September 20, 2010

Russell Golden, Technical Director
Financial Accounting Standards Board
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Comment on Exposure Draft - Disclosure of Certain Loss Contingencies
Accounting Standards Update of Topic 450 - File Reference No. 1840-100

Dear Mr. Golden,

As investors, we are writing to comment on the July 20, 2010 exposure draft regarding Accounting Standards Update of Topic 450 on loss contingencies.

We agree with the Board that under the existing contingent liability disclosure, formerly Financial Accounting Statement 5, financial statement disclosures typically contain inadequate information regarding many of the liabilities faced by the reporting entity. In far too many instances, investors are only informed of a realistic estimate of liability after a settlement or judgment is reached. Prior to that, the reliance on the so-called "known minimum" allows many reporting companies to keep investors in the dark about the genuine extent of liabilities, whether they be for toxic products, toxic loans or other contractually created financial obligations.

Although the July 20 proposal scales back on some of the improvements originally set forth in the original FASB exposure draft of June 2008, the modest changes now being proposed still may portend some improvements in financial statement disclosure. We have the following comments on the specifics of the proposal.

1. **The current exposure draft makes an appropriate compromise – preserving legally privileged information while ensuring disclosures needed to avoid perpetuating misleading financial statements.**

   Given the substantial compromises made by the Board in refining its approach to contingent liabilities to avoid disclosure of privileged information, we are disappointed to see the Chamber of Commerce and corporate bar continuing to oppose elements of the exposure draft. In particular, we are aware that the corporate bar has expressed its opposition to the elements of the proposal requiring disclosure of prior average settlement amounts, discoverable amounts of liability insurance coverage and quarterly tabular reporting of evolving liabilities.

   In our opinion, the approach taken by the Board in the latest draft presents an appropriate compromise. It preserves legally privileged information, but requires disclosure of nonprivileged information. The information requested helps to ensure that companies do not issue intentionally misleading financial statements. This is an appropriate and necessary task

for the accounting rules to accomplish.

The requirement to disclose average settlement amounts to date is merely a matter of benchmarking pending cases against a company's own results to date. This is certainly being done internally by any well-managed company; these averages are informative to us and should be shared with investors.

Similarly, investors should stand, at minimum in the same position as litigants, in being able to ascertain whether and to what degree pending liabilities may be insured. Because the current proposal only requires disclosure of amounts of insurance if that information would be discoverable anyway, the cost of this disclosure is more than made up for by the benefit of providing to us as investors with more complete information on insurance coverage.

Finally, in the absence of tabular accounting of liabilities, it is difficult for investors to track changes in a firm's evolving liability picture. We strongly support the current proposals for tabular accounting of liabilities.

We support all three of these contested elements of the exposure draft in their current form.

2. **Enhance financial statement disclosure of contingent liability through additional examples of types of publicly available information required to be disclosed.**

We support the elements of the new proposal calling for additional disclosures of qualitative and quantitative information on contingent liabilities in financial reports to allow investors to better analyze the magnitude of potential liabilities. Although the new proposal withdraws the previously proposed requirement for management to disclose its projections of worst-case liability beyond the known minimum, it is apparent that the proposal will at least help to ensure that disclosures reliant on the known minimum may now be accompanied by other publicly available information that may assist investors in understanding the higher potential outcomes above the known minimum.

Of particular importance is the proposal to require disclosure of any expert estimates advanced as testimony in litigation. This disclosure requirement should also include any such estimates that have been provided on a nonconfidential basis through the discovery process.

In addition, the finalized version of the Statement should clarify that relevant publicly available information may also include settlements and judgments in litigation facing other companies in similar matters, so that such information must also be disclosed to allow investor benchmarking of liabilities.

With these additions, the information which will be required to be disclosed will allow investors to draw our own conclusions regarding potentially higher levels of liability.

3. **Additional disclosure models needed to clarify Statement's disclosure principles and duties.**

   The exposure draft notes that "During early stages of a loss contingency's life cycle, an entity shall disclose information that is available to enable users to understand the loss contingency's nature, potential magnitude, and potential timing (if known). Available information may be limited and, therefore, disclosure may be less extensive in early stages of a loss contingency. In subsequent reporting periods, disclosure shall be more extensive as additional information about a potential unfavorable outcome becomes available."

   Although we agree with these principles, the Exposure Draft provides inadequate guidance on the kinds of information that should be disclosed in particular liability scenarios to render these staged disclosure principles to be operational in practice. Therefore, the Board should provide additional examples prior to finalization of the Statement. These should include among other things, examples of the kinds of information that must be included in the event of product liability claims such as product toxicity scenarios.

4. **Scientific literature indicative of risks of products or operations is relevant to long-term liabilities as well as accruals.**

   We are supportive of the newly added Statement that the appearance of issues in scientific literature regarding hazards of corporate products and operations can serve as a trigger for disclosure. However, the final version should clarify that such scientific literature can trigger other contingent liability disclosures beyond the question of accrual of liabilities. Such accruals occur late in the contingent liability disclosure process. These emerging issues in scientific literature may also be a trigger for disclosure of potentially severe long-term liabilities, or as yet unasserted claims, and the final Statement should make this clear.

5. **Ensuring disclosure of remote and severe liabilities.**

   Additional guidance is required regarding disclosure of remote/severe liabilities. The new requirement for disclosure of remote/severe liabilities creates, in principle, an expanded obligation for disclosure, but leaves a loophole of discretion that would allow the financial statement preparer to fail to disclose a large claim if the management deems such claim to be "frivolous with an artificially inflated amount." Clarification is needed to prevent this exception from swallowing the new disclosure requirement.

6. **Disclosure of unasserted claims where outcome could be severe.**

   The exposure draft provides that "Disclosure is not required of a loss contingency involving an unasserted claim or assessment when there has been no manifestation by a potential claimant of an awareness of a possible claim or assessment unless it is considered probable that a claim will be asserted and there is a reasonable possibility that the outcome will be unfavorable." This is an inappropriate threshold for where the management is aware of potentially severe liability scenarios, even though no claims have yet been asserted. A

qualitative disclosure requirement should be included for potentially severe liabilities, even where those claims may be unasserted and viewed as remote by the management.

7. **Eliminating the "prejudicial disclosure" exemption.**

We agree that now that the board has eliminated a requirement for the management to disclose its worst-case liability estimate, and has based the principal disclosure obligations on publicly available, nonprivileged information, it is no longer necessary or appropriate to include a separate prejudicial disclosure exemption within the Statement.

Thank you for your consideration.

Sincerely,

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