

September 20, 2010

VIA EMAIL (director@fasb.org)

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

Re: File Reference No. 1840-100, Proposed Accounting Standards Update -
Contingencies (Topic 450)

Dear Mr. Golden:

Thank you for the opportunity to submit comments on Proposed Accounting Standards Update – Contingencies (Topic 450) on behalf of The Lubrizol Corporation.

Lubrizol is a Fortune 500 innovative specialty chemical company that produces technologies to improve the quality and performance of its customers' products in the global transportation, industrial and consumer markets. Lubrizol is headquartered in Cleveland, Ohio but is geographically diverse, with an extensive global manufacturing, supply chain, technical and commercial infrastructure. Lubrizol operates facilities in 27 countries through the efforts of approximately 6,750 employees. Lubrizol's in-house legal and financial teams have extensive, practical experience with respect to contingencies and FASB Accounting Standards.

Lubrizol understands that the proposed Update reflects the FASB's consideration of prior comments made in response to a 2008 exposure draft. Even though the FASB has taken certain of these comments into account, Lubrizol believes that portions of the proposed Update still have the potential to impose serious burdens and cause financial harm to a reporting entity, and will do so without any corresponding benefit to financial statement users. The FASB's current standards already obligate an entity to make disclosures necessary to render the financial statements not misleading. Lubrizol believes that this requirement (rather than certain provisions of the proposed Update) strikes a better balance between the need to provide users of financial statements with accurate information about contingencies and a reporting entity's legitimate interests in protecting its work-product and attorney-client privileges, and in not providing its adversaries with unfair advantages in litigation.

Therefore, what follows are Lubrizol's comments on the proposed Update, which respond to certain of the specific questions posed by the FASB.

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

Lubrizol's Response: No. The proposed disclosures are not operational because the requirement to provide a tabular reconciliation for every interim reporting period will create a burden on reporting entities that outweighs any benefit to investors.

First, contingencies often take a long time to resolve. Several reporting periods may elapse between developments that would cause a material change in management's estimate of the probable loss to be incurred. Therefore, a requirement to include disclosures for every interim period results in a burden on reporting entities to compile information that will disclose only immaterial changes from the preceding reporting period. In addition, disclosures on an interim basis also would allow plaintiffs' attorneys to judge immediately whether their specific legal tactics caused a change in management's outlook on the resolution of the contingency.

Suggested alternative: The FASB should consider modifying the proposed Update so that disclosure is only required when there has been a material change in the estimate of probable loss to be incurred.

Question 3: Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary ?

Lubrizol's Response: No. An explicit exemption from the disclosure requirement for information that would cause "prejudice" to the reporting entity if disclosed is necessary to protect the attorney-client and work product privileges, and to prevent a reporting entity's adversaries from obtaining an unfair advantage in litigation. The portions of the proposed Update concerning disclosures of insurance receivables, accrued amounts and unasserted claims are of particular concern. Without a "prejudicial information" exemption from these disclosure requirements (as well as certain other modifications) an entity might be required to disclose information that should be protected, and that may be harmful to its ability to fairly resolve contingencies.

a. *Disclosure Requirements Related to Insurance Receivables (450-20-50-1F (e)(5) & (f)(3))*¹

The disclosure requirement of the proposed Update related to insurance receivables may lead to disclosure of information that could harm a reporting entity. First, the language requires disclosure of information about insurance that is "discoverable," but that has not necessarily been requested or produced in discovery. As a result, an entity's adversary could obtain information that it failed to request during the litigation, and which it may (at some point) be barred from

¹ The proposed Update would require that for all contingencies that are at least reasonably possible, and for those remote contingencies that could result in a "severe impact," an entity must disclose information about possible recoveries from insurance to the extent that it has been provided to the plaintiff(s) or it is discoverable by either the plaintiff or a regulatory agency. In addition, an entity must disclose "other non-privileged information that would be relevant to financial statement users to enable them to understand the potential magnitude of the loss."

seeking during the litigation (for example because the discovery period has closed). Second, the required disclosure of "non-privileged" information could be read to require the disclosure of sensitive non-public information. This is contrary to the FASB's objective of limiting disclosures to publicly available information.

