



August 7, 2008

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

File Reference No. 1600-100

Dear Director:

The Financial Reporting Committee of the Institute of Management Accountants (“we” or “FRC”) is writing to provide its views on the Financial Accounting Standard Board’s (FASB) exposure draft on proposed Statement of Financial Accounting Standards on *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)*, dated June 5, 2008 (the “ED”).

While we understand the Board’s desire to address concerns raised about potential shortcomings in disclosure, the FRC believes that the enhanced disclosure proposals in the ED will bring about potentially more significant financial reporting problems. There is a presumption that management has extensive information and analysis about most, if not all, contingencies, which, based on the experience of members of our committee is simply not true. Moreover, with respect to litigation contingencies, the proposed requirements would compel companies to report information that could be both misleading and prejudicial to their cases. If the Board decides to proceed to a final standard, which we do not recommend, we believe that the Board will need to reconsider its positions on a number of key principles. These items, which are elaborated on in the following paragraphs, relate to the scope of the ED, disclosures about maximum potential exposures and remote disclosures, the scope and frequency of tabular disclosure requirements, certain attorney client privilege issues and the effective date. We do not believe these provisions are operational, either due to the burden they will place on companies or due to legal considerations regarding prejudicial information and attorney-client privilege.

We believe the existing disclosure rules included in *FASB Statements No. 5, Accounting for Contingencies* and *No. 141(R), Business Combinations*, provide sound, principle-based guidance on disclosure of contingencies. We believe a better solution than amending the current disclosure rules would be to first focus the profession’s efforts on improving application in practice, including SOP’s 94-6 and 96-1. This could be done through the issuance of practice aids or “best practices” documents by a respected organization within the accounting profession (e.g., the FASB, the Center for Audit

Quality or the AICPA), in consultation with professionals from the legal and investor community. Such practice aids could provide real life examples of disclosures that provide useful information to investors.

Should the FASB not pursue this course of action and move forward with the ED, we offer the following observations and suggestions that we believe would be necessary to *balance compliance costs and limit companies' financial exposures* resulting from disclosure of sensitive information on their existing contingencies that could be prejudicial to the ultimate outcome of the matters.

Scope of the Proposal

We believe the scope of the ED is too broad. We agree with the proposed exceptions to the scope of the ED as listed on page v of the exposure draft (as these exceptions largely relate to disclosure of items governed by other standards), as well as the exclusion from the roll-forward table of items identified and resolved within the same period. However, we believe the remaining scope could be interpreted to go well beyond the types of contingencies that are of primary concern to investors. We believe investors are primarily concerned about the perceived lack of disclosures related to significant litigation and environmental matters, both in terms of significant matters that are unresolved as of the end of a reporting period and significant matters that were resolved during the period. We do not believe there is a current practice issue related to disclosures of items that are more operational in nature that could otherwise be interpreted to be within the scope of the ED (e.g., normal ongoing legal matters such as employment-related litigation and minor personal injury claims, the risk of loss or damage from various hazards, or other types of operating accruals subject to uncertainty, such as sales returns). As such, we believe the Board should explicitly state that the scope is limited to significant litigation and environmental matters. To the extent normal ongoing "operational" items are included within the scope, we believe it will result in 1) operational difficulties, as discussed later in this letter, and 2) expansive boilerplate disclosures that are of little or no incremental value to investors while imposing significant costs to preparers.

Quantitative Disclosures of Maximum Exposure to Loss

We do not believe that disclosure of the amount of the maximum claim or assessment against the entity or best estimate of maximum exposure to loss, as would be required by paragraph 7a., would provide financial statement users with decision-relevant information. The net result of this provision would seem to require companies to disclose and quantify worst-case scenarios with respect to legal contingencies that are inherently extremely difficult to evaluate. Further, while compiling or computing the amounts for actual claims assessed against an entity may be possible, we do not believe it is reasonable to expect a preparer to estimate a maximum loss on an exposure in situations

where the plaintiff has not quantified the claim. Any calculation of the exposure when no quantified claim amount is assessed is often subjective and based on multiple competing factors. These amounts are not typically representative of the ultimate outcome and as a result could be very misleading to an investor. Finally, the calculations and disclosure of the exposures could be prejudicial to the ultimate outcome.

The possible loss or range of loss is likely more meaningful to the financial statement users than the maximum exposure. The range of loss provides more information as to what the entity believes to be the likely impact on the financial statements. However, providing this information could be detrimental to the entity. We believe it could be prejudicial to the ultimate outcome, providing a potential roadmap to plaintiffs. Therefore, disclosure of the range of loss for specific contingency items should not be required.

Rather than the approach proposed in the ED, we would recommend further effort being expended on improving practice under existing standards. For loss exposures for potentially material items wherein the amount can be reasonably estimated and disclosure would not be prejudicial, we would recommend publication of best practice examples illustrating effective ways of applying existing requirements, including disclosure of non-prejudicial qualitative information and a best estimate, or range of loss. In situations where risk of loss cannot be estimated or disclosure of quantitative information would be prejudicial, only non-prejudicial qualitative disclosures should be required.

Remote Loss Contingencies

Paragraph 5a appropriately excludes from disclosure loss contingencies for which a loss is considered remote. We agree with this exclusion as we do not believe disclosure of the possibility of remote events is useful to investors, and in fact could distract from more meaningful disclosure. However, in paragraph 6 the Board requires disclosure of remote contingencies that are expected to be resolved within one year and that could have a severe impact. This would require companies to forecast the timing of litigation or other claims that are inherently uncertain and to make judgments about what “could” have a severe impact.

