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

Via Electronic Mail: director@fasb.org File Reference Number: 1600-100



LETTER OF COMMENT NO. 171

Re: Proposed Statement of Financial Accounting Standards, Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R).

Dear Mr. Golden:

Standard & Poor's Ratings Services (Standard & Poor's) appreciates the opportunity to provide the Financial Accounting Standards Board (Board) with comments on the Proposed Statement of Financial Accounting Standards, Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R) (the Proposed Statement). We strongly support the direction in which the FASB is proceeding, and would welcome expanded disclosures of certain loss contingencies within the scope of FASB Statement No. 5, Accounting for Contingencies (SFAS No. 5) or FASB Statement No. 141, Business Combinations. The views expressed in this letter represent those of Standard & Poor's, and do not address, nor are they intended to address, the views of The McGraw-Hill Companies. Further, our comments are intended to address the analytical needs and expectations of credit analysts.

We fully agree that existing guidance on disclosing loss contingencies provided for in SFAS No. 5 does not provide adequate or timely information to assist users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies. We often obtain additional data from companies we rate, on a confidential basis, to enable more meaningful analysis of plausible scenarios. However, we do not disclose such information nor any adjustments we use in our credit analyses to reflect the effect of potential or expected cash outflows related to confidentially disclosed contingencies. The confidential data we obtain is, at times, largely based on the existing framework around reporting for contingencies, as some companies may use the guidance of SFAS No. 5 to determine the extent of information to provide to us. As noted by the Securities and Exchange Commission in their review of arrangements with off-balance sheet implications, the application of SFAS No. 5 should be improved and the "needed improvements include better application of both the recognition and disclosure [italics added] criteria of SFAS No. 5." We concur with both the FASB and the Commission's view and strongly support the proposed improvements.

¹ Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 On Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers released June 2005.

Our analytical process for assessing loss contingencies, and specifically litigation, often requires that we make case-by-case judgments regarding the likelihood of a negative outcome, its magnitude, and timing, including consideration of the duration of any appeals process. We may apply analytical techniques such as calculating ranges of outcomes or performing sensitivity analysis. Analysts understand that such disclosed amounts or ranges may sharply change because of the complexities inherent in the legal and estimation process. We may consult legal counsel, when appropriate, to evaluate the credit implications of likely scenarios. However, under the current accounting framework around contingencies, the potential financial effects of a loss contingency is difficult to discern and quantify by leveraging information available in public disclosures. Therefore, we believe that relevant, meaningful, and reliable qualitative and quantitative disclosures of litigation matters and other loss contingencies, as set forth in paragraph 7 of the Proposed Statement, would be very beneficial to our analysts.

We consider the following disclosures to be important in better enabling our analysis of companies' credit risk, and specifically the understanding of the effects loss contingencies could have on a company's business prospects, future cash flows and capitalization:

- Information on the company's maximum potential exposure to loss and the range of
 possible outcomes. Moreover, the information is more relevant to analysts if
 accompanied by a view on the likelihood of occurrence.
- Key underlying assumptions used by the company concerning the potential future events, including, for example, why it believes a litigation matter may settle, to allow users to better understand the drivers of management's judgment applied to measurement. There may be vast diversity by companies in assessing the amounts and likelihood thresholds for determining loss contingencies. Disclosing major assumptions would allow users to evaluate the rationale, make better peer comparisons, and draw their own conclusions -- including the perceived conservatism or aggressiveness in management's estimates over time.
- Aggregation by nature of litigation or other loss contingency (e.g., environmental, patent, anti-trust, shareholder, product liability, etc.) to better analyze the components and drivers of risk and build trend lines for similar loss contingencies.
- Quantitative information should be accompanied by qualitative disclosures to provide
 context and information on the factors that may impact the final outcome. Offsetting
 amounts that may mitigate contingent losses (e.g., insurance coverage) should also be
 provided separately. Here again, the disclosures will enable improved analysisincluding the ability for users to make their own assessments.

