

August 05, 2008

Technical Director File Reference No. 1600-100 Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, Connecticut 06856-5116



LETTER OF COMMENT NO. 35

File Reference No. 1600-100

Dear Technical Director.

Citigroup appreciates the opportunity to comment on the Exposure Draft, Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R) (the "ED" or "Exposure Draft").

Citigroup is in favor of increasing transparency of its financial statements for the benefit of users, and we support the Board's efforts to improve current disclosures of loss contingencies. However, we feel that the proposal, as written, will be detrimental to companies with pending or potential litigation and will provide little incremental reliable information to investors. Therefore, we suggest that the FASB discontinue this project.

After reviewing the ED, our main concerns are as follows:

- * The proposed disclosures are not appropriate for the highly litigious US corporate environment. In particular the ED does not fully take into account the adversarial nature of U.S. litigation.
- ❖ The proposal to expand the scope of those loss contingencies subject to disclosure, including certain contingencies that are considered remote, is excessive and costly. Furthermore, requiring any disclosure of remote contingencies will conflict with traditional materiality standards set forth by the SEC and the courts.
- The requirement to disclose unasserted claims that are probable of being asserted when the likelihood of loss is more than remote explicitly invites more litigation.
- We believe the quantitative and qualitative disclosures proposed will lead to the disclosure of prejudicial information by defendants for a significant number of litigation claims. The disclosure of such information is likely to be highly detrimental to a Company's defense in many cases. Furthermore, the quantitative requirement to

disclose the entity's best estimate of the maximum exposure to loss in the absence of a claim amount potentially compromises the defendant's litigation strategy by providing the plaintiff with the defendant's assessment. As a result, the defendant could be placed in a disadvantageous position.

- The additional qualitative disclosure requirements may be based on confidential communications between the entity and its counsel, which could lead to a waiver of its attorney-client privilege.
- ❖ Some elements of the ED (such as the proposed disclosure of certain remote loss contingencies and probable unasserted claims) will need to be based on highly unreliable estimates. Forcing entities to make disclosures regarding such items will reduce the reliability of financial statements.
- ❖ The additional disclosure requirements for subsequent events are very far reaching. It is questionable whether companies could provide reliable disclosures on information the entity was made aware of shortly before issuing its financial statements. An entity's attempt to evaluate the contingencies in such a short period of time could result in highly unreliable and potentially misleading information being disclosed to financial statement users.
- ❖ The aggregation of loss contingencies by the nature of the contingency for disclosures purposes will often not be sufficient to prevent the disclosure of prejudicial information. In some cases, for example, where there is one very significant litigation claim or only one claim of a particular nature, we believe that simple aggregation of loss contingencies for disclosure purposes will not address this issue.
- ❖ Moreover, we believe that the inclusion of a prejudicial exemption that may be used only in "rare" circumstances, will be of little use in preventing companies from disclosing prejudicial information in relation to litigation claims. Given our concerns about the limited benefits of aggregation of loss contingencies and the volume of litigation claims that would be affected by the proposals in this ED, we believe that such an exemption would likely need to be used frequently in order to provide any benefit.
- ❖ Furthermore, even if an entity is able to make use of the prejudicial exemption from the main disclosure requirements in the ED, we believe that the minimum disclosure requirements could still result in the disclosure of information that is detrimental.

For the reasons outlined above and discussed in further detail below, we do not agree with the issuance of the Exposure Draft. We believe that current standards relating to loss contingencies, if uniformly applied by companies, are workable standards. Therefore, we believe that the FASB should discontinue this project. We believe that many of users' concerns in relation to the lack of transparency around loss contingencies result from inconsistency in the application of the current requirements of FASB Statement No. 5

Accounting for Contingencies (FAS 5), rather than from a deficient accounting standard. We, therefore, recommend that the Board work with preparers to improve the consistency of application of the existing requirements as opposed to creating a new disclosure standard.

