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

Re: Proposed Accounting Standards Update, "Disclosure of Certain Loss Contingencies," an update of Topic 450, *Contingencies.*

Dear Mr. Golden,

We would like to take this opportunity to comment on the Proposed Accounting Standards Update, "Disclosure of Certain Loss Contingencies." Emerson is a diversified Fortune 100 global manufacturing company. We strongly believe that the proposed Update will not provide decision-useful information versus what's already required under the existing rules, and we have significant concerns regarding both the volume of proposed disclosures and the potential extreme sensitivity of information to be disclosed.

- We believe the proposal is unnecessary and that the real issue is not a lack of rules but a lack of compliance with existing requirements. Better enforcement of existing material contingency and uncertainty disclosure rules would ensure investors have the decision-useful information the Board seeks to provide with this Update.

- The scope of the proposed Update is far too broad. Financial statement users are concerned about individual significant exposures and risks that could have a "severe impact," not detailed accounting rollforwards of routine items that are more suitable for auditors than investors.

- We are concerned the proposed disclosures will expose prejudicial information, could actually invite additional litigation and could have an inappropriately negative impact on the market perception of companies. Additionally, the proposal implies the evaluation of highly subjective and sensitive legal matters is a simple undertaking that is easily accomplished each quarter.

- The proposed Update will add voluminous disclosures to already overloaded footnotes, strain accounting and reporting control systems, cannot be cost justified and will ultimately not provide meaningful information to investors.

Enforcement of Existing Rules vs Adding Disclosures

First and foremost, we question the premise underlying the proposed Update. It is the FASB's assertion that constituents are concerned about the sufficiency and timeliness of disclosures regarding loss contingencies. We ask how genuinely prevalent is this "issue" and to what degree has the Board received these types of comments? Is this really a systemic issue, or more likely, were there just a few companies that did not properly follow the spirit and intent of ASC 450 or the M D & A requirements to discuss known trends or uncertainties that could materially and adversely impact results of operations and cash flow?

Risk manifested, even catastrophically, does not mean disclosure requirements were inadequate. Perhaps better enforcement of existing risk and contingency disclosure requirements would be more appropriate. If only a few companies were not providing adequate disclosures, it is inequitable that all other companies should incur an additional and unreasonable burden by requiring the lengthy and detailed disclosures proposed. The present approach of "remote, reasonably possible and probable" is well understood by investors and allows for appropriate disclosures based on experienced legal views. Also, unaddressed in the proposal is that much of the perceived fault with the current requirements actually lies in the shortcomings of the U.S. litigation system itself. No amount of incremental disclosure will remedy this.

We strongly oppose the Board issuing any new Updates while the IASB is still deliberating the same concepts but reaching different conclusions in its project to modify IAS 37. The alleged improvements associated with this proposed Update are not sufficient to warrant the creation of additional differences, and therefore reduced comparability, between GAAP and IFRS. In fact, the proposal moves GAAP in the opposite direction of IFRS, which is wholly contrary to the Memorandum of Understanding regarding convergence. If the ultimate objective is to converge GAAP and IFRS, new GAAP standards should not be promulgated until existing differences are resolved.

Scope of the Proposed Update

If this Update is adopted, we believe the scope should include only pending or threatened litigation or potential future liabilities stemming from truly significant events where there is a "reasonably possible" risk of a "severe impact." Information provided should explain in simple terms the company's exposures to very material unrecorded potential losses at the end of the period, as already required by ASC 450. Other routine loss contingencies (e.g. collectability of receivables, product warranties, inventory obsolescence, workers' compensation, etc.) should be excluded from the scope of this proposal. Giving details on these sorts of on-going contingencies is simply providing data without providing useful information to investors. The nature of this information is not easily summarized and will require significant time and resources to do so, especially in a complex multi-national operating environment. Our concern is this will become yet another detailed accounting exercise of tracking and analyzing minutiae while adding no real benefit to investors. Contingency disclosures should address only material exposures and not be a summary of provisions and payments for minor issues that remain largely steady relative to the level of business. Should the Board maintain the scope as proposed, rollforwards of routine loss items should be disclosed only on an annual basis, with quarterly update of developments only for genuinely significant changes impacting liabilities or earnings.

