TRW Automotive

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September 17, 2010

Mr. Russell Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference Number 1840-100, Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies*

Dear Mr. Golden:

TRW Automotive Holdings Corp. ("TRW") appreciates the opportunity to comment on the Financial Accounting Standards Board ("FASB") Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies* ("the Proposed ASU"). TRW is among the world's largest suppliers of automotive systems, modules, and components to global automotive manufacturers and related aftermarkets. As a result of our global operations, we are subject to laws and regulations in multiple jurisdictions around the world.

TRW supports the FASB's efforts to provide meaningful financial reporting to the users of financial statements, and supports changes to the Accounting Standards Codification ("ASC") which improve the quality of financial reporting. TRW also appreciates the effort that the FASB has put into improving the Proposed ASU from the 2008 exposure draft, *Disclosure of Certain Loss Contingencies – an Amendment of FASB Statements No. 5 and 141(R)* ("the 2008 Exposure Draft"), in removing the more subjective and predictive requirements of the 2008 Exposure Draft from the Proposed ASU.

However, while an improvement from the 2008 Exposure Draft, we believe that the Proposed ASU would diminish the quality of financial reporting. We believe that a number of the requirements of the Proposed ASU are either not operational, would result in the disclosure of prejudicial information, or both. We also believe that certain aspects of the Proposed ASU will diverge from IFRS, at a time when the FASB is working on convergence between US GAAP and IFRS on many other accounting topics. Finally, we believe that the implementation of the Proposed ASU, if adopted as written, will subject us to costs that significantly outweigh the benefits to our shareholders and other users of financial statements, especially given the proposed effective date of years ending after December 15, 2010.

A more detailed explanation of our concerns, broken into five categories, follows.

**Aggregation**
TRW believes that one of the objectives of the Proposed ASU is to find a balance between providing users of financial statements too little information and overburdening them with too much information. Thus, to assist preparers in striking this balance, the FASB permits reporting

entities to combine sufficiently similar claims on the basis of their nature, terms, and characteristics, and refers to this as the aggregation principle.

However, we believe that the aggregation principle in the Proposed ASU is not operational. In the revisions to paragraph 1A of ASC 450-20-55[1] of the Proposed ASU, it states that it may not be appropriate, in a number of instances, to aggregate contingencies. Given the extensive list of criteria limiting the amount of aggregation that a reporting entity can perform for loss contingencies, any benefit that aggregation provides would be undermined or eliminated.

Consequently, reporting entities will be faced with a choice. They can disclose the many, small aggregated groups required by the Proposed ASU, which will result in the disclosure of an overwhelming amount of information, much of it immaterial to the financial statements, and obscuring the information that is material to users' understanding. Or, they can apply a materiality threshold to the individual cases and aggregated groups, which will result in, at best, disclosures that are similar to those made by reporting entities under current US GAAP in accordance with ASC 450, which has provided appropriate information to shareholders and users of the financial statements.

In addition, while TRW believes that most reporting entities will elect to aggregate loss contingency disclosures, even at the relatively low level required by the Proposed ASU, the majority of the disclosures required by the Proposed ASU appear to be relevant only to individual loss contingencies. Consequently, we believe that a number of the disclosures, including the legal basis of defense and the quantitative disclosures spelled out in the revisions to paragraph 1F(e) of ASC 450-20-50 of the Proposed ASU, would not be operational, as they would result either in the disclosure of information on all of the individual loss contingencies comprising the aggregated class, thereby undermining the benefit of aggregation, or, if aggregated, would not provide meaningful information to shareholders and other users of the financial statements. Disclosure of these items could potentially also risk disclosure of items subject to attorney-client privilege, attorney work product doctrine, and disclosure of items under court order preventing disclosure, harming reporting entities in their defense of these matters.

We strongly recommend that the FASB revise the aggregation guidance in paragraph 1A of ASC 450-20-55 in the Proposed ASU, to more widely permit aggregation of similar cases, even though the jurisdiction, timing, or class status may be different. We further recommend that the FASB include an illustrative example in the Proposed ASU that would demonstrate how the disclosures of the Proposed ASU should be made with the application of the aggregation principle.

We also ask the FASB to consider how the Proposed ASU will interact with other authoritative literature, from a materiality standpoint, on the disclosure of loss contingencies. In particular, in the Instructions for Item 103 of Regulation S-K on legal proceedings, the Securities and Exchange Commission ("SEC") advises that, "No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis." We believe that there is significant overlap between the Proposed ASU and

[1] The revisions state that it may not be appropriate to, among other things, aggregate contingencies that are dissimilar, contingencies that occur in the normal course of business versus arising through litigation, individual litigations versus class-action lawsuits, cases in different legal jurisdictions, and cases that have significantly different expected timing of resolution.