However, should the FASB decide to continue with the implementation of this ED, we strongly recommend that, at a minimum, the Board address the following points that we believe are the most detrimental elements of the proposed disclosure requirements:

- * Keep the scope of required disclosures consistent with that in the existing FAS 5 by:
 - Removing the requirement to disclose an unasserted claim or assessment in which there has been no manifestation by a potential claimant of an awareness of a possible claim or assessment, unless it is probable that a claim will be raised and its chances of success are more than remote; and
 - o Eliminating the need to disclose loss contingencies for which the likelihood of loss is remote when the contingency is expected to be resolved in the short term and could have a severe impact on the entity's financial position.
- ❖ Eliminate the requirement to disclose the entity's best estimate of the maximum exposure to loss in the absence of a claim amount or assessment.
- ❖ Maximize the level of aggregation allowed for disclosure purposes (for example, by allowing all litigation claims to be disclosed together).
- ❖ Expand the use of the prejudicial disclosure exemption beyond "rare," such that it may be used where, in the opinion of legal counsel, inclusion of the required disclosures would result in the reporting entity's providing prejudicial information to a claimant or potential claimant.
- Provide an additional exemption from the quantitative disclosure requirements where the reporting entity is unable to make a reliable estimate regarding a particular loss contingency or group of loss contingencies.

The balance of the letter contains our detailed comments on the Exposure Draft, and our suggestions for improving it in the event that the Board decides to proceed with the standard.

Remote Loss Contingencies

Disclosures of loss contingencies where the likelihood of loss is remote do not provide valuable information to financial statement users, even where they are likely to be resolved in the near term or could have a significant impact on the reporting entity. The ED as drafted would likely lead to significant additional loss contingencies being disclosed, thus obscuring information about the key loss contingencies on which users should be focused. Such disclosures would also result in additional and unnecessary costs to the reporting entity.

Furthermore, as an entity approaches the date of resolution of a contingency, it has a greater capacity to assess with certainty the likelihood of loss of such contingency. Therefore, for a contingency that has been determined to be remote, even if the impact could be "severe," providing these disclosures implies that the entity's assessment of remote items expected to be settled within one year is not correct. This disclosure could also mislead users of the financial statements by overstating potential losses.

Unasserted Claims

The proposal to increase the level of disclosure regarding certain unasserted claims is not operationally feasible in our view, and may result in the disclosure of information that is detrimental to an entity that is subject to litigation. We believe that the current disclosure requirements of FAS 5 regarding unasserted claims are sufficient and accomplish the goal of preventing the financial statements from being misleading.

First, it is not clear to us whether a reporting entity could obtain the required data in order to provide the additional proposed disclosures for certain unasserted claims. Given that the specific claims have not been publicly asserted, obtaining information for probable claims will be based largely on speculation. However, as drafted, the ED requires detailed disclosures of both quantitative and qualitative information. We are concerned that entities will be unable to provide reliable information regarding exposure to loss, timing, basis for the claim, and a description of those factors affecting the outcome of the contingency.

In addition, should an entity be able to provide such information, we are troubled that doing so may invite further speculative litigation claims, as it will highlight to potential claimants the target areas where there is an increased likelihood of the reporting entity's settling if a claim were made. This disclosure will also increase the costs of defending against such speculative claims. Furthermore, we are concerned that the disclosure of unasserted claims may compromise the entity's ability to defend itself should the claim ever be asserted. Therefore, we believe that unasserted claims should be scoped out the Exposure Draft and continue to be disclosed under the current requirements of FAS 5.

Disclosure of the Claim Amount or the Maximum Exposure to Loss

Although Citigroup appreciates investor concerns over the insufficiency of disclosures about contingencies, we question whether the proposed disclosures will actually address the concerns raised by constituents. By requiring entities to provide information that is by its nature highly uncertain and continually evolving, the proposed disclosures have the potential to mislead investors, who will likely assume a level of reliability in the quantitative data that does not exist. Furthermore, the Exposure Draft would require an entity to disclose prejudicial information that may weaken the entity's position in current litigation proceedings. In some cases, the disclosure of this highly subjective quantitative data may result in the reporting entity's being subjected to further litigation should the estimates disclosed prove to be different from the eventual outcome.

