

Merck & Co., Inc.
One Merck Drive
P.O. Box 100
Whitehouse Station, NJ 08889-0100



September 20, 2010

Via E-Mail To director@fasb.org
Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P. O. Box 5116
Norwalk, CT 06856-5116

Dear Mr. Golden:

Merck is a global human health care company that delivers innovative health solutions through its medicines, vaccines, biologic therapies, and consumer and animal health products. In November 2009, Merck and Schering-Plough completed their merger. Pro forma revenue for the two companies for 2009 was approximately \$46 billion and total assets for Merck were \$112 billion. We appreciate the opportunity to comment on the FASB's Proposed Accounting Standards Update, Contingencies (Topic 450): *Disclosure of Certain Loss Contingencies*. We also appreciate the Board's consideration of comments received in 2008 in response to the Exposure Draft, Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)*. In addition to the comments below, the Appendix to this letter includes responses to certain questions in the Proposed Accounting Standards Update that we believe provide useful input to the Board's request for comment.

While the Board has considered some of the concerns addressed in the 2008 comment letters, we are still concerned about several of the proposed changes. We do not support a change to the current recognition and disclosure requirements pursuant to ASC 450-20, Contingencies, formerly FASB Statement No. 5, "SFAS 5." We believe that the existing SFAS 5 framework provides the appropriate level of disclosure and gives users of the financial statements the proper level of information. The proposed additional disclosures in the ED have the potential of being onerous, misleading and provide little incremental value to users. Specifically, we are concerned about the following provisions.

- ❖ 450-20-50-1D – Disclosure of asserted but remote loss contingencies
- ❖ 450-20-50-1F (g) – Reconciliations by class, in a tabular format, of recognized (accrued) losses
- ❖ 450-20-55-14 – Determining the probability that a claim will be asserted based on disclosures of studies in scientific journals
- ❖ 450-20-65-1 – Transition

Disclosure of asserted but remote loss contingencies

Many companies with significant operations in the United States have ongoing litigation ranging from product liability to shareholder class action suits. Litigation is inherently unpredictable and results in much uncertainty. Many of the cases brought forth are without merit, but may have exorbitant claims. Because of the litigious environment in the U.S., we already have extensive loss contingency disclosures under the existing SFAS 5 framework. We believe the existing disclosures are already robust and the proposed added disclosures could have an unintended consequence of diluting the importance of those contingencies. Further, disclosure of remote loss contingencies would likely be misleading as unnecessary focus may be placed on a contingency that is remote.

Reconciliations by class, in tabular format, of recognized (accrued) losses

We believe that a tabular reconciliation of accrued losses could provide prejudicial information to the plaintiffs. Specifically, for those loss contingencies that cannot be aggregated with others, providing a tabular reconciliation of accrued losses could provide a roadmap into our defense strategy. We believe our current disclosures, under the existing SFAS 5 framework, provides a sufficient level of information to the users of our financial statements.

Disclosure of studies sponsored by third parties in scientific journals

We are concerned that disclosure of studies sponsored by third parties in a scientific journal could be misleading. As a pharmaceutical company, all of our pharmaceutical and vaccine products are required to be extensively researched and studied. Conducting research is complex, especially when studying the impact of a particular drug on a specific disease. Research studies require the proper due care to ensure an accurate reflection of the impact of drugs on disease. Requiring disclosure of a study sponsored by a third party that may be published in a scientific journal may be misleading because we may not have sufficient insight into the manner in which the study was conducted, the underlying data, or how the conclusion was reached to provide accurate and complete disclosure. We do not think including this example or providing this disclosure would be beneficial to users of our financial statements.

Transition

If the Board decides to move forward with this ED, we believe that implementing the enhanced disclosure requirements by year end is not feasible given the significant efforts that would need to be undertaken in this regard.

Conclusion

We appreciate the Board's reconsideration of this issue. However, we do not believe the proposed changes will ultimately provide users with the intended outcome which is meaningful disclosures. Furthermore, these proposed changes could provide prejudicial information pertaining to a company's litigation defense strategy which adversely affects its investors, and the extremely detailed and lengthy disclosures may ultimately confuse and mislead users and obscure the more material matters that are most likely to impact the entity. We believe the existing SFAS 5 framework strikes an appropriate balance of providing useful information without excessive or onerous disclosure.

We appreciate the opportunity to comment and would be happy to discuss these matters further.

Sincerely,

/s/ John Canan

John Canan
Senior Vice President, Controller
Merck & Co., Inc.

Appendix

Questions for Respondents

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

While many of the proposed disclosures may be operational, they will require significant incremental effort and cost to prepare and yet in our opinion, will provide little additional benefit to users of the financial statements. However, despite being operational, we believe the tabular reconciliation notwithstanding the possibility of aggregation may provide prejudicial information. Additionally, the disclosures of remote loss contingencies may be misleading as investors are likely to assume the contingency is significant by mere virtue of the fact that it is being disclosed. Further, we do not believe requiring these disclosures for this year end is reasonable.

Question 2: Are the proposed disclosures auditable? If not please explain why.

Since the agreement was reached between auditors and legal counsel, the two groups have had a mutual understanding that the content of the legal representation letter will provide the necessary information in accordance with SFAS 5. The enhanced disclosures around remote contingencies pursuant to this proposed ED would not be included in future legal letters. Audit firms rely on this letter to corroborate management's assertions on the status of litigation. Without a revision to the agreement between audit firms and legal counsel, audit firms will have little to no audit support on the enhanced disclosures proposed in this ED.

Question 3: The June 2008 FASB Exposure Draft, *Disclosure of Certain Loss Contingencies*, had proposed certain disclosures based upon 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 amendments in this proposed Update would:

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

No. We believe that not requiring a disclosure based upon management's predictions about a contingencies resolution is appropriate. However, the other enhanced disclosure requirements still could result in disclosing information that is prejudicial or misleading. Disclosures that focus on information that is publically available would include the initial claim made by the plaintiff which frequently bears little relation to the actual outcome of the contingency. Therefore, we believe this disclosures would be misleading. Also, because of the nature of many of our outstanding claims (class action), it may not be possible to aggregate the claims with other similar claims and as such disclosing amounts accrued would be prejudicial. Accordingly, should the FASB proceed with requiring these disclosures, we believe the FASB should include an explicit exemption for the disclosure of prejudicial information.

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

As noted above, we do not believe the proposed effective date is operational. It will take a significant effort and the development of new processes by both internal and external legal counsel, finance personnel, management, auditors and audit committees to understand and comply with the new standard. We do not believe an effective date of December 31, 2010 (for calendar year end companies) is possible.

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?

As previously stated, we believe the existing SFAS 5 framework, when applied in good faith, provides the proper balance of information for users of the financial statements. The expanded disclosures proposed in the ED, we believe may ultimately be misleading, confusing and onerous for users while not providing any significant incremental benefit.