We believe the proposal places too much emphasis on losses that potentially may not occur. Remote loss contingencies should not have the same level of prominence as those that are probable and entities should not be required to provide disclosure of a "potential severe impact" related to them. By definition, a remote contingency is an event that has a significant chance of *not* occurring and it should not have equal disclosure prominence with legitimate, known contingencies. There is a very real risk that investors will falsely assume disclosure equates to certainty regarding the outcome, because they will be unaware of the nuances of the disclosure rules. Such false assumptions could result in an inappropriate and disproportionately negative impact on an entity. It is unreasonable to us that an entity should be required to disclose and/or potentially quantify remote contingencies when no event has occurred and there is only a low probability of actually sustaining a loss.

We also do not agree with the inclusion within the scope of the proposed Update of obligations that may result from withdrawal from a multiemployer pension plan in all circumstances. If a company is considering withdrawing from a multiemployer plan it is likely the arrangement with the current plan is not satisfactory. Disclosing that a withdrawal is possible is therefore prejudicial and could negatively affect an entity's ability to successfully withdraw from the plan. We recommend that if multi-employer pension plans comprise only a small portion of a company's pension funding requirements, or the company participates in numerous small multi-employers plans with individually insignificant funding demands, it should not be required to disclose its intent to withdraw from any of these plans. Additionally, the Board needs to consider the very real issue of limited access and low quality of information commonly associated with multiemployer plans. Information is rarely made available more frequently than annually making quarterly reporting impractical.

Legal Matters and Prejudicial Information

Legal cases are often very intricate and subject to interpretation of opposing viewpoints regarding facts and circumstances. The reality in litigation is that little is known or even probable until one settles, or a judgment is rendered and the appeals process plays out. Estimating potential legal contingencies might therefore produce information that is not necessarily relevant, understandable or decision-useful, and actually make it more difficult for the average financial statement user to properly interpret the information and make wise investment decisions. Further, requiring an explanation of why no estimate is given can lead to the false notion that accurately predicting the outcome or timing of litigation is a fairly simple exercise, or that no estimate somehow equals deficient disclosure.

The disclosures required in the proposed Update are inherently prejudicial. While we strongly agree with the Board's decision to eliminate from the original proposal the requirements for management to predict the timing of a contingency's outcome and to provide a maximum exposure amount, we continue to believe an explicit exemption from disclosing prejudicial information, as originally proposed, is absolutely necessary. As discussed, we believe the detailed rollforwards of routine contingency accruals are simply more quantitative disclosure overload. But we also believe that qualitatively, the disclosure regimen proposed will lead to an incorrect conclusion that disclosures are all-inclusive. An explicit exemption regarding prejudicial information will forestall such a conclusion, which will in turn reduce an entity's litigation risk until matters have progressed far enough that disclosure becomes appropriate (i.e., a potential claimant will be precluded from asserting an exposure *should have been*

discussed earlier due to there being no prejudicial exemption). The Board should reinstate the prejudicial disclosure exemption. Additionally, the FASB should not constrain the use of such an exemption. Only management and counsel can make the judgment as to what information is truly prejudicial and any limitation on that judgment is inappropriate and exposes the entity and indirectly, its shareholders.

Aggregating the disclosures at a higher level does not necessarily eliminate the risks associated with disclosing prejudicial information once the proposed qualitative disclosures are considered. The nature of both asserted and unasserted legal claims can be extremely sensitive. Even at an aggregated level, an entity with a large loss contingency or one that fluctuates significantly could still be taken advantage of by potential claimants, through the assertion of a claim that would otherwise not be made. Or claimants could analyze fluctuations in the contingency amounts and conclude that an entity favors settling over litigating, providing them an unfair advantage in negotiations. Additionally, claims are often filed to gain publicity, express a political statement, or pressure an entity into action. Excessive disclosure only gives credence to these types of baseless claims and encourages questionable behavior.

We disagree with the Board proposal to disclose possible insurance recoveries. While we understand and accept the concept of evaluating contingencies on a gross basis, without offsets for possible insurance coverage, actual disclosure of the amount of insurance is prejudicial in that it advertises the extent of coverage to potential claimants. In the current U.S. litigation environment, this is almost certain to invite additional legal claims. Disclosure of insurance coverage could also impact the behavior of jurors by making them more comfortable with a large award if they perceive the company itself will not be responsible for funding the entire amount.

We are concerned with the status that the proposal bestows upon so-called "expert" witnesses, and the requirements to disclose their assertions regarding potential damages. In the adversarial U.S. legal system, expert witnesses are simply paid testifiers, which renders their testimony inherently biased toward the side sponsoring them. Additionally, expert witnesses are often zealous and their very participation in litigation may be driven by passion for a particular cause, placing them wholly at odds with the interests of the entity. The proposal should not call out "expert" witness testimony as being superior to other testimony or even particularly useful for disclosure purposes.

