AMERICAN INTERNATIONAL GROUP, INC.



September 20, 2010

Technical Director—File Reference No. 1840-100 Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, Connecticut 06856-5116 By e-mail: director@fasb.org

Re: Proposed Accounting Standards Update, Contingencies (Topic 450): Disclosure of Certain Loss Contingencies (the "Proposed Standard")

We appreciate the opportunity to offer our comments on the above-referenced Proposed Standard. We support the Board's effort to enhance the contingency related disclosure requirements in Accounting Standards Codification (ASC) Topic 450-20, *Contingencies: Loss Contingencies* (ASC 450-20). We believe the Proposed Standard contains a number of improvements from the original exposure draft, and we appreciate the Board's responsiveness to the many comments and concerns regarding that draft as relayed by the community of financial statement preparers and users.

Nonetheless, we are concerned the Proposed Standard would create unwarranted and unnecessary confusion among the users of financial statements, and also would create significant risks that disclosures concerning litigation-related loss contingencies would have the unintended effect of influencing the outcome of legal proceedings. We believe the adverse effects of the Proposed Standard outweigh the potential benefits and, therefore, strongly urge the Board to reconsider certain aspects of the Proposed Standard.

In particular, we are concerned about the proposed requirement for disclosure of amounts accrued for individual loss contingencies as well as disclosure of information about such accruals in a tabular reconciliation. In addition, the Proposed Standard calls for expanded disclosure of information that would be of little significance for financial statement users, and yet the Proposed Standard may have the unintended and prejudicial effect of inflating claims by

plaintiffs to the detriment of reporting entities. Similarly, we believe the proposed requirements for disclosure of remote contingencies and insurance-related contingencies could create premature and/or unwarranted concerns by investors and other financial statement users. Finally, notwithstanding the Board's responsiveness to prior concerns about waiver of privilege, we believe the Proposed Standard still entails serious risk of waiver, which could have a potentially significant prejudicial effect on public companies like AIG.

We will limit our comments on the Proposed Standard to litigation-related contingencies, and highlight our key concerns with the Proposed Standard in the paragraphs that follow.

I. Disclosure of Accrued Amounts and Tabular Reconciliation of Recognized Loss Contingencies

The Proposed Standard would significantly expand the mandated disclosure of recognized loss contingencies, by requiring disclosure of "the amount accrued, if any" rather than only the individual amount accrued for a probable loss contingency if "necessary for the financial statements not to be misleading." In other words, the Proposed Standard requires disclosure of any accruals, whether or not the non-disclosure of these amounts would result in misleading users of financial statements. We are concerned that these more particularized disclosures would create a significant risk that companies will be required to disclose information that could influence the outcome of litigation and, therefore, cause substantial prejudice to public companies like AIG.

The establishment of litigation-related accruals pursuant to ASC 450, *Contingencies*, is an inherently subjective exercise, requiring legal counsel to engage in a critical analysis of the merits of a claim and to estimate the potential consequences if that claim is successful. Historically, preparers of financial statements have been able to engage in this analysis without undue concern that accruals will be used against them in legal proceedings. The Proposed Standard, however, puts these considerations under a microscope and creates significant risk of the following potential prejudicial effects.

First, disclosure of recognized loss contingencies could significantly impact settlement negotiations in a manner that gives plaintiffs a key tactical advantage without providing any significant benefit to investors and other financial statement users. This is because there is significant risk that adversaries (and mediators) will view any disclosed accrual as a "floor" in settlement negotiations, thereby jeopardizing a company's ability to negotiate on an even playing field and potentially increasing settlement costs, to the detriment of the company and its investors. Whether or not accruals play a role in settlement discussions, a company's loss contingency disclosures and related communications may be deemed admissible evidence that could be used against it in litigation – thereby increasing the risk of adverse outcomes.

Second, we believe the level of disclosure required by the Proposed Standard would increase the possibility of disclosure of confidential information that is protected by the attorney-client or work-product privileges, resulting in a waiver. As discussed above, the considerations regarding the establishment of accruals necessarily involve legal analysis and discussions with counsel. Therefore, requiring disclosure of these matters will significantly increase the risk of waiver. A litigation adversary's access to such highly-confidential information could undermine a party's legal strategy and ability to succeed.