We recognize that reserve or contingent amounts, if disclosed, are not absolute indicators for the ultimate liability or cash flows. However, where disclosures exist, they provide us with better information and a perspective from which to engage management in further discussion.

We support the Board in including a disclosure principle that is based on FASB Concepts Statement No.1, Objectives of Financial Reporting by Business Enterprises, to communicate the objective of the disclosure requirements. Enhanced disclosure efforts should center on providing better quality disclosure and transparency. We agree that disclosures stating that "an estimate of the possible loss or range of loss cannot be made" or similar types of statements frequently are exercised by entities to the extent where these types of disclosures become boilerplate efforts, and

meaningless for analytical purposes. Expanded disclosures may be provided in the MD&A section for public registrants but are not subject to the same level of scrutiny by independent auditors as information (both qualitative and quantitative) in the financial statements. In addition, in most cases, MD&A disclosures, where they exist, are duplicative to those found in the financial statements. Other times, as in the case of multiemployer plan withdrawal liabilities, disclosures may only exist in the MD&A section, rather than in the footnotes.

We recognize that loss contingencies may be complex and unpredictable, and are mindful of the various sensitivities issuers and their lawyers may have surrounding their disclosure. Recent accounting statements and interpretations, such as FASB Interpretation No. 48 Accounting for Uncertainty in Income Taxes, have dealt with similar, although not equal, sensitive matters around the implications of increased transparency and disclosure. These issues should not preclude the FASB from moving forward in making financial statement disclosures more complete, understandable and useful.

Our comments on enhancing disclosures apply equally to nonlitigation loss contingencies within the scope of this Proposed Statement (e.g., those loss contingences assumed in a business combination in accordance with FASB Statement No. 141 (revised 2007), Business Combinations. Further, while the Proposed Statement addresses the disclosure of certain loss contingencies, we respectfully request that the FASB also consider a project to improve the disclosures related to gain contingencies. Requirements for disclosing gain contingencies under SFAS No. 5 are minimal. SFAS No. 5 (paragraph 17.b) states "Adequate disclosure shall be made of contingencies that might result in gains, but care shall be exercised to avoid misleading implications as to the likelihood of realization." We believe the existing guidance related to gain contingencies should be made more robust to include information that would equally assist users in assessing the likelihood, timing and amounts of cash flows.

We have provided our responses to certain specific questions listed in the "Request for Comments" section of the proposed statement.

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We thank you for the opportunity to provide our input on the Proposed Statement and would be pleased to discuss our views further with you or any member of the Board or its staff. If you have questions or require additional information, please contact Neri Bukspan, Managing Director and Chief Accountant (neri_bukspan@standardandpoors.com (212) 438-1792), Joyce Joseph Bell, Senior Director (joyce_joseph-bell@standardandpoors.com (212) 438-1217), or Jonathan Nus, Director (jonathan_nus@standardandpoors.com (212) 438-3471).

Very Truly Yours,

Standard & Poor's Ratings Services

Appendix - Response to Certain Specific Questions in the Proposed Statement

Question 2 – Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?

Yes. Considering that FASB Statement No. 158 Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R) did not change the accounting and disclosure requirements for multiemployer plans, we strongly urge that disclosures for multiemployer plans be significantly improved². Companies participating in these plans generally disclose only the amount of cost recognized during the period, and at times, the future expected contributions for the upcoming year. Even though many of these plans are defined benefit plans, the disclosure approach in many ways parallels the accounting treatment for defined contribution plans and, as such, it does not provide information about the current funded status of these plans (which for many of the companies participating in multiemployer plans may represent a material unrecognized liability). Because multiemployer plan withdrawal liabilities are treated as contingent liabilities that must meet the stringent provisions of contingency accounting under FASB Statement No. 5, we seldom see these obligations accrued or disclosed. Until the FASB deals with multiemployer plan accounting in Phase 2 of its postretirement benefit obligations, including pensions project, we believe multiemployer plan disclosures should be expanded to include withdrawal liability estimates for all entities that contribute into these plans (regardless of withdrawal likelihood), and include qualitative discussions of potential adverse changes that may arise in these plans.