Other Items

FASB Question No. 1: Are the proposed disclosures operational?

No, we do not believe the proposed disclosures are operational. As noted, we are concerned about excessive time, cost and resource strain to prepare the disclosures and about the disclosure of potentially prejudicial information. Emphasis should be placed on those items that are likely to have a genuinely severe impact on an entity and more robust enforcement of the current disclosure rules in ASC 450. The materiality of exposures must be measured against the size of the company (scaled to market capitalization, for example) to adequately convey truly material items. For items expected to have a material impact on the financial condition and future earnings potential of a company (i.e., will have a "severe impact"), we believe the materiality threshold should be amounts greater than 10% of current assets, consistent with SEC Rule S-K, Item 103, We strongly believe that additional quantitative disclosures are not

necessary after applying Rule S-K. The burdensome disclosures proposed are not a substitute for adequate enforcement of existing contingency disclosure requirements.

FASB Question No. 2: Are the proposed disclosures auditable?

No, we do not believe the proposed disclosures are auditable. Publicly available evidence of litigation such as courts/jurisdictions, parties involved, claims asserted and amounts sought will be auditable. Beyond these, auditors will be unable to perform adequate testing or otherwise validate management judgments and the opinions of counsel, as they lack the proper legal background to analyze cases and determine if the disclosure is proper. Companies will not want to waive, or appear to be waiving attorney/client privilege by allowing counsel to provide auditors with prejudicial information, knowing that details of the auditor/client relationship are subject to legal discovery. This will just lead to more reliance on the Management Representation Letter as a form of audit evidence, which provides no real assurance to investors.

Conclusion

Overall, the issue of adequate contingencies disclosure is one of enforcement rather than a lack of rules, and much of the perceived deficiency in the current disclosure approach stems from the nature of the U.S. litigation system itself. We believe the Board's response to the perceived issue is excessive. Most legal matters are quite complex and rarely have obvious, black and white outcomes for which accounting or disclosure is simple. Instead, they demand careful analysis of very sensitive matters requiring the frank and confidential input of an entity's attorneys. The confidentiality of the attorney/client relationship is paramount in the U.S. legal system and the Board's proposals will erode this relationship by forcing the disclosure of prejudicial information. Therefore the Board needs to include a prejudicial exemption in any final rules and respect management's judgment in applying this exemption.

The present accounting and disclosure approach of "remote, reasonably possible and probable" is well understood by investors, allows for appropriate disclosures based on experienced legal views, and need not be abandoned for a far riskier yet inherently less informative model. Experience has shown that creating numerous new disclosure requirements does not necessarily trigger better compliance.

We strongly believe the proposed tabular disclosure requirements would place undue burden on financial statement preparers and reporting control mechanisms due to the excessive time, cost and resources required to gather, analyze, debate and ultimately conclude on disclosures. Under the proposed project scope, such a process would produce estimates that are not reliable, understandable or decision-useful for investors and instead could potentially provide sensitive information to existing and potential claimants, which would have the effect of harming, rather than protecting shareholders. Further, making such an effort on a quarterly basis is overly burdensome and will not provide useful disclosures beyond the current regimen. Due to the cost, complexity and inherent risks involved, any new disclosures should be limited to annual reporting only, with tabular rollforwards omitted altogether. Quarterly disclosures should only update the annual disclosures for genuinely material developments.

In a general sense, the Board seems to have lost sight of the implementation cost and on-going cost of complexity it continues to create with the avalanche of changing rules and disclosures, thereby further diminishing the competitiveness of U.S. businesses. Similar to the processes used by companies to weigh important business decisions, new or incremental accounting and disclosure requirements should only be added by the Board after very careful consideration of all costs and only when the benefits are obvious and substantial.

Given the significant volume of very important and highly technical accounting and disclosure updates recently proposed, we request that the Board extend the comment deadline for the proposed update on Revenue Recognition in Contracts with Customers to December 31, 2010, and also extend the comment deadline for the proposed update on Leases to March 31, 2011.

We appreciate the opportunity to respond to the Exposure Draft and trust that our comments will be seriously considered in future Board deliberations on this issue.

Sincerely,

Richard J. Schlueter
Vice President & Chief Accounting Officer

cc: Frank J. Dellaquila
Senior Vice President & Chief Financial Officer