b. Disclosure Requirements Related to Specific Accruals (450-20-50-1F (e)(2))²

The disclosure requirement of the proposed Update related to specific accruals may unfairly advantage a reporting entity's adversaries. Disclosure of specific accruals and accrued insurance recoveries could make it nearly impossible for an entity to negotiate a settlement for anything less than those accruals. In certain circumstances, the opportunity to aggregate claims may mitigate this concern, but where an entity does not have a great number of similar claims for aggregation, identifying the relevant accruals will not be difficult for an entity's adversaries and will provide the adversaries with an unfair advantage that is disconnected from the merits of the claim.

c. Unasserted Claims and Assessments (450-20-55-14)³

The disclosure requirement of the proposed Update related to an entity's analyses of unasserted claims is inconsistent with an entity's interest in protecting the attorney-client and work product privileges. As illustrative examples, the FASB cites potential mass tort and patent infringement cases. The mass tort example focuses on an entity's awareness of scientific studies regarding "potential significant hazards related to the entity's products or operations." The patent infringement example concerns a situation where the patent owner is unaware of the infringing entity's conduct. The anticipatory nature of an entity's analysis of unasserted claims, particularly the types of claims envisioned in the examples cited by the FASB, would make the analysis protected under the work product doctrine. If disclosure of such analyses is required, the predictable auditor inquiries about whether an entity has considered "all of the information that it is aware of" and whether that information supports a conclusion that the assertion of claims is not probable also would necessarily intrude on an entity's protected work product. While studies may be publicly available, or allegedly infringing conduct maybe publicly discernible, an entity's analysis of what affects its risk profile is not.

Further, the quality of the information considered could render a reporting entity's disclosure unreliable in any event. There is an overwhelming volume of information readily available on the internet or otherwise, much of which is of questionable reliability. Requiring a

² The proposed Update would require that with respect to contingencies that are at least reasonably possible, the entity must disclose information about "the possible loss or range of loss and the amount accrued, if any" as well as possible recoveries from insurance and other sources.

³ The proposed Update would require an entity to "consider all the information that it is aware of when determining the degree of probability that a claim will be asserted and an unfavorable outcome could occur." If the assertion of a claim is probable, an entity must assess the degree of probability of an unfavorable outcome and make disclosures if "an unfavorable outcome is probable, but the amount of loss cannot be reasonably estimated" or "an unfavorable outcome is reasonably possible but not probable."

reporting entity to consider all of this information undermines the FASB's goal of providing meaningful information to users of financial statements.

Suggested alternatives: For all of these reasons, the FASB should consider:

- including a "prejudicial information" exemption to the contingency disclosure requirements permit a company to refrain from disclosing information about insurance or other sensitive non-public (but non-privileged) information that could harm the entity's position in ongoing or future litigation;
- requiring disclosure of specific accruals only where a failure to make such disclosure would render the financial statements misleading;
- eliminating the requirement that a reporting entity disclose its analysis of unasserted claims so as to avoid waivers of the attorney client privilege or work product doctrine; and
- narrowing the universe of information to be considered in assessing probability of the assertion of a claim from "all information that a reporting entity is aware of" to "reasonably reliable information."

In sum, Lubrizol urges the FASB to modify the language of the proposed Update to provide for adequate protection of the attorney-client and work product privileges and to prevent the disclosure requirements from becoming an instrument of gain for a reporting entity's litigation adversaries. Specifically, Lubrizol believes that the FASB should: (a) require updated disclosure about contingencies only when there has been a material change in the estimate of probable loss; (b) include a "prejudicial information" exemption from the disclosure requirements; (c) require disclosure of specific accruals only where a failure to make such disclosure would render the financial statements misleading; (d) eliminate the requirement that a reporting entity disclose its analysis of unasserted claims; and (e) narrow the universe of information to be considered in assessing probability of the assertion of a claim. These proposed modifications to the disclosure requirements would serve to both mitigate the risk of harm to a reporting entity, and to provide more useful information about contingencies to financial statement users.

Very truly yours,



Suzanne F. Day
Associate General Counsel