Item 103 of Regulation S-K, and believe that clarification in the Proposed ASU is necessary in order to be able to comply with both the Proposed ASU and Regulation S-K.

**Disclosure of Prejudicial Information**

We understand that the FASB has undertaken efforts to modify the 2008 Exposure Draft to remove instances where the 2008 Exposure Draft would have resulted in the disclosure of prejudicial information. We appreciate the efforts that the FASB has undertaken to remove these disclosures.

The FASB has decided, however, in paragraph BC36 of its Basis for Conclusions, "...to not provide a prejudicial exemption because the proposed amendments would eliminate many of the speculative or predictive disclosures that were proposed in the (2008) Exposure Draft..." Thus, the Proposed ASU has eliminated the prejudicial exemption for disclosure, because the FASB believes that it is no longer needed. However, in reading the Proposed ASU, we believe that the low level of aggregation required by the Proposed ASU would continue to result in the disclosure of prejudicial information in the tabular reconciliation. Further, certain of the narrative disclosures that would be required by the Proposed ASU would also result in the disclosure of prejudicial information.

In the tabular reconciliation that the Proposed ASU requires, we are concerned that the disclosure of movements in the accrual would result in the disclosure of prejudicial information. To the extent that changes in an accrual can be linked to a particular loss contingency, we believe that disclosure of the change in the accrual could permit the change to be discovered and admitted as evidence by plaintiffs, potentially making it determinative of the outcome of the contingency itself. Further, it is likely that changes in an accrual can be linked to a particular loss contingency, given the low level of aggregation that the Proposed ASU would require, especially when a reporting entity faces a few cases in a particular class, or where one claim represents the majority of the accrual for the class.

The FASB, in its Basis for Conclusions, provides a rationale for the removal of the prejudicial exemption by noting that paragraph 1 of ASC 450-20-50[2] requires that, if specified criteria are met, disclosure of the actual loss contingency would be required. TRW believes there is a significant difference between the disclosure of the amount accrued for a material loss contingency and providing the detail of increases and decreases to that contingency.

For the same reasons, we believe that the disclosure of a potential loss, or a range of potential losses, would also be prejudicial, even if disclosed by class. The disclosure of potential loss by class may result in harm to reporting entities trying to defend against these claims, and would effectively operate as a "floor" for settlement of the claims that might otherwise be resolved by reporting entities on more favorable terms. This would result in harm to the reporting entity, and, therefore, to the very shareholders that the Proposed ASU is trying to assist.

Similarly, we believe that the suggested disclosures in paragraph 1D of ASC 450-20-55 in the Proposed ASU, which recommends the disclosure of the number of claims, average amount claimed, and the average settlement amount, would be prejudicial. Disclosure of the number of

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[2] Paragraph 1 of ASC 450-20-50 states that, "Disclosure of the nature of an accrual made pursuant to the provisions of paragraph 450-20-25-2, and in some circumstances, the amount accrued, may be necessary for the financial statements not to be misleading."

claims, particularly in a rollforward format, would invite additional claims from potential plaintiffs, especially in situations where a large increase in the number of claims is observed. Further, disclosure of the amount claimed would not be meaningful to users of financial statements, as it is often not representative of the reporting entity's view of its actual exposure. In addition, the disclosure of the average amount claimed, and the average settlement, would be prejudicial, as it would effectively set a "floor" for negotiations between the plaintiff and a reporting entity, which would significantly hinder the reporting entity's ability to settle the claim.

We recommend that, for the purposes of the tabular reconciliation, companies be allowed to aggregate the reconciliation on an overall basis of the risks faced by the reporting entity, and continue to apply the guidance in paragraph 1 of ASC 450-20-50 to disclose any material components into separate categories, in order to prevent the financial statements from being misleading. Further, we recommend that similar aggregation be permitted in disclosing the total potential loss, or range of losses, for all reasonably possible loss contingencies faced by the reporting entity. Finally, we recommend that the suggested disclosures in paragraph 1D of ASC 450-20-55 be removed entirely. By making these changes, we believe that the FASB would strike a better balance between providing useful information to shareholders and other users of financial statements without the disclosure of prejudicial information.

However, even if the FASB makes all of the changes discussed above, we observe that it would still be possible for prejudicial disclosures to be made under the Proposed ASU. Thus, in addition to the above changes, we strongly recommend that the FASB restore a prejudicial exemption to the Proposed ASU. Instead of the prejudicial exemption that was proposed in the 2008 Exposure Draft, we would recommend that the FASB consider a prejudicial exemption similar to the one discussed in paragraph 92 of IAS 37, *Provisions, Contingent Liabilities, and Contingent Assets.*[3] We believe that such an exemption would significantly reduce the risk of a prejudicial disclosure being made, and we believe that the requirements of paragraph 92 of IAS 37 would provide shareholders and other users of financial information sufficient information about the nature of the risk and why additional information could not be provided.