These concerns above are not adequately mitigated by the ability to aggregate accruals. In our experience, the most sensitive accruals often relate to matters that are both quantitatively significant and qualitatively unique, such that aggregation is not practicable. Even for a company the size of AIG, to the extent aggregation is appropriate, the most sensitive accruals often dominate the aggregated class.

For example, if one case in a class has an accrual that far exceeds the other aggregated cases, then the correlating disclosures about changes in and tabular reconciliations of loss contingencies would provide a road map as to which matter caused the increase or decrease reflected in the reconciliation. Even at a highly-aggregated level for a large company involved in a significant number of proceedings, we are concerned that a plaintiff's attorney could analyze facts about a proceeding available in the public domain (e.g., date of filing a claim, nature of the claim, amount of the claim, developments in the proceeding) together with information disclosed in the financial statements and the quarterly changes in those disclosures, and reach conclusions about the company's otherwise privileged and confidential analyses of the claims at issue. Moreover, the Proposed Standard's required tabular reconciliations of recognized loss contingencies to reflect the change in accrued amounts during the reporting period would further exacerbate these prejudicial effects. For example, changes in the accrual could be associated – rightly or wrongly – with specific developments in litigation during that reporting period, which could lead plaintiffs to information that could provide insight to a defendant's privileged analyses and attorney work product.

II. Qualitative Disclosures

We are concerned about the Proposed Standard's requirement that reporting entities disclose publicly-available qualitative information such as "the contentions of the parties (for example, the basis for the claim and the amount of damages claimed by the plaintiff and the basis for the entity's defense or a statement that the entity has not yet formulated its defense)." In practice, this requirement would create incentives for a plaintiff to publicly demand (in the complaint or other public litigation filings) inflated amounts of damages – even if that demand is not grounded in the law or the facts. Once disclosed in a public company's financial statements, this may have the effect of substantiating unwarranted demands and/or damage estimates—pressuring a company to settle at a premium. This concern is exacerbated by the related concern discussed below surrounding the Proposed Standard's required disclosure of remote and potentially "severe" contingencies.

III. Disclosure of Information Related to Insurance Coverage

As both a public company, and a company that is the corporate parent of many insurance companies, AIG is concerned about the proposed disclosure requirements relating to possible recoveries from insurance. We believe this proposed disclosure would be problematic in a number of ways.

At the outset, information concerning a company's insurance arrangements is often confidential. In a litigation context, if disclosure of insurance coverage information is required, this would provide highly prejudicial information to opposing counsel who can use the existence of insurance and the insured's expected recovery as a floor in settlement discussions. In a

broader context, insurance-related disclosures will provide third parties access to information they could use in legal proceedings unrelated to the matter discussed in the financial statements. This could have the unintended effect of encouraging additional litigation which, in turn, could increase the cost and/or limit the availability of insurance coverage for public companies in the future.

In addition, insurers typically need not resolve questions regarding the applicability of coverage until legal proceedings are concluded. Requiring public disclosure of the availability of insurance coverage (especially coverage for potentially "severe" matters), would complicate the dialogue between insurers and their insureds, and require them to engage in unnecessary and premature determinations about the applicability of coverage for legal contingencies. We are similarly concerned about the proposed requirement that there be disclosure when an insurer "has denied, contested, or reserved its rights" as to both reasonably possible and remote contingencies. In both cases, such disclosure could prematurely create concern among financial statement users about the availability of insurance before coverage negotiations have been completed. For remote contingencies, that would further compound already unwarranted concerns as the contingency itself is unlikely to occur.

Also problematic is the obligation to disclose information that is "discoverable." As a practical matter, insurance arrangements are generally considered discoverable. However, in litigation such information must be specifically requested and such disclosure is often subject to a protective order requiring the parties to keep the information confidential. Disclosing this information, whether or not requested by the plaintiff in discovery, provides vital information to plaintiff's counsel. The potential for prejudice in the disclosure of any insurance information deemed "discoverable" is readily apparent.

