

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399

Tel 425 882 8080
Fax 425 936 7329
<http://www.microsoft.com/>



September 20, 2010

Mr. Russell Golden
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Re: File Reference No. 1840-100

Dear Russ:

Microsoft appreciates the opportunity to respond to the Exposure Draft (ED), “Disclosure of Certain Loss Contingencies”. We appreciate the Board’s responsiveness to concerns raised on the June 2008 ED by eliminating proposed disclosure requirements such as estimating when a loss contingency would be resolved and the entity’s maximum exposure to loss. However, we remain concerned about the overall approach and believe changes to the current ED are needed in the tabular reconciliation and disclosures on reasonably possible and remote loss contingencies.

Overall, we are deeply concerned with the significant increase in the total volume of disclosure about contingencies that would result from implementation of the ED. As we indicated in our recent input to the FASB’s Disclosure Framework Project Team, it is imperative that the FASB have an overarching disclosure criterion that takes into account a potential new disclosure in the context of all existing disclosures, as unnecessary disclosures can be damaging or misleading if relevant information is obscured. The ED seems to assume that aggregation will work to significantly reduce the volume of disclosure required. We believe this assumption is flawed because, as explained below, the aggregation criteria are so narrowly drawn that little, if any, aggregation will be possible for Microsoft.

Microsoft believes its current contingency disclosures are transparent and concise. However, to achieve these objectives, our contingency footnote is over two pages long, close to 100 lines of text, and over 1,500 words. Complying with the ED will result in disclosure many times longer than our current disclosure. Furthermore, given the requirements of the ED, one may anticipate contingency disclosures will be further burdened with legal disclaimers and qualifiers.¹ We do not believe the FASB has fully considered the implication that unnecessary disclosures can be damaging or misleading if relevant information is obscured.

¹ There may be increased liability risk related to the mandated disclosures because any non-historical information may be outside the “safe harbor” protections provided by the Private Securities Litigation Reform Act of 1995.

Tabular Reconciliation

The requirement to provide the tabular reconciliation by class/type of recognized loss contingency will likely result in the disclosure of prejudicial information. While the aggregation principle was added in the current ED to avoid overwhelming users with too much information and to mitigate concerns regarding disclosure of individual contingencies that may be prejudicial to the reporting entity, the guidance on aggregation in the ED based on the nature, terms, and characteristics of contingencies will likely result in the disclosure of accruals/changes in estimates for individual contingencies. This is exacerbated by the fact that the tabular reconciliation is required on an interim basis.

Microsoft believes a more narrowly constructed approach to tabular disclosure could achieve a meaningful balance that would address concerns about prejudicial affect and preparer burden while providing financial statement users with improved information. The requirement should be changed back to a tabular reconciliation of recognized loss contingencies on an aggregated basis as proposed in the June 2008 ED.

Reasonably Possible Loss Contingencies

Similar to our concerns regarding the possible disclosure of prejudicial information from the tabular reconciliation, we also believe the disclosure of prejudicial information will likely occur with the proposed disclosure requirement in Subtopic 450-20-50-1F.e.2 of the ED, which would require the disclosure of the possible loss or range of loss (if estimable) for contingencies that are at least reasonably possible. This would be required at a loss contingency level or by class/type of similar loss contingencies. To avoid the possible disclosure of prejudicial information, Microsoft proposes that amounts accrued be disclosed at an aggregate level in the tabular reconciliation (as recommended above) and that companies be required to disclose possible losses or range of loss for all reasonably possible contingencies only at an aggregate level (if estimable).

Remote Loss Contingencies

Microsoft does not believe companies should be required to provide disclosures about loss contingencies if the likelihood of loss is remote. By definition in the accounting literature, a judgment that a contingency is remote means the chance of the future event or events occurring is *slight*. We believe the requirement to disclose a contingency whose outcome is slight of occurring conflicts with one of the objectives of the revised ED to not require the disclosure of excessive information.

