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August 17, 2010

Via email

Russell G. Golden, Technical Director
Financial Accounting Standards Board
File Reference No. 1840-100
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1840-100: *Contingencies (Topic 450), Disclosure of Certain Loss Contingencies*

Dear Mr. Golden:

Wells Fargo & Company (Wells Fargo) is a diversified financial services company with over \$1.2 trillion in assets providing banking, insurance, trust and investments, mortgage banking, investment banking, retail banking, and consumer finance. We appreciate the opportunity to comment on the issues being considered by the Board to enhance the disclosure requirements in Topic 450 *Contingencies, Disclosure of Certain Loss Contingencies* that are recognized in a statement of financial position and for unrecognized loss contingencies that would be recognized as liabilities if the criteria for recognition in section 450-2-50-1C through 50-1E were met.

Executive Summary

We believe that the proposed amendment to Topic 450 will change the existing standard in significant ways and is likely to discredit rather than bolster confidence in U. S. accounting and disclosure requirements. Fundamentally, we disagree with the proposed amendment due to its required disclosure of prejudicial information. Although the disclosures may enhance information provided to users concerning loss contingencies (particularly litigation), the nature of litigation is so uncertain that enhanced disclosures, both qualitative and quantitative, will be used as tools by litigants to increase their leverage over issuers. As currently drafted, the proposal creates a paradigm shift in the litigation dynamics between plaintiffs and defendants which will result in significant adverse economic consequences. In the interest of benefiting users, the proposal tilts the litigation battlefield dramatically to the benefit of plaintiffs. In fact, history is now repeating itself as similar concerns were raised with the FASB during the deliberation of ASC 740-10 *Income Taxes*, (FIN 48 *Accounting for Uncertainty in Income Taxes*), with the preparer community's worst fears now being fully realized and exceeded. The IRS now requires a detailed reconciliation (i.e., a roadmap) filed with corporate tax returns for all changes in a registrant's reported reserve for uncertain tax positions. IRS agents are now very aggressively pursuing these uncertain tax position matters using the FIN 48 disclosures as the starting point for auditing these contingent tax matters.

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Separately, the IASB is also deliberating changes to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*. While we have similar issues with the usefulness and prejudicial nature of both sets of proposed disclosures, we are equally concerned that there is no process to ensure that both Boards are working toward a common and consistent accounting standard for loss contingency accounting and disclosures. Failure to resolve differences in these standards will result in companies implementing new U.S. generally accepted accounting principles related to loss contingencies in 2010, then another set of standards when the SEC permits IFRS for US registrants.

Specific Comments

We have specific concerns with the proposed expanded disclosure requirements as follows:

1. The requirement to disclose recognized loss contingencies by class, coupled with the requirement to describe significant activity in tabular reconciliations each interim reporting period, may be prejudicial to the reporting entity.

Although we prefer the current requirement to disclose amounts accrued when “necessary for the financial statements not to be misleading”, we do not object to a general requirement to present an annual reconciliation of an entity’s total recognized loss contingencies, with the information enumerated in proposed 450-20-50-1F-g-1-5. However, aggregating such disclosures by “class” of contingency may allow litigation plaintiffs to learn what amount has been reserved for a particular piece of litigation. In addition, we believe that quarterly statements concerning recognized loss contingencies, particularly related to litigation, amplifies this risk especially when there are isolated matters which change within a “class” during a quarter. We will not repeat the numerous arguments already made concerning the prejudicial effect on litigation outcome by disclosing individualized accruals, except to emphasize our agreement that such disclosure is definitely prejudicial. Finally, we are unclear what is intended by the requirement to “describe the significant activity in the reconciliations” and are concerned that such disclosure would be prejudicial.

2. We believe that the incremental disclosures required for remote contingencies create significant risk with little benefit.

We believe that the requirement to disclose remote contingencies with potential severe impact will not provide meaningful information to users given existing unrealistic and outsized claims being made by plaintiffs. The proposal will likely encourage entities to settle frivolous litigation to avoid disclosing significant claims where the likelihood of recovery is remote. The amendments will actually encourage litigants to claim very large damages when filing lawsuits in order to gain leverage for larger settlements from public companies. In addition, the definition of severe (a significant, but not catastrophic, financial disruptive effect on the normal functioning of the entity) is vague and accordingly is not operational, making it difficult to determine which “remote” cases should be disclosed. Disclosure of remote contingencies therefore provides no useful information for users of financial statements and is much more likely to mislead rather than enlighten investors. In summary, transactional and litigation costs would increase with no benefit to the bank’s shareholders.

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3. We do not agree that current standards in Topic 450 do not provide sufficient information to assist users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies.