Having already concluded that a contingency is remote, we do not believe the benefits of providing this information would outweigh the administrative burden of the underlying process. Further, we believe it would be impractical for most companies to accurately predict the timing of resolution of many remote contingencies. The timing of resolution for many contingencies can be very difficult to predict, even for matters that are highly probable, due to difficulties in predicting the actions of the multiple parties involved. Management generally devotes fewer resources to cases that are judged to be remote. Therefore, predicting the timing of their resolution will inherently be more difficult. This

will likely result in disclosures that are incorrect in hindsight, which could lead to further legal exposure from assertions of inaccurate or misleading disclosures.

In addition, as noted on page vi of the exposure draft, the IASB presently does not require disclosure of remote contingencies. We do not believe the Board should issue a new standard that creates a divergence between US GAAP and IFRS on such an important matter, particularly where there does not appear to be a compelling reason to create divergence.

Accordingly, we believe the Board should delete paragraph 6 from a final standard so that truly remote contingencies within the ED's scope are not required to be disclosed.

Tabular Reconciliation of Recognized Loss Contingencies

We believe it would be extremely difficult for companies to comply with the tabular reconciliation requirements. Many of the more operational items that could be scoped into the reconciliation are tracked manually or in multiple off-line repositories or systems. Any holistic reporting of all such contingencies, including the detailed movements in the underlying accounts, would present a significant administrative burden far in excess of any disclosure benefits gained.

Further, to the extent that any accruals would be material, a company would already be disclosing such amounts. To aggregate and tabulate immaterial amounts would not seem to provide useful information. In addition, regarding the qualitative description of movements required by the second part of paragraph 8, the required components of the reconciliation specified in paragraph 8a-d seem self explanatory and it is not clear what else a company would provide in the way of a "qualitative description of the significant activity."

Tabular Reconciliation – Frequency

The ED currently requires tabular reconciliation for both interim and annual reporting periods. We believe there is little incremental value to interim disclosure. Any significant changes in interim periods versus the data presented annually would already be required to be reported under current guidance (APB 28 and Article 10 of Regulation S-X). This should be sufficient to meet investor needs, without creating the significant burden of full interim tabular updates, due to the non-systemic nature of this data compilation. Preparation of the tabular disclosure will already be cumbersome on an annual basis, but would be even more difficult in interim quarters due to tighter timing for quarterly reporting. We would also note that for contingencies under *FIN 48, Accounting for Uncertainty in Income Taxes*, the roll-forward reconciliation is only required on an annual basis.

Finally, if quarterly reconciliations are required, additional guidance would be needed on how items identified and accrued in one interim quarter and settled in a subsequent quarter within the same year are to be handled in the annual reconciliation, given the provision that items identified and settled in the same period are exempted from the reconciliation. To be clear, we support this exemption. Given that the exempted items are by definition settled, they do not represent “contingencies” as defined in SFAS 5. The exemption generally impacts loss exposures that are viewed as normal ongoing operating items. We do not believe investors are concerned about these types of items.

Accordingly, if the tabular reconciliation is retained, we support requiring it on an annual basis only.

Attorney – Client Privilege Matters

We understand that the legal community has expressed significant concerns around the proposed standard. These include practical considerations around the ability to estimate and provide meaningful numbers that do not create an illusion of certainty about highly uncertain items. Further, they raise concerns that early disclosure concerning details of a lawsuit may prejudice an entity’s case. They raise concerns that the attorney-client privilege provided under the current treaty between the American Bar Association and the American Institute of Certified Public Accountants, does not provide the auditing community access to the appropriate level of information that would be needed in order to corroborate management’s assertions in regard to the proposed disclosures. Unless the ABA reconsiders this policy and works with the AICPA to revise their long-standing treaty on attorney responses to auditor requests for information and representation, and it is unlikely attorneys will be able communicate to the auditor all of the information the ED requires.

We strongly share these same concerns.

Effective Date

We believe that the proposed effective date is unrealistic and not achievable. Due to the nature of contingencies, they are not prone to systemic real-time tracking, particularly in large multinational companies that operate in multiple legal systems and have information spread throughout the world. Because of this, companies generally do not currently have the systems in place to accumulate the required information. In addition, we would note the time that would be required to amend the understandings between the AICPA and ABA before any new disclosure requirements are put in place. In light of these factors, we do not believe this standard could be effective until the end of 2009 at the earliest.

In summary, we do not support the issuance of this exposure draft as a final standard. While we support the FASB's intent to improve companies' disclosures about certain loss contingencies, we believe the existing disclosure rules in FASB Statements No. 5 and 141R, as well as SOP's 94-6 and 96-1, provide appropriate principle-based guidance on disclosures of contingencies. We suggest focusing on improving practice relative to existing standards rather than amending those standards. Should the FASB instead choose to move forward with the ED, certain significant changes need to be made in the areas of scope reduction, nature of quantitative information disclosed, eliminating any disclosure of items deemed remote, limiting the scope and frequency of tabular disclosures requirements, addressing attorney-client privilege matters and delaying the ED's effective date.

We appreciate the Board's consideration of these comments. We are available to discuss these matters at your convenience.

Sincerely,



Mick Homan
Chairman, Financial Reporting Committee
Institute of Management Accountants