



LETTER OF COMMENT NO. 223

615 MERRICK AVENUE, WESTBURY, NY 11590

August 7, 2008

Mr. Robert H. Herz Chairman Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Sir David Tweedy Chairman International Accounting Standards Board 30 Cannon Street London EC4M 6XH United Kingdom

Re: Disclosure of Certain Loss Contingencies- an amendment of FASB

Statements No. 5 and 141(R) - File Reference No. 1600-100

Gentlemen:

New York Community Bancorp, Inc. appreciates the opportunity to present our comments on the Financial Accounting Standard Board's exposure draft titled "Disclosure of Certain Loss Contingencies: An Amendment of FASB Statements 5 and 141(R)" (the "Exposure Draft"). As set forth below, we urge the Board not to adopt the proposed amendment to FASB Statements No. 5 (Accounting for Contingencies) and 141(R) based on the concerns noted herein, including, among other things, that the proposal as written will confuse, rather than clarify, financial disclosure; will dismantle vital legal principles advanced by the attorney-client and work-product privileges; will unnecessarily undermine an important balance between issuers and litigants; and will result in more irresponsible claims against public issuers while providing no actual benefit to investors.

New York Community Bancorp, Inc. ("NYB") is the multi-bank holding company for New York Community Bank and New York Commercial Bank and one of the premier financial institutions in the Metro New York/New Jersey region. With assets of \$31.1 billion and a market capitalization in excess of \$5.6 billion, we are among the largest publicly traded bank holding companies in the United States. Since our conversion to stock form in 1993, we have maintained our focus on protecting the interests of our investors while maintaining an expectation of franchise expansion and financial growth. The management of NYB, including the several inhouse attorneys who work daily to address a variety of legal matters posed by claimants, strive to

ensure that NYCB's financial disclosure presents an accurate financial picture for investors, including with respect to loss contingencies.

Accordingly, our review of the Exposure Draft has left us with many concerns, which, we believe, our investors would share. Among them are the following:

Litigation outcomes are often highly unpredictable and transitory. Countless extraneous factors influencing the course of a proceeding make it impossible to create a formula to measure loss that would be accurate, provable, or useful. As a result, prediction about loss at almost any stage of litigation is inherently unreliable and neglects important legal processes designed to bring about final and fair resolutions of claims.

The discovery process in the United States is designed to allow for the exchange of facts so that litigants may discover from one another the information relevant to a claim and so that an adjudicator may draw meaningful conclusions about that information. Well-established state and federal rules of civil procedure are designed to ensure that judges and juries are not required to make their decisions until appropriate discovery (both fact and expert) is completed – i.e., when the record is complete and closed. Why would it be beneficial to require an issuer or investor to attempt to do otherwise? The Board's proposal flies in the face of these important principles. For a company to comment publicly without a complete set of facts to support its estimates would be both premature and potentially irresponsible.

Even if the various facts relevant to a claim could be accounted for (somehow, before discovery is completed), litigation typically proceeds according to complex and often drawn out time frames – sometimes through several reporting periods. Through these cycles various factors are likely to bring about numerous highs and lows, which would significantly alter the financial value of a suit and complicate the predictability of its outcome. Consequently, a number that may accurately estimate loss one day, may become completely irrelevant the next. Further, no effective standard exists for measuring the accuracy of an issuer's prediction about such cases. In such circumstances, despite the best efforts of an issuer to assess and predict litigation, an auditor would be left only to second guess its client's estimations, contributing little, if anything, to the objective of full and accurate disclosure about loss contingencies.

An auditor charged with responsibility for assessing the accuracy of an issuer's predictions about loss contingencies actually may do more harm than good by undermining the attorney-client privilege and attorney work product protections deeply rooted in the foundations upon which our legal system was established. Plaintiffs and defendants alike, as well as respected jurists, have fought through the years to guard these important principles as

fundamental to the system envisioned by the Founders. These principles are intended to foster frank, open, and uninhibited discourse between attorneys and their clients (including in-house counsel and management) so that the client's legal needs can be properly addressed by counsel who are aware of all relevant information about a particular matter. Free and open discussion with counsel fosters an environment of "idea exchange" that benefits a company and its shareholders.

The outright release of privileged information by an issuer, as would be necessary in disclosure of an estimate of likely losses in a litigated matter, will dismantle the privileges that are designed to protect such information. Furthermore, an issuer's Independent Registered Public Accounting Firm will require comfort on the additional information disclosed or reserves taken, which then will result in the need for additional disclosure and to the creation of additional documentation and other information, all of which then would potentially be exposed to further unfair exploitation by adversaries. By weakening the privileges that protect information from such exposure, the proposal will interfere with the free exchange of important information between legal counsel and their clients. Given these important collateral consequences to fundamental structures within our legal system, the Board's proposal should be withdrawn.