**Remote, but Severe, Disclosures**

The Proposed ASU would require the disclosure of certain information about loss contingencies where the risk of loss is remote, but the potential impact to the reporting entity is severe. TRW believes that the requirement to disclose remote, but severe, potential loss contingencies does not improve financial reporting.

The disclosure of potential loss contingencies where the expected risk of loss is remote would not provide additional useful information to our shareholders and other financial statement users. We believe that reporting entities, including TRW, are frequently subjected to cases where the risk of loss associated with the case is deemed to be remote, but, for various reasons, the amount of damages claimed by the plaintiff rises to the level of severe. We believe that the disclosure of these matters would not add to the understanding of the risks faced by the reporting entity, since, by definition, it is highly unlikely that the contingency will result in a loss to the reporting entity.

[3] Paragraph 92 of IAS 37 states that, "In extremely rare cases, disclosure of some or all of the information... can be expected to prejudice seriously the position of the entity in a dispute with other parties on the subject matter of the provision, contingent liability, or contingent asset. In such cases, an entity need not disclose the information, but shall disclose the general nature of the dispute, together with the fact that, and reason why, the information has not been disclosed."

At best, disclosure of these remote loss contingencies would create disclosure with little meaningful benefit to financial statement users; more likely, disclosure of remote loss contingencies would confuse users and make them perceive reporting entities to be subject to much more risk than may actually be present. Further, disclosure of these amounts may spur others to file similar claims, based on the perceived value of the claim.

In addition, the Proposed ASU, in paragraph 1E of ASC 450-20-50, would prohibit entities from considering the possibility of recoveries from insurance or other indemnification arrangements. In the Basis for Conclusions, the FASB noted in paragraph BC15 that, "Several roundtable participants and comment letter respondents observed that insurance coverage often is uncertain and may be subject to litigation with the insurer." However, evaluation of the risk associated with remote, but severe, contingencies, without evaluation of the risk management strategies that a reporting entity would use to mitigate these risks, including insurance and indemnification arrangements, would result in misleading disclosure that would not benefit shareholders and other users of the financial statements.

We strongly believe that the requirement to disclose remote, but severe, loss contingencies should be eliminated entirely from the exposure draft. However, if the FASB wishes to continue to require this disclosure, it should permit reporting entities to consider the impact of insurance and indemnification agreements with third parties.

**Convergence with IFRS**

The FASB notes that while the disclosure requirements in the Proposed ASU are similar to the disclosure requirements in IAS 37, they are not identical. The FASB further notes that the IASB is currently deliberating changes to IAS 37, and that the IASB is expected to complete its project in the first half of 2011. However, several of the required disclosures in the Proposed ASU would diverge US GAAP from both current IFRS and the IASB's deliberations on the revisions to IAS 37; in particular, the disclosure of remote loss contingencies, the aggregation principles of the Proposed ASU, and the lack of a prejudicial exemption. Given the focus on convergence between US GAAP and IFRS in other areas, such as fair value, financial instruments, leasing, and revenue recognition, we do not understand why the FASB would consider a proposed accounting standard at this time that would result in further divergence from IFRS.

Given the significance of the changes to the disclosures of loss contingencies that the Proposed ASU would make, and the changes in IAS 37 being contemplated by the IASB, TRW recommends that the FASB and IASB add loss contingencies to the list of accounting topics to be converged. We believe that one converged standard on loss contingencies would better serve users of financial statements than the separate approaches that the FASB and the IASB are currently pursuing. Otherwise, multiple changes in standards would result in TRW incurring cost to adopt the Proposed ASU, then incurring additional cost upon conversion to IFRS.

**Effective Date**

Based on the significance of the changes that the Proposed ASU would make to the disclosure of loss contingencies, we believe that the proposed effective date of years ending after December 15, 2010, is not operational. We believe that the proposed effective date would not provide enough time for TRW to implement the Proposed ASU in a cost-effective manner, due to the significance of the changes made to the disclosures and the corresponding decisions that would need to be made by reporting entities with regards to aggregation principles, evaluating remote contingencies, the collection and evaluation of the information required under the Proposed ASU, and, assuming

that a final Accounting Standards Update is issued early in the 4th quarter of 2010, categorizing at least nine months of changes in accrual balances into the tabular reconciliation.

We would strongly recommend that the effective date of the Proposed ASU be changed to fiscal years ending after December 15, 2011. We believe that the additional year would allow preparers to implement the changes required to systems and controls, craft the new disclosures in the Proposed ASU, as well as consider the Proposed ASU in conjunction with IFRS, in a thoughtful and rational manner. In addition, if the FASB and IASB decide to add loss contingencies to the list of accounting topics to be converged, we would recommend that implementation be delayed until a final, converged, standard is issued.

