation is not an option.

<u>Suggested alternative</u>: Inclusion of this quantitative information may affect the ultimate outcome of the contingency, a circumstance which both the Board and reporting entities would like to avoid. We believe that current U.S. GAAP appropriately balances the parties' interests. If the Board requires additional disclosure, then we believe that it should retain a meaningful, if limited, prejudicial exemption similar to the exemption included in the 2008 exposure draft.

2. Proposed requirement to provide information about possible insurance recoveries -

It is our understanding that the Board is attempting to address concerns that this information may be prejudicial by requiring disclosure of possible insurance recoveries only to the extent that it has been provided to the plaintiff or is discoverable by either the plaintiff or a regulatory agency (in line with item (c) above). A defendant's liability coverage is generally subject to discovery and, as such, would almost always have to be disclosed under the proposed Update. This disclosure would prejudice reporting entities by providing other potential litigation adversaries the reporting entities liability coverage terms – potentially serving as a catalyst for additional litigation.

Furthermore, it is common practice for insurance companies to reserve their rights related to the entity's claim for recovery, if not to contest or deny the claim outright. In such an event, the proposed Update would require disclosure of that fact. We question the benefit of

creating an expectation of coverage which in itself would trigger the need for further disclosure to dispel that expectation.

<u>Suggested alternative:</u> Based on the comments above, we do not believe that it is appropriate to require an entity to disclose possible insurance recoveries and recommend removing this disclosure requirement.

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

Response: Yes, the proposed effective date for fiscal years ending after December 15, 2010, and interim and annual periods in subsequent years is operational.

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?

Response: As the Board correctly pointed out throughout the proposed Update, management must exercise judgment in applying many of the disclosure requirements. Additional disclosure requirements cannot eliminate or even reduce the magnitude of judgment required or the variation in how this standard will be implemented by reporting entities. This variation will cause the disclosures to be less meaningful as comparability among reporting entities will be difficult.

Question 6: Do you agree that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not, please explain why. Are there any other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.

Response: As a public entity, we do not wish to comment on this matter.

Question 7: The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.

Response: As a public entity, we do not wish to comment on this matter.

Question 8: 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.

Response: In order to limit the number of element extensions, we believe that the taxonomy should include a complete list of elements by classes or types of loss contingencies. For example, in order to provide the proposed tabular reconciliation in XBRL interactive format without extending the taxonomy, the taxonomy should include an element for "increases due to change in estimate" for various classes or types of loss contingencies such as environmental, product liability, warranties, litigation, malpractice, etc.

Additional comment: Subparagraphs 450-20-50-1F(e) and 450-20-50-1F(f) of the proposed Update require disclosure of the amount of damages indicated by the testimony of expert witnesses. While we recognize that in some instances this information might help financial statement users assess the potential magnitude of the possible loss, experts are hired by one party to the litigation. As a result, inherently biased and unrealistic damages calculations are promulgated by experts. Including the potential damages calculated by experts in the financial statements could have the unintended consequence of misleading users. At trial, litigants have the opportunity to cross-examine and discredit opposition experts. It is difficult to effectively communicate the potential bias of an expert in a disclosure to the financial statements.

<u>Suggested alternative</u>: We believe that judgment is required to determine if the amount of damages indicated by the testimony of expert witnesses would be relevant to financial statement users' understanding of the potential magnitude of the possible loss. We suggest that the final standard exclude this information as a requirement and include it as an example of "Other nonprivileged information" that would be relevant to financial statement users to enable them to understand the potential magnitude of the loss (subparagraphs 450-20-50-1F (e) and (f)).

We appreciate the opportunity to provide our views on this Proposed Accounting Standards Update.

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Respectfully submitted,