August 19, 2010

Technical Director
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

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

Dear Sir or Madam:

I am submitting these comments on the above-referenced exposure draft (the “Exposure Draft”) on behalf of The Home Depot, Inc. The Home Depot is the world's largest home improvement specialty retailer, with 2,244 retail stores in the United States, Canada, Mexico and China. In fiscal 2009, we had sales of $66.2 billion and approximately 1.3 billion customer transactions. We employ more than 300,000 associates (employees). As with other large retailers, this level of activity in our stores and number of associates gives rise to a significant amount of litigation. For instance, in fiscal 2009, there were approximately 1,600 lawsuits filed against The Home Depot.

While the Exposure Draft reflects significant improvements over the prior exposure draft released in June 2008 (the “2008 Proposal”), we believe that it continues to contain a number of provisions that will seriously prejudice The Home Depot’s position in litigation and similar proceedings and, in some cases, force the Company to waive the attorney-client and work product privileges. Given the volume of claims filed against us annually, the collateral effects of the proposed disclosures are significant. Specifically, The Home Depot expects more litigation and increased litigation awards and settlement amounts that would not have existed but for these requirements.

Our primary concerns with the Exposure Draft relate to the quantitative disclosure requirements for contingencies that are at least reasonably possible (¶450-20-50-1Fe).

- The Exposure Draft would require disclosure of publicly available information such as the amount claimed by the plaintiff. We believe that this requirement would have detrimental consequences in the litigation context. In practice, plaintiffs’ early demands are inflated, and even plaintiffs do not realistically believe that matters will ultimately be settled or otherwise
resolved for these amounts. This requirement would force the Company to include these inflated amounts in its financial statements, where they will be viewed by investors as relevant to the Company’s financial results by virtue of the fact that the Company has included them.

- The Exposure Draft would require disclosure of the amount of damages indicated by expert testimony. Similarly, this disclosure would be detrimental to The Home Depot in litigation matters and lead to disclosure of misleading or confusing information of questionable value to our investors. In practice, a plaintiff’s “expert” will always support plaintiff’s assessment of the value of the claim, which is frequently significantly higher than any reasonable assessment by the Company. To explain the disparities, the Company will be forced to argue its cases not only in court, but also in the notes to its financial statements. In doing so, the Company may be forced to waive the attorney-client or work product privilege, since the information necessary to make those arguments is based upon privileged legal assessments. Furthermore, expert testimony is subject to ultimately being rejected by the court; several quarters after the testimony is provided, and after the disclosure has been made. This will result in further confusion and misleading information for investors.

- The Exposure Draft would require disclosure of the amount The Home Depot has accrued for a claim. Disclosure of this amount will be extremely prejudicial to the Company in both arguing the merits of a case and in attempting to settle it. It will be difficult for the Company to argue that a case has no merit, because opposing counsel will be able to point to the fact that the Company has accrued for the case. In fact, the disclosed amount will effectively set a floor for potential damages, whether determined before a court or in settlement discussions.

- For amounts that are capable of aggregation, the Exposure Draft states that disclosures should include the “average amount claimed” and “average settlement amount.” Again, in practice, these amounts would effectively set floors for potential damages, and have the same impact discussed above of raising the level of liability.

- The Exposure Draft would require disclosure of “other nonprivileged information that would be relevant to financial statement users to enable them to understand the potential magnitude of the possible loss.” Particularly early in the life cycle of a case, there may be significant nonprivileged information that has not yet been provided to or requested by the plaintiff. The existence of that information, however, may impact the Company’s opinion of the merits of the case and its assessment of the plaintiff’s chances if the matter goes to trial. Premature disclosure of this information will directly and negatively impact the Company’s strategy for resolving the matter.

- The Exposure Draft’s tabular disclosure requirements (¶450-20-50-1Fg) raise concerns similar to those discussed above. While the concept of aggregation of amounts is preferable to tabular disclosure of individual contingencies, the benefit is limited in the litigation context, since many matters will not fall within the same “class or type” and will effectively require individual disclosure. Even with aggregation, the reconciliation for an individual matter is
likely to be discernable if it reflects the bulk of the changes for a reporting period or the number of aggregated matters is small. Further, in a litigation matter, the increase or decrease in the estimate will necessarily reflect counsel’s assessment of the merits of the case, and the reasons for that increase or decrease are inherently subject to the work product and/or attorney-client privileges.

Given the duration of most litigation matters, quarterly reconciliations are too frequent and would serve to provide plaintiffs with regular updates on our assessment of cases. At a minimum, if ultimately implemented, this requirement should be limited to disclosure on an annual basis, with interim disclosure only if there is a material change, similar to the requirements under FASB ASC 740-10 related to uncertainty in income taxes.

Each of the proposed disclosure requirements discussed above could have detrimental consequences for The Home Depot in the context of litigation and similar contingencies. The requirements will fundamentally change the way litigation functions in the U.S. Plaintiffs will exploit the disclosure requirements to gain an unfair advantage. For example, plaintiffs will make initial claims in excess of the Company’s materiality threshold for disclosure to force reporting of the claim. Plaintiffs will similarly have the incentive to delay resolution of issues until a reporting deadline passes. In each case, they will be able to take advantage of prejudicial information included in the Company’s periodic reports. The Company will be forced to choose between settling prematurely, even if the merits of the case do not justify settlement, or disclosing damaging information. The disclosure of inflated values will undoubtedly encourage strike suits, inaccurately reflect potential liability and unnecessarily raise investor concerns. In sum, the disclosure requirements are likely to result in higher payouts by the Company than would otherwise occur, but for those requirements. These concerns are exacerbated by the Exposure Draft’s requirement that insurance not be considered. Even though a case is fully insured, and the Company never expects to expend corporate funds for it, the Exposure Draft will require the prejudicial disclosures discussed above unless the Company resolves the claim within the reporting period.

Consequently, we believe that the Exposure Draft should not be implemented, and that the disclosure requirements currently in place are appropriate. If, however, the FASB adopts the Exposure Draft, regardless of its ultimate content, the exemption from disclosing prejudicial information should be re-inserted. As reflected by the discussion above, this exemption is still necessary, despite the improvements made since the 2008 Proposal. Even if the concerns raised in our letter are addressed in the final standard, the complexity of the legal system virtually ensures unintended consequences, making this exemption a critical component.

If the FASB does move forward with adoption of the Exposure Draft, we request that the effective date be delayed by at least one year. Given the very large number of loss contingencies that we face annually and the quantity of analysis and preparation necessary to comply with the proposed disclosure requirements, the proposed effective date would impose an undue burden on The Home Depot.
We appreciate the opportunity to comment on the Exposure Draft and express our concerns.

Sincerely,

Jack VanWoerkom

cc: Carol B. Tomé, Executive Vice President – Corporate Services and Chief Financial Officer, The Home Depot, Inc.
    Bonnie G. Hill, Lead Director and Chair, Nominating and Corporate Governance Committee, The Home Depot, Inc.