Filed Electronically

August 20, 2010

Technical Director
Financial Accounting Standards Board
401 Merritt 7
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Subject: File Reference No. 1840-100, Contingencies (Topic 450)

Cummins Inc. wishes to share its views on your exposure draft entitled “Contingencies (Topic 450)”. We are a Fortune 250 Company and a global power leader that designs, manufactures, distributes and services diesel and natural gas engines, electric power generation systems, and engine related products, including filtration, exhaust aftertreatment, fuel systems, controls and air handling systems. We appreciate the opportunity to comment on this important accounting standard.

While we appreciate that the Board has made some revisions to the previous exposure draft, we do not believe that certain significant concerns raised during that process were addressed in this revised exposure draft. As a result, we do not support the release of the exposure draft in its present form.

Our main concerns are summarized as follows:

- The proposal continues to require disclosure of information that will be harmful to a company’s litigation position and potentially impose additional costs to shareholders.
- The disclosure obligations are very onerous and in many circumstances will take a tremendous amount of time and effort to update on a quarterly basis. We question whether a cost/benefit analysis was performed with respect to this proposed requirement.
- The proposed effective date is not realistic given the significant volume of data required to be disclosed and the manner in which the information must be segregated. More time is needed to produce a meaningful and accurate disclosure.

We will expand on each of these points in the discussion that follows.

**The proposal continues to require disclosure of information that will be harmful to a company’s litigation position and potentially impose additional costs to shareholders**

There are several aspects of the disclosure requirements that we believe are harmful to a company’s litigation position. While the proposal claims to be predicated on a framework that only information otherwise publicly available need be disclosed, there are several instances where non-public information will either be explicitly disclosed or can be inferred from the information presented. Some examples include, but are not limited to, the following:
- Providing information about possible insurance recoveries will allow potential future plaintiffs to better position their demands with respect to settlement offers. This information, even if shared with a current plaintiff, is generally not made publicly available and could significantly harm our positioning in lawsuits. Taken a step further, additional adverse settlements could increase insurance premiums further reducing the return to shareholders.

- When aggregating claims for disclosure, the proposal requires disclosure of the average settlement amount of individual claims within that class. As most settlements are typically confidential, this requirement will not only require disclosure of non-public information, but will also give other current and future potential plaintiffs insight into management’s litigation strategy.

- While we understand the Board’s desire to disclose range of potential losses on individually significant claims, providing information about management’s reserve on an individual claim is unprecedented and will be unduly prejudicial to the case. In addition, requiring quarterly updates to changes in those estimates could provide a road-map to the plaintiff regarding management’s litigation strategy.

- As all of the information provided in the disclosure is required to be audited, we believe there is a significant risk that the auditor will be required to have access to privileged information in order to be able to provide an opinion on the company’s disclosures. The amount of information the auditor will need is significantly increased by this proposal. This poses a risk that the company could be deemed to have waived its attorney-client privilege with respect to certain information, thereby damaging its position in a lawsuit.

- The proposal continues to require disclosure of unasserted claims under certain conditions. The conditions are broad enough (i.e. probable a claim will be asserted and reasonable possibility of an unfavorable outcome) that inevitably a company could be required to disclose its vulnerability to a particular matter before a claim is asserted, virtually assuring that a claim will be asserted. Even in cases where the company has a strong defense, claims asserted that would otherwise not have been raised will lead to increased legal costs for the company to defend itself.

**The disclosure obligations are very onerous and in many circumstances will take a tremendous amount of time and effort to update on a quarterly basis.**

There are numerous additional disclosure requirements included in the proposal. Even disregarding their potential prejudicial impact, these disclosures will also require significant time and effort to prepare. In many cases, we do not believe the information will add significant value to shareholders and question whether the Board is being thoughtful about the cost/benefit analysis of this proposal in addition to the prejudicial consequences of the additional disclosures. Some examples include, but are not limited to, the following:

- The proposal requires aggregation of disclosures about claims that are not individually material. Significant judgment will be required to determine how best to aggregate claims and we question the value of the information to the reader of the financial statements. It will be difficult to audit judgments about claim categories. For example, should claims be segregated by country (or jurisdiction within a country), by type of claim, estimated time to settlement or a combination thereof? Do we only aggregate claims where the individually insignificant claims aggregate to a material number and then have an “all other” caption?
The proposal requires disclosure of the reserve rollforward by "class" of claims rather than in total. This will require a significant amount of either manual effort or programming time in order to (1) properly classify a claim at the point in time the first reserve is established, (2) tracking the movements in the reserve accounts on a claim-by-claim basis, and (3) add significant additional account structures to our system. While we can track activity in a general ledger account for a rollforward, it will be very difficult and time consuming to create a separate range of accounts for each "class" of contingency and significant changes to our control processes to ensure that each account range is used properly (i.e. the lawsuit is placed in the right "class").

