



American Insurance Association

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September 20, 2010

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

Via E-mail: director@fasb.org

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

Dear Mr. Golden:

The American Insurance Association (AIA) is the leading property-casualty insurance trade organization, representing approximately 300 insurers that write more than \$117 billion in premiums each year. AIA participated in a joint industry comment letter, dated August 20, 2010, on the loss contingencies exposure draft that was filed on August 20, 2010; we are following up with separate comments.

We support the Board's commitment to providing financial statement users with transparent, timely and useful financial information. Additionally, we commend the Board for its efforts to address concerns previously raised regarding the 2008 exposure draft on loss contingency disclosures. We believe that, to every extent reasonable and practicable, an entity should disclose qualitative and quantitative information about loss contingencies to enable financial statement users to understand all of the following:

- a. the nature of the loss contingencies,
- b. their potential magnitude, and
- c. their potential timing (if known).

Though the proposed standard is aimed at achieving these results, the current exposure draft fails to adequately reflect the dynamic and complex nature of litigation in the United States. We are concerned that the unintended effects of the proposed disclosure standard will likely lead to misleading disclosures and prejudicial effects on preparers of financial statements. Additionally,

we question if it is even possible to develop a one-size-fits-all disclosure standard with respect to litigation contingencies.

Thus, after two unsatisfactory efforts to improve the existing standard, we believe the best course of action at this juncture is to retain the existing disclosure standard. We believe the existing standard works and we are not aware of any evidence to the contrary. The existing disclosure framework provides an appropriate balance between an investor's interest in knowing more about contingent losses, while protecting the legal interests of the reporting entity and its shareholders.

Because our greatest concern is the exposure draft's treatment of litigation contingencies, our comments in the rest of our letter focus on issues associated with the disclosure of litigation losses.

DISCLOSURE OF ACCRUALS

Our foremost concerns are that the proposed disclosure standards may compromise attorney-client privilege and the attorney work-product doctrine, and reveal valuable information about strengths and weaknesses of the reporting entity's legal posture to opposing litigants. With respect to the first concern, the analysis of legal exposure and related accruals is provided by the ones with the best knowledge of the legal dispute – legal counsel for the reporting entity. Legal counsel regularly provide information about the progress and status of lawsuits in which a company is involved, and provide company's management with updates on exposure to assist in determining the most appropriate accrual at any given point in time. The communication of such information is generally protected under the attorney-client privilege and the attorney work-product doctrine. Our concern is that disclosure of the accrual may vitiate that protection. Although one might argue that the risk of losing that protection applies to both sides of the litigation, factually, that is not generally the case because financial statement disclosure obligations may not apply to all parties of a lawsuit. For example, the individual complainants of a shareholders' derivative lawsuit or a class-action securities lawsuit would not ordinarily be financial statement issuers and, therefore, would not have a financial statement disclosure obligation. Thus, the proposed disclosure standards would create a one-sided bias against the reporting entity and undercut that entity's efforts to defend itself. We believe that at a minimum, the currently proposed standard should have retained the "prejudicial exception" that was contained in the 2008 exposure draft.

The second concern relates to a reporting entity's ability to negotiate a settlement of a pending lawsuit; as a practical matter, disclosure of the accrual sends a signal to the opposing side that the accrued amount represents an amount the reporting entity is willing and able to settle upon, and therefore becomes the minimum that the opposing side will accept, even though it may be the maximum amount the reporting entity is willing or able to accept. In other words, revelation of the accrual may create an environment in which it is impossible for the reporting entity to settle the lawsuit for any amount less than the accrual. Considering the Board's principles and objectives regarding disclosures, it is difficult to see how the proposed disclosure standard provides a benefit to investors. Driving up the cost of settlements, or increasing the amount of litigation because settlements will become impossible, is certainly not in the best interest of investors.

AGGREGATION, CLASSIFICATION, AND TABULAR RECONCILIATION

Although we appreciate that the aggregation option in Section 450-20-55-1A of the exposure draft is intended to avoid potentially prejudicial disclosures, it is not helpful for companies that have a limited number of litigated cases. For such companies, aggregation would fail to mask the details of underlying claims or prevent plaintiffs from identifying specific accruals. The classification requirement may further isolate a contingency when there are not enough similar claims to aggregate. As a result, changes in aggregated amounts will provide more meaningful information to the adversary than to the investor.

Even at a highly-aggregated level for a large company involved in a significant number of proceedings, opposing counsel could analyze the facts, together with information disclosed in financial statements and periodic changes in those disclosures, to reach conclusions that could affect, to the reporting entity's detriment, the defense of the proceeding and the outcome of the contingency. In fact, counsel for plaintiffs could be subject to malpractice claims for failure to track and isolate such information for the benefit of their clients.

