## Paul Hastings

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## via email: director@fasb.org

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

File Reference No. 1840-100: Proposed Accounting Standards Update of Topic 450 (Disclosure of Certain Loss Contingencies)

Dear Mr. Golden:

Re:

We appreciate the opportunity to comment on FASB's July 20, 2010 Exposure Draft concerning Disclosures of Certain Loss Contingencies. Although we are certainly respectful of FASB's efforts regarding the Exposure Draft, it is our view that the proposed amendments would be unfairly prejudicial against issuers of publicly traded securities involved in litigation and also result in an invasion of well-established and critical legal privileges and protections (i.e., the attorney-client privilege and attorney work product). We further believe that the currently existing disclosure standards provide a more-balanced approach to disclosure without requiring unfairly prejudicial and legally protected disclosures. In this vein, we do not support the proposed amendments and believe that the current standards should remain in effect.

The Exposure Draft's proposed amendments require a broad range of new qualitative and quantitative disclosures concerning an entity's loss contingencies. In particular, issuers would be required to make extensive new disclosures with respect to the accruals of litigation loss contingencies and the potential magnitude of litigation loss contingencies. As a result of these increased disclosure requirements, issuers would potentially have to disclose internal judgments, assessments, or analyses regarding likely litigation outcomes, which could put issuers at a severe and unfair disadvantage in reaching fairly negotiated settlements and defending lawsuits. Indeed, an issuer's accrual disclosures could be used against it in the underlying litigation and the estimated likely loss (or lower range of likely loss) amounts could be unfairly used by plaintiffs as the probable "floor" for any negotiated settlements. Moreover, because such wide-ranging disclosures would require the disclosure of internal assessments or judgments, they would also likely infringe upon critically important legal privileges and protections.

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The proposed amendments permitting "aggregated" disclosures could also result in unfair prejudice against issuers involved in litigation. In fact, any potential protection or value offered by allowing "aggregation" would likely be entirely negated by the additional disclosure requirements. Specifically, the aggregated disclosures would potentially allow plaintiffs to determine certain information regarding their specific case—such as whether the aggregated accrual amount includes plaintiff's case, the amount the issuer accrued for plaintiff's case, and whether the issuer's valuation of plaintiff's case changed over time. Permitting plaintiffs such insights into an issuer's internal assessments and valuations would be extremely unfair to the issuer and could negatively impact its litigation defense.

In addition, the proposed amendments would require that issuers provide, for every annual and interim reporting period in which a statement of financial position/performance is presented, a highly detailed "tabular reconciliation" concerning accrued loss contingencies. Further, issuers would be required to describe the significant activity in the reconciliations and disclose the line items in the statement of financial position/performance in which recognized (accrued) loss contingencies are included. By requiring such revealing disclosures, the proposed tabular reconciliation would likely result in unfair prejudice against issuers involved in ongoing litigation.

The proposed amendments would also extensively broaden an issuer's disclosure obligations regarding legal proceedings, especially with respect to "subsequent reporting periods." Indeed, the Exposure draft states that "[i]n subsequent reporting periods, disclosure shall be more extensive as additional information about a potential unfavorable outcome becomes available, for example, as the litigation progresses toward resolution, if the likelihood or magnitude of loss increases, or both." Such new disclosure obligations would effectively require an issuer to provide litigation opponents with privileged and confidential internal assessments and analyses on an ongoing basis regarding ongoing litigation. Issuers would again therefore potentially be subjected to unfair prejudice in the litigation context.

In addition, the Exposure Draft's disclosure provision regarding "[o]ther nonprivileged information that would be relevant to financial statement users to enable them to understand the potential magnitude of the possible loss" does not negate the other proposed amendments which likely require the disclosure of legally privileged or protected information. Further, the "nonprivileged" provision itself seems to contemplate the disclosure of information potentially derived from privileged or protected analyses. Finally, this provision combined with the other extensive new disclosure provisions seems to unfairly provide plaintiffs with additional ammunition to use against an issuer in litigation.

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Finally, the Exposure Draft is unduly broad in its scope and would require public issuers to comply with the proposed amendments in a drastically short period of time. Moreover, it does not include an exemption from disclosing prejudicial information that was included in the previous proposal.

Based on the foregoing, we believe that FASB's current standards regarding the disclosure of certain loss contingencies should remain in effect and that the proposed amendments should be completely rejected or withdrawn.

Thank you for your consideration and the opportunity to provide these comments. Should you have any questions regarding this letter, please do not hesitate to contact me.

Very truly yours,

Thomas A. Zaccaro

of Paul, Hastings, Janofsky & Walker LLP

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