A further collateral effect of the proposed rule would be the resulting extraordinary and unprecedented imbalance in an issuer's position vis-à-vis an adversary in litigation. The proposal would require issuers to reveal myriad details regarding their defenses or settlement strategies. The more meaningful the disclosure, the more valuable such information will be to adversaries. This is directly at odds with the system upon which jurisprudence in the United States is based, which relies upon the skill of each advocate representing his or her party's position from an equal footing, with an impartial judge tasked to determine the outcome of the case. The proposal, putting issuers at an obvious disadvantage, suggests that they are not eligible to participate on common ground in such system or, worse, that they serve only as adjuncts for their adversaries in litigation (as is the case in the inquisitorial system). We doubt that investors would view this unprecedented approach as beneficial, where such imbalances likely will result in increased expense to the companies in which they hold stock.

Compounding problem upon problem, once an issuer is compelled to waive its legal privileges, there will exist enormous potential for misuse and abuse through the virtually unregulated penetration by adversaries into its databases and carefully preserved records. Further, the proposed requirements likely would provide fertile ground for adversaries, motivated solely by personal gain, who would exploit the power to threaten a lawsuit,

¹ Recent overly aggressive and constitutionally questionable challenges to these privileges, such as those observed by Judge Kaplan in *U.S. vs. Jeffrey Stein, et al.* (June 28, 2006, [S1 05 Crim. 0888 (LAK)], opinion available online at http://www.acca.com/public/attyclientpriv/kpmg_decision.pdf.), have been met with staunch resistance, including in Congress, where bills have been submitted seeking to ensure their preservation (see, *e.g.*, The Attorney-Client Privilege Protection Act of 2007 (H.R. 3013 and S. 186)).

independent of the merits of their cases, in order to force a settlement before a suit is filed. Actions will be undertaken with the expectation that an issuer may be motivated to settle in order to avoid the risk of adding the matter to its public loss contingency disclosure.

While numerous factors are considered in determining the appropriate strategy for each particular case, and, in turn, determining the appropriateness of establishing a reserve for potential losses related to a claim, disclosure of such reserves to an adversary would unfairly threaten the negotiation position of an issuer – obliterating the important balance between the parties and setting the stage for a ratcheting up of the floors upon which a minimum settlement positions are based. We see no benefit in this for investors.

Investors also will suffer as a result of the potential exposure to additional adverse claims that the Board's proposal will yield. Publicizing potential loss estimates in the manner proposed will create an incentive for plaintiffs to file claims merely for the purpose of testing the waters – attempting to discover whether an issuer views the claim as having any value. In light of the pressure to not underestimate potential exposure, issuers may be compelled to project potential losses at levels that provide greater (although not more rational) enticement for potential claimants. Those who currently lack the conviction to pursue a claim due to its frailty or legal insufficiency will see less risk in undertaking an exploratory process, groping at the legal system, just to try their hand in the game with little concern for their own expense or losses. The result will be that more corporate resources are drained in responding to more claims and undertaking costly estimates of the related potential loss. The Board has articulated no valid reason why public issuers, and shareholder resources, should be exposed to such stalking, while others who participate in our legal system are not so burdened.

Many law suits are commenced merely to exploit the imperfections in our legal system, leveraging them in an effort to bring about quick settlements despite the unworthiness of a claim. The FASB proposal will exacerbate these problems by giving class action lawyers and other claimants an additional foothold in the lower stratum of the litigation system – encouraging them to assert claims that investments would not have been made had more been revealed about pending (or potential) litigation. Under the proposal, issuers would be required to hazard more guesses about the outcome of the claims they face, and new litigants will emerge to assert that they somehow were harmed because an issuer guessed incorrectly.

The Board's current policies result in an appropriate weeding out trivial or "remote" contingencies, requiring disclosure only where there is a "reasonable possibility" that a loss has been incurred. The proposal, on the other hand, will result in an overwhelming quantity of additional information that is difficult to interpret. Investors, without inside information, knowledge of litigation law, and surrounding context, have little basis to assess the merits of cases for which inherently unreliable predictions are made. In this respect, the proposal likely would do more harm than good.

In conclusion, we note that it has been said of the proposal that it is a solution in search of a problem. The case for additional disclosure has not been made, as it has not been demonstrated that shareholders are harmed by existing approaches to this subject and there has been no clamor for change. The proposed amendment creates a cure for a problem that exists only in theory and in doing so presents a hornets' nest of potential significant new problems. Further, invasive and complicated surgery should not be pursued when it is possible to determine the nature and extent of a patient's ailment merely by swabbing his or her throat. We respectfully suggest that the Board take these many factors into account and discontinue this project.

We thank the Board for their willingness to consider our concerns. If you have any questions please feel free to contact us at (516) 683-4570.

Very truly yours,

By:

By: ______ Thomas R. Cangemi Senior Executive Vice President and Chief Financial Officer

R. Patrick Quinn, Esq. Executive Vice President, Chief Corporate Governance Officer and Corporate Secretary August 7, 2008 Page 6

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