Moreover, whether or not particular information is discoverable is often a subject of dispute in litigation, and the resolution of such disputes often turns on fiercely contested motion practice. Questions about the discoverability of insurance-related information will result in forward-looking and speculative considerations about the scope of information that will be produced in litigation. Since these considerations involve analysis and application of legal standards, the inclusion of the term "discoverable" in the Proposed Standard significantly increases the risk of waiver of attorney-client and work-product privileges. To the extent reporting entities do not disclose insurance-related information on the grounds that it is not discoverable, and those decisions are subsequently determined by a court to be incorrect, filers may be accused of having made inappropriate and/or misleading disclosures.

IV. Disclosure of Remote Contingencies

We are very concerned with the Proposed Standard's requirement to disclose information concerning remote contingencies that may have a "severe impact" due to the contingency's nature, potential magnitude, or potential timing (if known). While it may seem appealing to require disclosure of matters that could have a dramatic or "severe" effect, requiring disclosure of contingencies that only have a remote chance of such effects creates a serious risk of misleading and alarming financial statement users by drawing unwarranted attention to them. By their very nature, potentially severe but remote contingencies will be those with the most speculative factual allegations, far-fetched legal theories and overreaching damage demands. In

our experience, these are the sort of claims that are often the most interesting to unsophisticated investors and the media, and requiring their disclosure in the company's financial statements will only exacerbate the amount of unnecessary and distracting attention they receive.

Moreover, given the open and flexible standards defining "severe" contingencies, we believe it will be challenging for preparers to make appropriate judgments as to which remote contingencies meet the threshold for disclosure. To avoid unwarranted concern and speculation about these claims, reporting entities will need to provide significant explanations in their financial statements as to why claims with potentially severe effects are, in fact, remote and/or unmeritorious. Such disclosures will significantly increase the possibility of prejudicing financial statement filers, including the risk of waiving privileged work-product and attorney-client communications. All of this additional disclosure, however, is of questionable value to the users of financial statements given the fact that remote contingencies are by definition likely never to occur.

Finally, requiring disclosure of potentially severe, but remote contingencies will create a sanctioned platform that could inspire plaintiffs to pursue unwarranted claims, and to demand inflated damages and other remedies. Defending such claims will add significant cost and burden on public companies in the form of legal fees and expenses, nuisance value settlements, and distraction of corporate legal and management resources from more productive matters.

V. An Exemption From Disclosing Prejudicial Information Is Warranted

Presumably acknowledging that increased amounts of disclosure also contained an increased risk of prejudice to financial statement filers, the original exposure draft provided an exemption from disclosing information that would be prejudicial to an entity's position. We applaud the Proposed Standard's effort to limit prejudicial disclosures. It is our understanding the Board does not believe contingency disclosures should affect the outcome of the contingency, and we expect the Board will continue to focus on the Proposed Standard's potential unintended effects such as undermining a reporting entity's ability to defend itself in litigation by legitimizing unmeritorious claims or effecting waivers of attorney-client and work-product privileges. As discussed above, however, we continue to have significant concerns that the disclosure of litigation-related contingencies as required by the Proposed Standard would be prejudicial. Therefore, to the extent the Board decides to implement the Proposed Standard in its current form, we believe an exemption from disclosing prejudicial information should be retained as a safe harbor.

VI. The Effective Date Should be Extended

We understand the Board's desire to propose an accelerated effective date for the final standard. Given the significance and the scope of the Proposed Standard, we believe it would be prudent not to rush towards implementation and to delay effectiveness until the end of the 2011 calendar year.

VII. Conclusion

We understand users' needs for additional contingency-related disclosures and support the Proposed Standard's enhanced disclosures for non-litigation-related contingencies. We also

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do not object to the proposed disclosure of litigation-related information that exists in the public domain. However, we believe the cumulative mix of proposed litigation-related disclosures discussed above could, in certain circumstances, result in the disclosure of prejudicial information. Consistent with the goal of achieving an appropriate balance between providing fulsome disclosures to financial statement users and protecting reporting entities from prejudicial effects of disclosure of sensitive and confidential information, we believe the Proposed Standard requires further consideration and revision to reflect the comments provided above.

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Thank you for the opportunity to present our views. We would be pleased to discuss our views with Board members or the FASB staff at your convenience. Please feel free to contact Anthony Valoroso at (212) 770-6463.

Very truly yours,

/s/ Mr. Anthony Valoroso Vice President Chief Accounting Officer

cc:

Mr. Thomas A. Russo Executive Vice President General Counsel

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