The proposal continues to require separate presentation of increases and decreases in changes in estimates. We fail to see the importance of this distinction. As noted above, presenting this on an individual case could be prejudicial and presenting it on an aggregate basis has little meaning or value to the reader of financial statements. This proposal requires us to add additional accounts to our account structure and ensure that our worldwide finance personnel use the proper accounts for increases and/or decreases to a particular reserve. This bookkeeping would differ from how other accounts are structured adding complexity to our ledger and risk of inconsistent practices across a global company, potentially resulting in an inaccurate disclosure.

The proposal requires disclosure about average amount claimed for claims disclosed on an aggregated basis. Collecting this information on each and every case around the world will be very difficult and time consuming, and even more difficult to apply in cases where no damages are stated. We fail to see the benefits of providing this information and, as stated in our previous letter, believe this information could actually be misleading to investors as amounts claimed typically bear no resemblance to the realistic exposure or ultimate settlement amount.

Given the significant manual processes involved in collecting much of this information, we would request that the disclosure requirements be required only on an annual basis and not quarterly. Quarterly reporting timelines are significantly shorter than annual reporting and collecting the necessary data to provide an accurate disclosure on a quarterly basis will be even more difficult.

The proposed effective date is not realistic given the significant volume of data required to be disclosed and the manner in which the information must be segregated.

We do not understand the Board's reasoning for implementation of the standard on such an aggressive timetable. Given the amount of effort involved and level of disclosures currently required, we do not believe it is practical to require implementation for 2010 10-K documents. We are party to hundreds of lawsuits at any one point in time, most of which individually are not material. For example, in order to comply with the rollforward disclosures we would be required to:

1. Analyze each individual case and determine its "class" for grouping purposes.
2. Manually pull each journal entry recorded to our legal reserve throughout 2010 to determine which particular case it related to.
3. Aggregate the journal entry information by class to prepare the "by class" rollforward.

We believe a better implementation would result with disclosures effective as of the first annual period beginning after the Board's target effective date. This would allow companies sufficient time to determine their classes up front, set up the required additional account structure and populate the beginning balances accordingly based on prior period ending reserves by case. This would avoid a significant amount of manual researching of historical journal entries.
Other problematic issues with such a quick effective date include, but are not limited to:

- Obtaining management’s agreement as to the proper classification for claims that are not individually material. As noted above, there will be significant judgment with this determination and it will be important to get consensus on the proper manner in which to evaluate our exposures.
- Evaluating all “remote” loss contingencies, which are typically numerous, for new disclosure requirements as very little information was previously required to be considered for remote contingencies.
- Evaluating all risk exposures for possible unasserted claims that meet the conditions outlined in the proposal.

Summary

As detailed above, we remain concerned about numerous aspects of the Board’s revised proposal. There remains a significant risk that disclosure of prejudicial information will be required to be provided and significant risk that the additional disclosures will at best lead to increased legal costs and at worst lead to an increase in the number lawsuits a company faces. The current requirements in FAS 5 are well understood and in our opinion continue to provide an appropriate balance between informing investors and mitigating risk of harming a company’s legal strategies. We agree that the addition of a tabular reconciliation of the contingency accrual in total could provide meaningful information, subject to some of the limitations noted above. However, we fail to see the need for the other additional information required by the proposal.

As a result, we strongly urge the Board to either remove this item from its agenda or significantly scale back the proposed changes. If the Board does proceed with a final standard, we strongly urge you to consider the comments above regarding the effective date as the current proposal will not result in quality and accurate disclosures.

We appreciate the opportunity to provide you with our comments and hope that you will consider some of the recommendations we have provided. If you have any questions or need further clarification about any aspect of our response please contact Jeff Sisk, Director – Accounting Research and Activities at 812-377-1293 or via e-mail at jeff.sisk@cummins.com.

Sincerely,

Marsha Hunt
Vice President - Corporate Controller

Marya Rose
Vice President - General Counsel, and Corporate Secretary