Question 3 — Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, 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? Why or why not?

Yes. We believe this disclosure, if appropriately applied by companies under the guiding disclosure principle, will aid users in understanding the potential effects on an entity's cash flow and capital. However, while we expect a great deal of management judgment about timing will need to be exercised under the disclosure principle, we view two aspects of this requirement with some concern. First, there may be a great deal of variability in the manner in which the term "expected to be resolved" (paragraph 6 of the Proposed Statement), is interpreted and defined by entities. As a result, disclosure under this requirement may be minimal if entities apply a strict interpretation of the term and contend that certain loss contingencies are not "expected to be resolved" within one year of the date of the financial statements, despite materiality. Second, we believe the term 'severe' financial impact³ is too high a threshold, and may further inhibit transparent disclosure. We suggest changing the term to include disclosure of items that could have a "material impact" upon the operations of the entity. We believe that lowering the threshold will result in information that is more timely, relevant and reliable.

² Refer to our comment letter on Exposure Draft – Proposed Statement of Financial Accounting Standards; Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R). File Reference 1025-300, Comment letter No. 93. ³ As defined by AICPA Statement of Position 94-6, Disclosures of Certain Significant Risks and Uncertainties.

Question 4 – Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.

a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?

The required quantitative disclosures would significantly enhance the information that will be available to users of financial statements. However, we believe companies should disclose their best estimate, range of estimates and maximum possible exposure of the claim or assessment with the probability and confidence level and key assumptions applied, in order to make such estimates more meaningful to users. If the likelihood of the outcome is not expressed, it may result in disclosure of claims or assessments that are so wide and variable that it will render the information far less meaningful for analytical purposes.

b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?

Yes, we believe the FASB should require, and not make optional, a company's explanation of why it is unlikely the amount of the claim or maximum exposure is not representative of the entity's actual exposure to loss. As indicated above, the disclosure should include the company's estimation of the probability and confidence level and the key assumptions applied. It would be more useful to analysts to have a range of plausible outcomes to consider, stress test, and draw their own conclusions than to have information that likely does not represent an entity's actual exposure.

c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

Not applicable.

Question 6 – Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?

We believe settlement offers should be reflected in the quantitative disclosures discussed in question 4. We recognize that the nature of the settlement process is often fluid and may involve

multiple exchanges of offers and counteroffers. Further, the structure of settlement offers — whether in the form of one lump-sum payment or the equivalent payment spread over time — may dramatically change during the negotiation process. However, settlement offers can be indicators of potential lower and upper boundaries of the potential outcomes. Settlement offers likely are factored into expectations of the ultimate resolution and may affect the quantitative range of estimates and probabilities of outcomes.

Question 7 – Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?

Yes. The tabular reconciliation of recognized loss contingencies provided on an aggregate basis creates a clear, standardized way to readily assess changes in the amounts from period to period. Nevertheless, quantitative information in isolation can be limited; therefore, the breadth of the accompanying qualitative descriptions of the significant activity in the reconciliation, including management's rationale for decisions that affected the changes in amounts and the major assumptions applied, are important to the analysis. Presenting information in this manner creates a more comprehensive view that allows analysts to glean further insight into the nature of changes during the period.

We support the Proposed Statement requirement to disclose loss contingencies recognized in a business combination within the tabular reconciliation. However, we recommend that the Board consider including other loss contingencies whose underlying cause and ultimate settlement occurred during the same period (paragraph 8 of the Proposed Statement). Intra-period activities, accompanied by qualitative disclosures, are meaningful in understanding management's estimation practices and ultimate resolution.

[Questions 1, 5, 8, 9, 10, 11, 12 and 13 are not addressed in this letter]

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