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To: Director – FASB
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LETTER OF COMMENT NO. 239

I concur with the attached Wall Street Journal article on FASB's proposed change regarding reporting on litigation. Having steered my micro cap public company (DOVR) recently through these intrepid waters, I believe that FASB's proposal will be another large burden on smaller sized entrepreneurial companies.

It assumes that senior management has some magical crystal ball that can see into the future and encourages litigation for blackmail and profit. The proposal goes way beyond accurately reporting of the present financial condition of a company into the murky and often misleading waters of creating pro formas. No good will come of this proposal.

Regards,
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FASB's Lawyer Bonanza

Truth in advertising: This is an editorial about the Financial Accounting Standards Board. Keep reading anyway, because as with so much else these days you could end up paying.

FASB—the rule setter for green-eyeshades—wants to require companies to account for the potential cost of ongoing litigation. While FASB says this would offer more transparency to the investing public, the real gift is to the trial lawyers, who will be able to use the information to extort settlements and influence jury verdicts.

Under the proposed change, a company facing a lawsuit would have to list on its financial statement its best-guess estimate of what that litigation could end up costing—not just in attorney fees, but in any potential payouts. For a company in high-stakes litigation, that means showing its hand to plaintiffs and one-upping them to cause management's upper estimate of what the case is worth.

The effect will be to force corporate defendants to fight lawsuits with one hand tied behind their backs—assuming the company can even figure the "fair value" of a lawsuit it has no idea if it will win or lose. Predicting the trajectory of complex, often multi-year litigation is inherently unscientific. As we saw with Merck and Vioxx, a company's stock price can jump or fall depending on jury verdicts whose results are impossible to predict.

Bad guesses will also put a company at risk of more lawsuits. Estimate the possible liability too high, and the plaintiff's bar may extract more loot. Estimate too low and the company could get hit by shareholder suits questioning whether there was intent to mislead investors. Suddenly, every lawsuit against a corporation would contain its own downside and a secondary collateral

risk. That gives trial lawyers added leverage to force premature settlements.

An accounting change to sue for:

The proposed change is open for comment until tomorrow, and FASB has been getting an earful. Senior litigators from 13 companies, including Pfizer, General Electric, DuPont, Boeing and McDonald's have signed a letter to FASB Chairman Robert Herz, objecting to the plan. "Too often, lawsuits are filed for publicity or to pressure companies, only to be dropped later," they wrote, and trying to estimate the fair value of liabilities at the outset "would be both flawed and misleading."

All of which raises the question, why mess with the current system? Under existing rules putting a number on the potential cost of a lawsuit is required only when the defendant believes it is "probable" it will lose the case. At that stage of the game, some knowledge and calculation from the trial can actually inform the judgment and provide a reasonable service to investors. Lawyers, accountants and corporations are all reasonably comfortable with the way things are.

Meantime, markets have proven to be aggressive watchdogs of litigation prospects. The mere threat of a suit can send a stock price tumbling, a fact amply demonstrated by the plaintiffs' bar trying to extort settlements. Lawsuits are also disclosed in financial statements, just without the imaginary "fair value" number FASB now demands.

The folks at FASB are partisans of the idea that accounting can provide black and white answers. But all financial reporting is a bit of a wizard's game, trying to measure concepts that can be subjective and amorphous. By organizing a wealth transfer from corporations to trial lawyers, FASB is doing no favors to the investors it claims to represent.