THE PEPSI BOTTLING GROUP

THOMAS M. LARDIERI
VICE PRESIDENT AND CONTROLLER

LETTER OF COMMENT NO. 202

August 8, 2008

Mr. Russell G. Golden
Director of Technical Application and Implementations Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Subject: File Reference No. 1600-100
Proposed Statement of Financial Accounting Standards, "Disclosure of Certain Loss Contingencies an amendment of FASB Statements No. 5 and 141(R)"

Dear Mr. Golden and Board Members:

The Pepsi Bottling Group, Inc. appreciates the opportunity to comment on the proposed Statement of Financial Accounting Standards, "Disclosure of Certain Loss Contingencies an amendment of FASB Statements No. 5 and 141(R)." We support the FASB's efforts to establish and improve standards of financial accounting for the guidance and education of the public and, to that end, we are providing our comments. Our letter addresses our main concerns related to the Exposure Draft.

A robust contingency valuation model is needed.

Among other things, the Board states this project addresses the criticism that "the ***option*** to state that 'an estimate of the possible loss or range of loss cannot be made' is exercised with such frequency by financial statement preparers that users often have no basis for assessing an entity's possible future cash flows associated with loss contingencies." [Paragraph A3(c) of the Exposure Draft, ***emphasis added.***] We respectfully disagree with the characterization of the above disclosure (that an estimate of the possible loss cannot be made) as being an option. SEC regulations prohibit registrants from disclosing misleading information in their financial statements. If we were able to determine a reasonable estimate of possible losses or a range of losses under these contingencies, SEC regulations would prohibit us from stating that we could not and existing GAAP would require us to include these items in our financial statements. We understand the frustration expressed in constituents' statements; however, the problem is borne of the current limitations of valuation techniques.

The fact of the matter is valuation guidance and techniques do not currently exist that would enable reporting entities to provide relevant, reliable information to financial statement users for many loss contingencies. Even valuation experts are at a loss when it comes to assessing the potential extent of contingent liabilities. At its May 8, 2008 meeting, the FASB's Valuation Resource Group discussed contingent liabilities and

noted the nature of contingencies is not compatible with valuation techniques discussed and that the resulting measurements "may be far removed from an actual possible outcome."

The lack of a robust fair value measurement model is further highlighted in the final report of the Advisory Committee on Improvements to Financial Reporting (CIFiR) to the United States Securities and Exchange Commission, dated August 1, 2008. In its report CIFiR's first recommendation is that:

> The SEC should recommend that the FASB be judicious in issuing new standards and interpretations that expand the use of fair value in areas where it is not already required until:
>
> - The FASB completes a measurement framework to systematically assign measurement attributes to different types of business activities
> - The SEC, the FASB and other regulators and standards-setters develop and implement a plan to strengthen the infrastructure that supports fair value reporting.
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> [Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission, August 1, 2008, page 8, footnote reference omitted.]

The CIFiR's recommendation underscores the concern that we do not currently understand the appropriate measurement attributes for many items.

Without further development of a contingency valuation model, it is impossible to know whether the proposed disclosures would provide useful information or a false sense of security, or whether the disclosures would unintentionally mislead investors. We believe the Board should focus on supporting the development of a reliable contingency valuation model. A robust contingency valuation model will help in two ways; (1) entities will actually be able to provide reliable estimates of potential losses, and (2) meaningful disclosures could be developed based on attributes that are known valuation drivers. Unfortunately, the FASB has removed from its agenda the project that would address the fundamental issue of contingency measurement.

Scope

We believe it would be helpful if the scope of the proposed Statement were more clearly articulated. As written, the proposed Statement would require extensive disclosure about all potential losses and expenses that have a more than remote possibility of arising in the future. Our impression from following the project is that the Board's intent is to insure financial statement users are aware of the existence of lawsuits and environmental contingencies as described in paragraph 4(e) and 4(f) of FAS 5 that could result in a significant loss to the entity, before the loss actually occurs (with contingencies related to business combinations under the scope of FAS 141(R) added during initial deliberations). If this is the case, the scope of the proposed Statement should be limited to include only those types of loss contingencies.

The scope of FASB Statement No. 5, *Accounting for Contingencies*, (FAS 5) is far more encompassing than the term "loss" would convey in common parlance (as articulated in Statement of Concepts No. 6, *Elements of Financial Statements*, (CON 6)). As stated in footnote 1 of FAS 5: "The term *loss* is used for convenience to include many charges against income that are commonly referred to as *expenses* and others that are commonly referred to as *losses*." The difference between true *loss* contingencies and *loss and expense* contingencies is significant. In the strict sense of the term, *loss* contingencies would include items such as litigation and environmental contingencies. However, *loss and expense* contingencies would include, among other things, all contra asset accounts, uncertain tax positions related to VAT (which are common in foreign tax jurisdictions), property taxes, and contracts that could have payments based on optional future performance. The final Statement needs to clarify whether the term loss contingency is intended to convey possible losses as that term is articulated in CON 6 or both possible losses and possible expenses.

If the Board's intent is to provide disclosures on potential losses, we would suggest directly stating that the proposed Statement applies to litigation and environmental claims described in paragraphs 4(e) and 4(f) of FASB Statement No. 5, and to loss contingencies recognized in association with a business combination under the provisions of FAS 141(R).