If the FASB chooses to maintain the current effective date in the Proposed ASU, then TRW would strongly recommend that the tabular reconciliation disclosure only be required on an annual basis, for fiscal years beginning after December 15, 2011. This change, which would make the tabular reconciliation effective in 2012 for calendar year-end companies, would significantly reduce the cost associated with the implementation of the tabular reconciliation.

We thank the Board for its consideration of our comments and recommendations, and would be pleased to discuss these issues in more detail with the Board, or its staff, at your convenience.

Sincerely,

Tammy Mitchell, CPA
Vice President and Controller
TRW Automotive Holdings Corp.

Appendix A: Responses to Questions for Respondents

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**Question 1: Are the proposed disclosures operational? If not, please explain why.**
As discussed in the body of this letter, TRW believes that a number of the required disclosures in the Proposed ASU are not operational. In addition to the discussion above, we believe that the following additional required disclosures in the Proposed ASU would not be operational:

- We believe that the disclosure of publicly-available quantitative and non-privileged information, without appropriate mitigating disclosure, would potentially lead to the disclosure having the appearance of fact, even though the information may be disputed by TRW. In particular, we have concerns that the requirement to disclose damages indicated by expert testimony, damages claimed by plaintiffs, and other publicly available information, without an appropriate counterbalance of TRW's opinion on the matter, would result in misleading disclosure. Further, disclosing all of these matters, while providing the necessary context for balance, will bury users of financial statements in details about immaterial items.
- We have concerns about disclosing recoveries of insurance information that may be "discoverable." This would require TRW to evaluate whether the insurance information is, in fact, discoverable, and, if so, cause a disclosure which would then guarantee discovery by the plaintiff, even though that information may not have been requested by, or provided to the plaintiff.
- We believe that the tabular disclosures, if required to be disclosed for interim periods, would not be operational, as it would require the dedication of significant resources to complete within the SEC's deadline for filing a Form 10-Q.

**Question 2: Are the proposed disclosures auditable? If not, please explain why.**
We believe that the majority of the proposed disclosures that relate to facts that are publicly available and the tabular reconciliation would be auditable. However, we believe that the following disclosures will not be easily auditable, and may prove to be not auditable:

- TRW believes that the disclosures surrounding remote, but severe, loss contingencies will not be easily auditable. We believe that auditors will rely upon legal confirmations, as required under current auditing standards issued by the PCAOB and AICPA. The information in those legal confirmations is based on the American Bar Association ("ABA") Statement of Policy, which does not contemplate the concept of "remote" or "severe losses." Resolution of the work currently being done by the FASB with the PCAOB, AICPA, and ABA, surrounding the Proposed ASU, will significantly enhance the auditability of this disclosure. Failure to complete this work prior to the issuance of the final version of the Proposed ASU will lead to increased costs associated with attempting to audit these provisions, which will be detrimental to shareholders and other users of the financial statements.
- More importantly, we believe that disclosures surrounding non-privileged information would also not be easily auditable, and, in order to respond to auditors' requests, reporting entities will risk unintended waiver of attorney-client privilege, attorney work product doctrine, and the disclosure of information subject to court orders that prevent disclosure. In addition, preparers and auditors would be required to evaluate which non-public, non-privileged information, which represents all (potentially voluminous) information exchanged during the discovery process, which would be considered to be material to a user's understanding.

**Question 3: Do you believe that a prejudicial exemption is no longer necessary in the Proposed ASU?**
We believe that a prejudicial exemption, similar to that provided in paragraph 92 of IAS 37, is required in the Proposed ASU, as discussed above.

**Question 4: Is the Proposed Effective Date Operational?**
We do not believe that the proposed effective date of years ending after December 15, 2010, is operational, as discussed above.

**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 of loss contingencies?**
TRW does not believe that the proposed disclosures will enhance and improve the information provided to users of financial statements. We believe the disclosure requirements of paragraph 1 of ASC 450-20-50 provide an appropriate level of disclosure regarding the nature, potential magnitude, and potential timing of material loss contingencies. Thus, we believe that the improvement that users of financial statements will obtain as a result of the adoption of the Proposed ASU will be minimal for material loss contingencies, and unnecessary for contingencies that are not material.

**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?**
Given that TRW, as a public entity, anticipates significant difficulties in implementing certain aspects of the disclosures required by the Proposed ASU, we believe that the proposed deferral is appropriate and would encourage the FASB to consider the proposed deferral for all entities, not just nonpublic entities.

**Question 8: Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's requirement to provide financial statement information in the XBRL's interactive data format?**
We have evaluated the proposed XBRL elements attached to the Proposed ASU and believe them to be sufficient to provide the additional disclosures required under the Proposed ASU.