The FASB notes several criticisms of Topic 450 "Contingencies" as a basis for its Proposal. These include the observation that some issuers of financial statements have failed to disclose a litigation contingency until a material accrual is recognized, the limited universe of contingencies disclosed under the "reasonably possible" threshold, the frequent assertion by issuers that a reasonable estimate cannot be made, and lack of transparency about litigation reserves. We respectfully suggest that the inability of issuers to assess many litigation exposures at their early stages and estimate their potential financial impact to any meaningful degree is genuine and reflects the highly uncertain nature of the litigation process, especially in the United States, and not an intent to avoid transparency. The current approach embodies a careful consideration of the realities of our adversarial dispute resolution processes, which often involves baseless claims and/or damage demands that as a matter of practice exceed, by a wide margin, actual damages suffered and even the plaintiffs' own assessment of the true damages. Detailed disclosure of preliminary assessments of litigation exposure, often based on very limited information, in the modern litigation setting will lead to the dissemination of speculative and unreliable information - not useful disclosures. Shareholder and other public market participants would not have the benefit of more useful information but rather would have the additional burden of sifting through additional unreliable information.

Moreover, Topic 450 currently reflects a delicate balance struck among issuers, the accounting profession and the legal profession that provides for the prompt public disclosure and, when meaningful, quantification of material litigation exposure while limiting the potential negative effect of the accounting standard on the issuer's litigation posture. In addition, the current balance largely accommodates the need of issuers and their attorneys to preserve the attorney-client privilege, a cornerstone of our legal system and an essential element of effective legal representation. To destabilize this balance, particularly in the midst of the current storm of litigation facing U.S. financial institutions, would have seriously adverse consequences. Companies must balance the information needs of both prospective and current investors. A decision that would provide prejudicial information to potential investors at the expense of current investors will ultimately have a negative impact on all investors. Management, as the trustee for the shareholders, is in the best position to balance the legitimate information needs of both current and potential investors.

4. The proposed disclosures may lead to waivers of the attorney/client privilege and the confidentiality of an attorney's work product.

The required disclosures will obviously be developed with significant input from the attorneys handling the litigation. Disclosure of the information could result in judicial findings of waiver of the attorney/client privilege or of the confidentiality of an attorney's work product that would otherwise protect such assessments from discovery or from use against the company in litigation. Additionally, as independent auditors will certainly want to test the information included in the new disclosures as part of their audit work, there will be increased pressure for them to seek detailed information from counsel in the course of their work further weakening the privileged nature of this information.

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5. The cost and burden of providing the “qualitative information” required by the exposure draft will be substantial.

For companies with a large number of litigation matters, significant time and resources will be expended developing the new qualitative and quantitative disclosures. Additionally, this would have the impact of devoting additional resources from a Sarbanes-Oxley 404 perspective to document and test the new process related to the qualitative and quantitative disclosures. We do not think this will be a productive use of resources and not useful to the investing public.

6. The prejudicial exemption should be retained.

Paragraph 11 of the 2008 Exposure Draft provided an exemption from disclosing prejudicial information as follows: “For certain contingencies, such as pending or threatened litigation, disclosure of certain information about the contingency may be prejudicial to an entity’s position (this is, disclosure of the information could affect, to the entity’s detriment, the outcome of the contingency itself). In those circumstances, an entity may aggregate the disclosures required by paragraph 7 at a level higher than by the nature of the contingency such that disclosure of the information is not prejudicial.” Current GAAP does not require the disclosure of accrued amounts except if it is necessary for the financial statements not to be misleading. Given the subjectivity of many of the disclosure requirements in the Proposed ASU, we believe that the prejudicial exemption should be retained as a safe harbor. Alternatively, we would prefer a more limited disclosure requirement as discussed in the first point above.

7. It will not be possible for companies to implement the proposed statement in fiscal years ending after December 15, 2010.

For companies with calendar year ends, the proposed statement would need to be implemented in the current year. We do not believe that implementation this year is a realistic possibility. For companies with a large number of litigation matters, the qualitative and quantitative disclosures, including the new tabular reconciliation of recognized loss contingencies, will require significant time and effort to develop. As noted above, companies will need to work very closely with numerous parties concerning each piece of litigation to carefully craft the disclosures in such a manner as to both meet the new disclosure requirements and try to preserve the privileged nature of the underlying information, assuming that is even possible. This will not be a simple undertaking.

Conclusion

We understand the Board’s desire to provide users of financial statements with additional information in this judgmental area of accounting. However, we believe that a proper balance has not been set between the needs of financial statement users for this information and the serious problems disclosure of the information creates for financial statement preparers. In our view, the proposed amendment will be detrimental to U.S. companies as it will require issuers to harm themselves solely so that they can provide inaccurate and affirmatively misleading information to the investing public.

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We appreciate the opportunity to comment on the issues contained in the Board's invitation. If you have any questions, please contact me at (415) 222-3119.

Sincerely,

/s/ Richard D. Levy

Richard D. Levy
Executive Vice President & Controller

cc: Financial Accounting Standards Board Members
Kathy Murphy – Office of the Comptroller of the Currency
Art Lindo – Federal Reserve Board
Robert Storch – Federal Deposit Insurance Corporation
Donna Fisher – American Bankers Association
Gail Haas – New York Clearing House Association