Paragraph 3(c) of the Exposure Draft excludes liabilities for unpaid claim costs related to insurance contracts or reinsurance contracts of an insurance entity or a reinsurance entity within the scope of various pronouncements. Would this exception apply when those types of entities are consolidated by a parent that is not an insurance entity (captive insurance subsidiaries)? We believe the Board should clarify this scope exception.

Proposed disclosure rules and attorney-client privilege

In our opinion, every proposed disclosure would in some way bias our litigation position and put at significant risk attorney-client privilege. We believe the following proposed disclosures will have the potential to significantly affect the outcome of ongoing litigation to the detriment of the company:

a. Disclosure of our best estimate of the maximum exposure to loss when no specific amount is stated for the claim
b. The legal or contractual basis for the claim
c. Anticipated timing of resolution
d. Description of the factors that are likely to affect the ultimate outcome of the contingency along with their potential effect on the outcome
e. Significant assumptions made in estimating the amounts disclosed
f. Significant assumptions made in assessing the likely outcome
g. Qualitative and quantitative description of the terms of relevant insurance indemnification arrangements that could lead to a recovery of some or all of the possible loss, including any caps, limitations, or deductibles that could affect the amount of the recovery

h. If we believe the amount of the claim or assessment or the maximum exposure to loss is not representative of our actual exposure, our best estimate of the possible loss or range of loss.

We have many concerns about making the above disclosures; particularly when the contingency is related to a contested claim. An entity's assessment relating to the valuation of a claim necessarily relies on counsel's legal strategy and legal opinion on the claim's defensibility; matters that are at the heart of attorney-client privilege. Case law is inconsistent on the question of whether these types of disclosures effectively waive attorney-client privilege. Consequently, the proposed disclosures would put that privilege at significant risk. Moreover, these disclosures would, in essence, require defendants to disclose publicly their legal strategy and to provide information that could easily be misconstrued as a tacit admission of liability by a plaintiff's attorney. We believe these disclosures could be used to mislead arbiters of contested claims, thus affecting the ultimate outcome of those claims.

In addition, in the absence of a contingency valuation model, there is a significant risk of an over-reliance on plaintiffs demand for damages. When bringing lawsuits, plaintiffs have the ability to ask for an unlimited amount of damages, no matter whether their claims are based in fact or baseless. In effect, the plaintiff's characterization of the claim inappropriately becomes a primary factor in evaluating risk with the result that there is less accuracy to the Company's disclosures, rather than more.

The Board asked for feedback on its description of the term "prejudicial information." The legal concept of prejudice is rooted in a tendency to bias the outcome – not necessarily to the advantage or detriment of any given party. We believe "to the entity's detriment" should be removed from the description of prejudicial information to make it consistent with both the legal concept of prejudice and the accounting concept of neutrality.

We believe aggregating the information as described in the two step approach in paragraph 11 of the Exposure Draft may help mitigate concerns. However, we are not sure how that information could be aggregated. The likelihood that various contingencies even within a category (for example, litigation loss contingencies) would arise from similar enough circumstances and have similar factors related to their potential assessment, cash flow timing, and possible disposition to allow aggregated disclosure is remote. Thorough disclosure of the required items on an aggregated basis would provide enough information for plaintiffs to identify their individual claim. In order to aggregate contingencies at a level that would not provide enough information for plaintiffs to identify their individual claims, the disclosures would have to be so vague as to be meaningless to financial statement users.

Effective Date

Until a final standard is actually issued, reporting entities do not have enough information to properly begin implementing the standard. According to the technical plan posted on the FASB's website, the Board plans to issue the final Statement in 4Q 2008. Even if the final standard were issued immediately, the sheer volume of information that would need

to be consolidated makes it impracticable to implement this proposed standard by the end of 2008. For companies with international operations it would be extremely difficult to collect, analyze, and consolidate the information by the proposed effective date.

Conclusion

PBG supports the Board's efforts to improve accounting and reporting. We believe only development of a more robust model for valuing contingent liabilities will address constituents' concerns. Without a robust measurement (valuation) model for contingencies there is no way to know whether any proposed disclosures would be useful in determining the risk inherent in contingencies. We believe requiring disclosures when the Board does not know whether they provide useful relevant information about the risks associated with contingencies would likely provide financial statement users with a false sense of security, while potentially misleading them as to the actual risks of their investment.

Absent a robust contingency valuation model we believe the proposed disclosures place too much reliance on the plaintiff's characterization of a claim and would disadvantage defendants when a contingency exists as the result of a contested claim. Also, the required disclosures put attorney-client privilege at significant risk.

We believe the concept of prejudicial information should be neutral in its application. That is, information that would bias the outcome of a contingency in either direction should be considered prejudicial information. We believe the aggregation provisions for prejudicial information may help mitigate concerns. However, we do not believe the nature of these contingencies and the volume of information required lends itself to aggregation.

We believe the scope, as written in the Exposure Draft, is far broader than the Board's intent. Unless the scope is appropriately limited, the disclosure requirements will be unduly burdensome for financial statement preparers.

Given the volume of information that would need to be consolidated to make the proposed disclosures, an effective date of December 2008 is unreasonable.

We hope you find our comments helpful in improving financial reporting.

Sincerely yours,

/s/ Thomas M. Lardieri