While we understand the ED tries to mitigate the effect of the disclosure of remote loss contingencies by limiting the disclosures to only loss contingencies with a potentially “severe impact”, this provision will require additional judgment from preparers, auditors and regulators as to what constitutes a severe impact. As indicated in the ED, this judgment should be based on a contingency’s nature, potential magnitude, or potential

timing; considering factors such as the potential impact on the entity's operations, the cost to the entity for defending its contentions, and the amount of effort and resources management may have to devote to resolve the contingency. However, the chances of the plaintiff prevailing is not one of the factors to be considered because that has already been evaluated in determining that the risk of loss is remote. Therefore, under the ED, any frivolous claim that could result in a damages award large enough to have a severe impact on the company should the plaintiff somehow prevail (such as a request for punitive damages in a jurisdiction recognizing such awards) would have to be disclosed.

We question the benefit of disclosing an item that is slight of occurring. The risk of a severe impact from a remote contingency may be no greater than that associated with a natural disaster. Further, this requirement is burdensome to preparers because it would require that all claims must be further analyzed even if the risk of loss is infinitesimal. Currently, for disclosure purposes we only evaluate contingencies for which an adverse outcome is more than remote. Under the ED, we would be required to assess *all* claims, regardless of merit, to evaluate whether there was a risk of severe impact even where the risks is far lower than remote. To implement the ED, we will have to construct a process that identifies and tracks all claims so that we are able to compile and analyze the potential for severe impact as to each claim period-to-period.

Nearly any patent claim asserted against one of our flagship Windows or Office products seeks an injunction against the sale of these products. Any case seeking a remedy involving an injunction of our flagship products would almost by definition under the language of Subtopic 450-20-50-1D of the ED amount to a severe impact. We believe the probability of such an outcome is highly remote and there would be no value to investors in providing additional information about all of these patent assertions, many of which verge on frivolous claims brought in an attempt to extract financial settlements. Indeed, such information could mislead readers as they assess the impact of these matters on the entity's future operating results, financial condition, and cash flows.

Our responses to the individual questions raised in the ED are attached. We have excluded questions that are not specific to Microsoft. If you have any questions, please contact me at (425) 703-6094.

Sincerely,

Bob Laux
Senior Director, Financial Accounting and Reporting

Attachment

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

Question 3: The June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposed Update would:

- a. Not require any new disclosures based on management's predictions about a contingency's resolution*
- b. Generally focus on information that is publicly available*
- c. Relate to amounts already accrued in the financial statements*
- d. Permit information to be presented on an aggregated basis with other similar loss contingencies?*

If not, please explain why.

Response (Questions 1 and 3): Microsoft appreciates the Board's responsiveness to concerns raised on the June 2008 ED by eliminating proposed disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. However, we believe changes to the current ED are needed in the tabular reconciliation and disclosures on reasonably possible loss contingencies to avoid the possible disclosure of prejudicial information.

The requirement to provide the tabular reconciliation by class/type of recognized loss contingency will likely result in the disclosure of prejudicial information. While the aggregation principle was added in the current ED to avoid overwhelming users with too much information and to mitigate concerns regarding disclosure of individual contingencies that may be prejudicial to the reporting entity, the guidance on aggregation in the ED based on the nature, terms, and characteristics of contingencies will likely result in the disclosure of accruals/changes in estimates for individual contingencies. This is exacerbated by the fact that the tabular reconciliation is required on an interim basis.

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likely occur with the proposed disclosure requirement in Subtopic 450-20-50-1F.e.2 of the ED, which would require the disclosure of the possible loss or range of loss (if estimable) for contingencies that are at least reasonably possible. This would be required at a loss contingency level or by class/type of similar loss contingencies. To avoid the possible disclosure of prejudicial information, Microsoft proposes that amounts accrued be disclosed at an aggregate level in the tabular reconciliation (as recommended above) and that companies be required to disclose possible losses or range of loss for all reasonably possible contingencies only at an aggregate level (if estimable).

Question 4: *Is the proposed effective date operational? If not, please explain why.*

Response: Microsoft believes the effective date should be changed to fiscal years *beginning* after December 15, 2010.

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 (if known) of loss contingencies?*

Response: Overall, we are deeply concerned with the significant increase in the total volume of disclosure about contingencies that would result from implementation of the ED. As we indicated in our recent input to the FASB's Disclosure Framework Project Team, it is imperative that the FASB have an overarching disclosure criterion that takes into account a potential new disclosure in the context of all existing disclosures, as unnecessary disclosures can be damaging or misleading if relevant information is obscured. The ED seems to assume that aggregation will work to significantly reduce the volume of disclosure required. We believe this assumption is flawed because the aggregation criteria are so narrowly drawn that little, if any, aggregation will be possible for Microsoft.