We have very serious concerns about disclosing the entity's best estimate of the maximum exposure to loss in cases where the claimant has not stated a claim amount. This disclosure requirement forces an entity to quantify and disclose its potential maximum exposure in an adversarial proceeding where the claimant has been unwilling or unable to quantify the maximum loss. This disclosure could compromise possible defense strategies and in certain instances may create evidence that could be used against the defendant in the actual proceedings.

In many cases, it may be very difficult or impossible for entities to make a reliable estimate regarding the maximum possible loss. However, unlike the current FAS 5 requirements, entities are not exempted from disclosure if the relevant amounts cannot be reliably estimated. The Exposure Draft forces an entity to make an assessment of possible loss even if it has no basis for making that assessment. Thus, it may lead to the disclosure of highly unreliable information, which we believe would be of little real benefit to users of the accounts. This disclosure requirement is also incompatible with a typical litigation proceeding, in which prediction of outcome and estimation of exposure are generally highly uncertain, particularly in the early stages of the process. As a result, the required disclosures and estimates themselves, should they prove to be inaccurate, may be sources of additional claims and litigation or make resolution of the claim more difficult and costly.

Therefore, we suggest that the requirement to provide an estimate of the maximum exposure to loss be removed from the ED. At a minimum, entities should be exempt from making such disclosures where it is not possible to generate a reliable estimate of the potential amount of loss.

Other Qualitative Disclosures

In addition to our concerns regarding the estimation of the maximum possible loss, we have similar concerns regarding the qualitative disclosures proposed in the ED. Disclosure of information relating to:

- the entity's assessment of the most likely outcome,
- factors that could affect the outcome of a loss contingency, and
- the significant assumptions made in estimating the amounts disclosed

are all likely to affect the outcome of many litigation claims. Such information could expose a defendant's litigation strategy to claimants. We are concerned that by requiring this disclosure, entities may be forced to disclose information that could result in their waiving their attorney-client privilege.

For the reasons stated above, we suggest that the Board remove these requirements from the Exposure Draft.

Subsequent Events

Citigroup agrees with the principle of disclosing information regarding loss contingencies that are subsequent events and believes that such disclosures of material litigation are necessary to keep the financial statements from being misleading. However, as written,

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the ED significantly expands the volume of disclosures required for loss contingencies that are also subsequent events. Entities would be required to meet the qualitative and quantitative disclosure requirements of paragraph 7 of the Exposure Draft should an entity become aware of a loss contingency incurred after the financial statement date, but before such financial statements are issued.

Given the nature of subsequent events, entities have a limited period of time between learning about the existence of a subsequent event and the actual filing of the financial statements. Therefore, requiring this level of disclosure for subsequent events will impose significant incremental costs on preparers. Furthermore, the limited timeframe in which to analyze a subsequent loss contingency in order to meet the increased disclosure requirements may compromise the reliability of the data disclosed. Under the proposed disclosures, entities must provide, among other things, estimates of the maximum exposure to loss, a description of the factors that are likely to affect the ultimate outcome of the contingency and a qualitative assessment of the most likely outcome of the contingency. Given the limited amount of time that an entity has to meet its reporting period deadlines, this type of detailed assessment in many circumstances will likely not be possible.

In contrast, under current FAS 5 guidelines, entities are only required to provide information regarding the nature of a contingency that arises subsequent to the balance sheet date and, if necessary, an estimate of the possible loss or range of loss associated with the contingency. Therefore, we believe that the Board should remove subsequent events from the scope of the project and retain the current disclosure requirements. We believe that the current level of disclosure regarding subsequent events prevents an entity's financial statements from being misleading, while at the same time not imposing excessive costs on an entity or jeopardizing the reliability of such disclosures given the limited period of assessment associated with a subsequent event.

Alternatively, we propose that an entity be exempt from disclosing those items for which it cannot make a reliable assessment given its reporting deadlines. Entities would still be required to disclose the nature of the contingency and an explanation that it could not make a reliable assessment of the contingency at the time the financial statements were filed.