We are concerned that the proposed tabular reconciliation requirement would encourage opposing counsels to increase the values of their cases and possibly to pursue more litigation that otherwise would not have been brought. Additionally, it should be noted that disclosure of aggregated litigation amounts will likely make the non-aggregated information subject to discovery.

The aggregation exemption provided in the exposure draft is not a meaningful alternative for litigation claims. The option to omit disclosure is prejudicial and damaging because of the requirement to disclose that a litigation matter has been omitted along with rationale for the omission. Revealing that the preparer has omitted disclosures about an accrued contingency (or a non-accrued, but reasonably possible) litigation contingency actually highlights the controversy and directs an adversary's focus to what would obviously be a sensitive area of the litigation. The disclosure requirement would provide little to no benefit for the financial statement user, while providing a significant tactical advantage to opposing counsel.

As explained above, these proposed standards will result in significant potential for prejudice to preparers of financial statements, in exchange for information that is not useful to users of financial statements. Aggregation of unique contingencies does not provide reliable insight because they lack homogeneity and a comparable basis. This is especially true for litigation contingencies in which each case presents a unique fact pattern that cannot be used to draw correlations to other cases.

ADDITIONAL CONCERNS

Disclosure of Potential Insurance Recoveries

Disclosure of information relating to possible insurance recoveries, required by Section 450-20-50-1F.e.5, could prejudice companies by requiring them to disclose their liability coverage terms to litigants and other potential litigation adversaries. In addition, disclosure of insurance information may mislead investors into thinking realization is close to certain.

From an insurance company perspective, disclosure of insurance information could make defense by the insurer more difficult and raise costs of defense. Requiring detailed disclosure

of insurance information could be viewed by plaintiffs' counsel as revealing a "deep-pocket" to pursue for recovery. In addition, disclosure about insurance information, including the potential disclosure of the name of insurers and specific policy information, could have unexpected and unintended negative consequences for insurance companies. Accordingly, if insurance information must be disclosed, then we request that the rule be clarified to provide that insurer names and specific policy terms should not be disclosed.

Ambiguity of Certain Standards

The factors listed in Section 450-20-50-1D are ambiguous, rendering them difficult to determine how to apply them. The timing for disclosures, including the reference to "early stages" in 450-20-50-1F(b), is ambiguous and makes it difficult to determine when to disclose different aspects of the litigation. The lack of clarity in the standard for disclosure could result in an entity facing unfounded claims by investors regarding the timing and sufficiency of disclosures.

Effective Date

The proposed effective date would not allow insurers sufficient time to implement the new guidance in an orderly and thorough manner. For example, reporting entities must, among other tasks, determine the entire population of all litigation and other loss contingencies, including those that are remote; they must determine which contingencies are included within the scope of the new guidance; and for Securities and Exchange filers, they must also tag quantitative information included in new disclosures for XBRL reporting purposes. The time commitment for any of these processes is enormous. Without a sufficient implementation period, we are concerned that the accelerated implementation period could result in disclosures that are potentially unreliable and not meaningful.

The evaluation and implementation process requires coordination among a number of internal constituents as well as external constituents, such as auditors and legal counsel. Given the significant implications of the proposed standard, we recommend that the new requirements not be made effective before December 31, 2011.

CONCLUSION

Although significant improvements have been made to the proposed loss contingency standard since 2008, there are still fundamental disconnects between the exposure draft and the realities of reporting loss contingencies, especially when those contingencies involve complex litigation. While understandably intended to provide investors with useful information, the proposed standard still leads to inherently misleading information, while sacrificing privileged information and increasing the cost of litigation.

As we noted in our joint comment letter in 2008, a perceived problem that financial statement users are receiving insufficient information is being substituted with a greater risk that users will receive misleading information. As a result, the required disclosures under the proposed standard would no longer be historical and reasonably accurate, but instead would constitute inaccurate and forward-looking guesses. Furthermore, the disclosure of litigation-related information could be severely prejudicial to reporting entities, ultimately resulting in greater costs to investors.

We recommend that the Board retain the existing disclosure standards for loss contingencies. To the extent there are financial statement preparers who have not been complying with those

standards, we submit that noncompliance becomes an enforcement issue, which is not the role of accounting standard-setters.

We appreciate the opportunity to provide the Board with comments on the proposed standard. Please let us know if you have any questions or if we can provide additional information or assistance.

Sincerely,

A handwritten signature in black ink that reads "Phillip L. Carson". The signature is written in a cursive style with a large, stylized "P" and "C".

Phillip L. Carson
Assistant General Counsel