Microsoft believes its current contingency disclosures are transparent and concise. However, to achieve these objectives, our contingency footnote is over two pages long, close to 100 lines of text, and over 1,500 words. Complying with the ED will result in disclosure many times longer than our current disclosure. Furthermore, given the requirements of the ED, one may anticipate contingency disclosures will be further burdened with legal disclaimers and qualifiers. We do not believe the FASB has fully considered the implication that unnecessary disclosures can be damaging or misleading if relevant information is obscured.

We do not believe companies should be required to provide disclosures about loss contingencies if the likelihood of loss is remote. By definition in the accounting literature, a judgment that a contingency is remote means the chance of the future event or events occurring is *slight*. We believe the requirement to disclose a contingency whose outcome is slight of occurring conflicts with one of the objectives of the revised ED to not require the disclosure of excessive information.

While we understand the ED tries to mitigate the effect of the disclosure of remote loss contingencies by limiting the disclosures to only loss contingencies with a potentially “severe impact”, this provision will require additional judgment from preparers, auditors and regulators as to what constitutes a severe impact. As indicated in the ED, this judgment should be based on a contingency’s nature, potential magnitude, or potential timing; considering factors such as the potential impact on the entity’s operations, the cost to the entity for defending its contentions, and the amount of effort and resources management may have to devote to resolve the contingency. However, the chances of the plaintiff prevailing is not one of the factors to be considered because that has already been evaluated in determining that the risk of loss is remote. Therefore, under the ED, any frivolous claim that could result in a damages award large enough to have a severe impact on the company should the plaintiff somehow prevail (such as a request for punitive damages in a jurisdiction recognizing such awards) would have to be disclosed.

We question the benefit of disclosing an item that is slight of occurring. The risk of a severe impact from a remote contingency may be no greater than that associated with a natural disaster. Further, this requirement is burdensome to preparers because it would require that all claims must be further analyzed even if the risk of loss is infinitesimal. Currently, for disclosure purposes we only evaluate contingencies for which an adverse outcome is more than remote. Under the ED, we would be required to assess *all* claims, regardless of merit, to evaluate whether there was a risk of severe impact even where the risks is far lower than remote. To implement the ED, we will have to construct a process that identifies and tracks all claims so that we are able to compile and analyze the potential for severe impact as to each claim period-to-period.

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Question 8: *Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission’s requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.*

Response: For consistency throughout the taxonomy, and in order to minimize the number of tags in the taxonomy where reasonable, we recommend that you consider expanding the use of members. For example, we noted the addition of two tags relating to malpractice loss contingencies, “Malpractice Loss Contingency, Increase Due to Change in Estimate” and “Malpractice Loss Contingency, Decrease Due to Change in Estimate”, which may alternatively be satisfied with the use of one “Malpractice Loss Contingencies” member. This member could be used in conjunction with the generic loss

contingency accrual rollforward tags (“Loss Contingency Accrual, Carrying Value, Increase Due to Change in Estimate” and “Loss Contingency Accrual, Carrying Value, Decrease Due to Change in Estimate”). Similarly, the “Accrual for Environmental Loss Contingences” tag could be replaced by an “Environmental Loss Contingencies” member used in conjunction with the preexisting “Loss Contingency Accrual, at Carrying Value” tag. In addition, in order to satisfy the disclosure requirements for loss contingencies recognized in a business combination, we recommend that you add a “Business Combinations” member. If you would like acquisition and disposition activity shown separately, we recommend you consider adding two members.

From an overall standpoint, we found it difficult to fully review the Amendments to the XBRL Taxonomy and suggest that more information be provided in future Exposure Drafts. Specifically, the tag type is unclear for each element (e.g., is it intended to be a string type tag or a monetary type tag). Additionally, we would ask that the Codification Reference be more specific. For example, the tag “Loss Contingency, Possible Recoveries from Insurance” has the Codification Reference 450-20-50-1F(e). We believe the reference should be 450-20-50-1F(e)5. While this may seem like a minor matter, more detailed Codification References would help us more efficiently review the Amendments to the XBRL Taxonomy.