Prejudicial Exemption

We acknowledge the Board's effort to strike a balance between the interests of both users and preparers when including the prejudicial exemption in the proposal. However, we feel that the ED does not achieve the Board's objective.

The Exposure Draft indicates that the use of the prejudicial exemption is expected to be rare and the ability to aggregate disclosures will alleviate the prejudicial nature of certain disclosures. Simple aggregation of loss contingencies for disclosure purposes will not address this issue. For example, an entity may have a very large claim and many smaller ones. Even when these claims are aggregated, it is likely that financial statement users

will be able to discern sufficient detail regarding the single significant claim in the group of aggregated claims to be detrimental to the reporting entity.

Given the above, if the prejudicial exemption is limited to "rare" events, we do not believe that it will suffice to prevent the disclosure of prejudicial information. In contrast, we believe there are a large number of litigation claims for which entities would need to use the prejudicial exemption in order to prevent the disclosure of prejudicial information. We suggest that the Board modify the Exposure Draft to indicate that it expects that use of the prejudicial exemption will not be "rare" with respect to litigation contingencies.

Furthermore, even if an entity is able to make use of the prejudicial exemption, the remaining required minimum disclosure would significantly reduce the utility of the exemption, as it could still result in the disclosure of information that is detrimental to a reporting entity. As discussed above, the requirement to disclose an estimate of the maximum potential loss, a description of the factors that are likely to affect the ultimate outcome of the contingency, and the potential impact of the outcome could be prejudicial to a reporting entity. We recommend that the Board remove these items from the required disclosures where the prejudicial exemption applies.

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In conclusion, we have a number of fundamental concerns around the proposals set out in the ED and, therefore, recommend that the Board discontinue the project or, at the very least, make modifications to the current proposal to resolve the various implementation issues raised in this letter. We believe that the benefits of providing the proposed information do not justify the related costs.

In the appendix below, we respond to some of the specific questions raised by the Board in the proposal, which support the comments that we have made above.

We thank the Board for its consideration and would welcome the opportunity to further discuss our comments with Board members and their staff. Please do not hesitate to contact me at (212) 559-7721.

Sincerely,

Robert Traficanti Vice President and Deputy Controller

APPENDIX

1. Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

The proposed Statement would not meet the project's objective of providing enhanced disclosures about loss contingencies. On the contrary, providing the additional information would be very costly for the company and the information would be more useful to the company's adversaries in a litigation process than to investors themselves.

The company will often be unable to estimate the exposure without consulting with its outside counsel, who are bound to be very uncomfortable providing estimates of maximum exposure to loss during the early stages of litigation.

- 2. 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?

 Not for remote items. Providing this disclosure implies that a reporting entity's assessment that a contingency is remote items for loss contingencies expected to be settled within one year is unreliable.
- 3. 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?

 No. See our comments in the body of our letter.
- 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?

No. As stated above, disclosing that kind of information can be detrimental to the company and create an advantage to the plaintiff.

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?

The Board should consider requiring only the claim amount when available.

5. If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

Citigroup would not be able to provide a reliable estimate of the maximum exposure to loss, without jeopardizing its potential legal defense.

6. This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

Yes. See our comment in the body of our letter.

7. If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

We agree with providing a prejudicial exemption. However, we believe the exemption should be expanded.

8. The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, Provisions, Contingent Liabilities and Contingent Assets, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

No. Given the amount of loss contingencies that arise, we believe the use of this exception will need to be common not "rare".

9. Do you agree with the description of prejudicial information as information whose "disclosure . . . could affect, to the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define prejudicial information and why? Yes.

10. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

The tabular reconciliation should be required only annually. Quarterly reporting timeframes are very tight. Therefore, it is very difficult to prepare a tabular reconciliation within a 30-day filing period for each quarter. See our comments in the body of the letter for a detailed discussion of our concerns regarding the proposed disclosures.

12. Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?

No.

13. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

No. Quantitative disclosures will be time consuming to develop for large companies with high volume of litigation outstanding. The initial analysis of each lawsuit under the proposed standard will be very difficult to do and will require a lot of time.