BorgWarner Inc.

World Headquarters
3850 Hamlin Road
Auburn Hills
Michigan 48326

248-754-9200
Fax: 248-754-0888
www.borgwarner.com

September 17, 2010

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Via email: director@fasb.org

Re: File Reference No. 1840-100: Disclosure of Certain Loss Contingencies

Dear Board:

BorgWarner Inc. appreciates the opportunity to respond to your Exposure Draft ("ED") on Contingencies (Topic 450) issued on July 20, 2010. BorgWarner Inc. (NYSE: BWA) is a product leader in highly engineered components and systems for vehicle powertrain applications worldwide.

While we appreciate the revisions in this ED, we continue to have fundamental concerns, especially with regard to the proposed treatment of legal proceedings, which we articulate below. In addition, in the interest of international convergence, the Commission should wait for the outcome of the International Accounting Standard ("IAS") 37 review cited in the ED. This review is scheduled to be completed this year, so delay would be minimal.

1. *Exclude legal proceedings from the standard.*

Though the proposal has been revised to eliminate disclosure of settlement offers and some predictive elements, some new predictive disclosures that do not rely exclusively on public information remain. For legal contingencies, a "prejudicial exemption" should remain. Litigation is the area of greatest concern because of its unpredictability and because of the opportunity for abuse of the disclosures by certain plaintiff lawyers who seek information they can use to their advantage in settlement negotiations. The exemption should be based on the lack of predictability of litigation outcomes, the unique nature of the attorney-client relationship, and the presence of the same disclosure required in Item 103 of Regulation S-K.

2. *Keep such disclosure out of the financial statements.*

Disclosure in a contingency footnote is not subject to the protection of the statutory safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Specifically excluded from the safe harbor are statements contained in the financial statements themselves. If the board adopts this disclosure regime, it should require such disclosure "only to the extent that the same disclosure is not contained in a document accompanying the financial statements." This allows public companies to make disclosures in the main part of their periodic reports, and eliminates redundancies. Users of financial statements would get the disclosures that they want, without repetition.

3. *The disclosure requirement should be annual only.*

   Litigation is a multi-year process. Some cases are litigated for decades. Very little changes from quarter to quarter. If something significant occurs during the year, preparers of financial statements are otherwise required to timely disclose it. The operational challenges of this standard would be mitigated if the exercise accompanied only the year-end audit.

4. *Plaintiffs' demands should not be required disclosures.*

   Requiring disclosure of plaintiffs' demands would not further the stated objectives of disclosing information to enable financial users to understand the nature of the loss contingencies, their potential magnitude and their potential timing. It could, in fact, mislead users about the potential magnitude of the loss contingencies.

   The intent of financial reporting is to provide reliable and relevant information for financial statement users. In its Statement of Financial Accounting Concepts No. 2 (Qualitative Characteristics of Accounting Information), the Board stated that relevant accounting information "is capable of making a difference in a decision by helping users to form predictions about the outcomes of past, present and future events or to confirm or correct prior expectations." The amount of a plaintiff's demand does not represent reliable or relevant information. It is common knowledge that plaintiffs often include unreasonable, exaggerated or outrageous amounts to force a negotiation. A requirement that plaintiffs' demands must be disclosed in financial statements would further incent them to make or threaten higher demands to increase their negotiating leverage. The amounts of damages claimed are very rarely representative of actual amounts paid when the claims are resolved. Plaintiff demand information is unlikely to provide users with meaningful information, could mislead them, and is inappropriate for use in the formation of predictions.

5. *Disclosures on an Aggregated Basis should not have to include the average amount claimed or the average settlement amounts.*

   The ED allows disclosures to be presented on an aggregated basis under certain circumstances (450-20-55-1D). It further states that if disclosures are provided on an aggregated basis, an entity should disclose information that would enable financial users to understand the nature, potential magnitude and potential timing (if known) of loss contingencies. We support the ED allowing companies to consider whether certain aggregated disclosures are appropriate. However, we have concerns about two of the specific examples of additional disclosures we should consider if we provide disclosure on an aggregated basis, namely: (i) the average amount claimed and (ii) the average settlement amount. By definition, neither of these "averages" provides any information to financial statement users about the nature or potential magnitude of the loss contingencies because, among other things, they would be skewed by inflated claims or unique settlements. As discussed above, the amount of plaintiff's demand does not represent reliable or relevant information and is

rarely representative of the actual amount paid when the claim is resolved. Requiring disclosure of the "average" amount claimed would only exacerbate the potential confusion to financial statement users. Similarly, requiring disclosure about the "average" settlement amount would suggest to financial statements users that this information is relevant to the outcome of the remaining loss contingencies, though that may not be true.

6. *Entities should not be required to disclose possible loss or range of loss for contingencies that are at least reasonably possible.*

   The ED would require disclosure of the possible loss or range of loss if it can be estimated. We believe that this disclosure will create a substantial risk that financial statement disclosure will adversely impact settlement negotiations or the outcome of a trial. Once a defendant company has publicly disclosed its estimate of possible loss or range of loss, that valuation will become a settlement "floor" and any competent plaintiff's counsel would refuse to resolve the claim for any amount less than that, and would likely feel compelled to call this disclosure to the attention of a jury. The safe harbor for forward-looking statements in the Private Securities Litigation Reform Act of 1995 specifically excludes statements contained in the financial statements themselves. So, the ED would require us to provide forward-looking statements in the form of possible loss/range of loss information without the benefit of any safe harbor, despite the fact that such disclosure would inevitably invite lawsuits by plaintiffs' counsel if those contingencies are ultimately resolved for a greater amount despite the fact that our estimates were reasonable at the time they were made. Finally, the additional requirement to explain the reasons why an estimate cannot be made will merely invite boilerplate disclosure because the essence of this disclosure will always be that an estimate cannot be made because no estimate is possible.

7. *Immaterial litigation.*

   The standard should make clear that no disclosure is required for a legal contingency that is immaterial. This could be accomplished by adding the word “material” in the first line of proposed 450-20-50-IC

8. *Insurance coverage should be allowed to be taken into account when assessing the severity of a contingency.*

   If the insurance carrier has not disputed the coverage, and has the financial resources to pay claims, the Company should not be required to include the claim in its disclosure.

9. *Effective Date:*

If a final standard is issued, there may be significant costs associated with modifying the Company's reporting systems, processes, and internal controls to comply with the standard. Systems and reporting packages may need to be expanded to capture more data, as more detailed information and assessments of contingencies will be required. The Company will also likely require more frequent and more detailed communications with outside counsel to assist in the reporting process, such as determining whether an asserted remote contingency meets the threshold for disclosure. Given the changes that may be necessary, we believe that it would be impracticable for the Company to change the controls and processes necessary to meet the disclosure requirements and to make the related, required assertions over the design and operating effectiveness of their internal controls over financial reporting, in the 2010 annual financial statements. Accordingly, if a final standard is issued in 2010, it should be effective for annual financial statements for years ending after December 15, 2011.

We appreciate the opportunity to comment on the ED. Please contact Ron Hundzinski, Vice President, Controller and Principal Accounting Officer at 248-754-0851 or email Rhundzinski@BorgWarner.com with any questions you may have concerning these comments.

Sincerely,

Ron Hundzinski
Vice President, Controller & Principal Accounting Officer

John J. Gasparovic
Vice President, General Counsel & Secretary