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August 12, 2010

director@fasb.org
Financial Accounting Standards Board

Re:

File Reference No. 1840-100

Proposed Accounting Standards Update

Contingencies (Topic 450)

The Accounting Principles and Auditing Standards Committee (the "Committee") of the California Society of Certified Public Accountants ("CalCPA") is pleased to provide our comments to the Proposed Accounting Standards Update Contingencies (Topic 450).

The Committee is the senior technical committee of CalCPA. CalCPA has approximately 36,000 members. The Committee is comprised of 50 members, of whom 67 percent are from local or regional firms, 23 percent are sole practitioners in public practice, 5 percent are in industry and 5 percent are in academia.

Question 1: Are the proposed disclosures operational? If not, please explain why.

The Committee believes that the proposed disclosures present operational difficulties, especially for losses involving litigation. For most nonpublic entities, and some public entities, management is generally not aware of the intricate issues involved in assessing liability or damages in a lawsuit. Accordingly, management is not capable of creating the proposed disclosures. Lawyers involved in the lawsuit are generally are reluctant to write the disclosures, and when they do, the result is often purposely minimally helpful to a reader. One alternative would be for the entity to engage a lawyer from another law firm to provide the needed advice. This would be a significant added expense which would not generally be worth the added benefit, if any.

In addition, for claims for which there is insurance or indemnification, many entities just do not deal with the claims but turn them over to the insurers or indemnitors, and do not engage counsel to deal with the claim. To engage counsel solely to evaluate the claim independent of the recovery, especially when there is little doubt as to the recovery, would be a significant added expense with no apparent benefit at all.

Question 2: Are the proposed disclosures auditable? If not, please explain why.

For most nonpublic and public clients, the auditor is generally entirely dependent upon the information provided by a law firm's response to a request for information. The usefulness of the information received in the response is dependent upon the limitations established by the American Bar Association *Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information*. In order for the information to be auditable, the PCAOB and the ASB will need to obtain the "buy in" of the ABA. Accounting standards need to reflect the reality of the real world environment.

Question 3: The June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposed Update would:

- a. Not require any new disclosures based on management's predictions about a contingency's resolution
- b. Generally focus on information that is publicly available
- c. Relate to amounts already accrued in the financial statements
- d. Permit information to be presented on an aggregated basis with other similar loss contingencies? If not, please explain why.

The Committee believes the approach proposed in the new standards is a more realistic approach and great improvement over the requirements presented in the 2008 exposure draft. However, we believe an exemption from disclosing information that is prejudicial still has merits and should still be included. Aggregation mitigates many instances where the disclosure might otherwise be prejudicial, but if an entity is involved in only a single significant litigation matter, disclosures of amounts accrued by itself could be prejudicial.

Question 4: Is the proposed effective date operational? If not, please explain why.

The proposed effective date is not operational. The date should be dependent upon the conclusion of discussions with the ABA on the establishment of ground rules for responding to auditors request for information.

Further, disclosures to date have generally been considered on a "net" of insurance or indemnification basis. There is not sufficient time to now re-evaluate claims without consideration of insurance or indemnification. This could require a very complex study, which is not even relevant in the face of solid insurance or indemnification offsets.

Question 5: Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing (if known) of loss contingencies?

Any improvement in the information provided to financial statement users will be dependent upon the quality of the information of information received from attorneys.

Question 6: Do you agree that *nonpublic entities* should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not, please explain why. Are there any other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.

Yes.

Question 7: The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.

Yes.

Question 8: Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.

The Committee recommends that the FASB discuss this issue with the SEC.

Other Comments:

We have the following comments which are not related to the specific issues raised in Questions 1 through 8.

Disclosure Threshold

The consideration of the evaluation for potential loss disclosure should be based on the assessment of the net loss - the gross loss less insurance or indemnity recovery. The standards in the proposed statement deal with loss disclosures, not balance sheet presentation (which requires gross amounts). The entity should evaluate any insurance or indemnification recovery in evaluating whether there is a potential loss. If there is uncertainty as to the recovery, then a gross approach would be appropriate.

Disclosure Requirements

It is inappropriate to require the disclosure of possible recoveries from insurance and other sources when the only reason to do so is because it is discoverable. This condition assumes the plaintiff's attorney will seek to discover the coverage. This disclosure would be very prejudicial in cases where the attorney would have otherwise failed to do so.

A tabular reconciliation of accrued losses by class should be optional, at best. If aggregation is not available (e.g. a single claim is involved), the disclosure of changes in an estimate for loss that are not based on the public record can seriously compromise the defense of a claim because the basis for the disclosures could be discoverable.

We do not agree with requirement to disclose all instances when an insurance company has denied, contested or reserved it rights related to a claim for recovery. Insurance companies do this as a matter of course, which is designed to afford them protection if discovery in the course of the litigation gives them a proper basis to deny coverage. The defendant can usually determine, with advice of counsel, whether the coverage is valid, but that evaluation may be privileged. The entity should be able to make reasonable disclosures without the details contemplated in paragraph 450-20-50-1F.f.3.

Implementation Guidance

The aggregation guidance contained in paragraph 13 does not provide any useful guidance that is not evident in section 450-20-50. We suggest that it be deleted.

We thank you for the opportunity to comment on the Proposed Standard. We would be glad to discuss our opinions with you should you have further questions or require additional information.

Very truly yours,

Jo Ann Guattery, Chair

Accounting Principles and Auditing Standards Committee

California Society of Certified Public Accountants