September 2, 2010

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

Dear Mr. Golden,

Re: File Reference No. 1840-100

Mayer Hoffman McCann, P.C. (MHM) welcomes the opportunity to comment on the Proposed Accounting Standards Update, Disclosure of Certain Loss Contingencies (the Exposure Draft).

We appreciate the Board’s considerable efforts in improving the previous proposal by removing much of the prejudicial and burdensome requirements formerly proposed in the June 2008 exposure draft. However, as we will discuss below, MHM believes the current Exposure Draft still contains elements that cause significant concerns regarding whether the proposed disclosures will be operational and auditable. MHM believes the proposal still requires disclosure of information that is prejudicial to many reporting companies. We question the applicability of the requirements to nonpublic entities and we also believe there is a better alternative to the final issuance of the Standards Update.

Overly Broad Terminology
One of our concerns regarding the operational aspects of the disclosures and their auditability relates to the various forms of the terms “publicly available information”, “information available” and “as additional information becomes available”. MHM is concerned that these terms are overly broad in that they do not indicate to whom the information must be available. Furthermore, these terms are not defined in the proposal or otherwise in U.S. GAAP. We think the concept in 450-20-55-14 where the proposal requires an entity to “consider all the information that it is aware of” would be more operational and auditable. However, even if the requirement were limited to “information the entity is aware of” this information may not be reliable and its credibility can be expected to be questioned in virtually all cases.

Auditors’ Ability to Corroborate
Our primary concern regarding whether the disclosures are operational and auditable relates to the dependency of many reporting entities’ management and their auditors on legal counsel in determining
whether many of the disclosures proposed would actually be required in specific circumstances. The following sections contain examples of these situations:

- 450-20-50-1D discusses the need to exercise judgment in determining whether disclosure of a remote contingency is necessary
- 450-20-50-1F.e.3, “If the possible loss...cannot be estimated, a statement...and the reason(s) why.”
- 450-20-50-1F e.4 and f.2, “Other nonprivileged information that would be relevant to financial statement users...”
- 450-20-50-1F e.5 and f.3, “Information about possible recoveries...only if and to the extent...it is discoverable by either the plaintiff or a regulatory agency...”

Whether these and other proposed disclosures are required will likely, be legal determinations, as management will likely not agree to include these disclosures without advice from counsel. Auditors will not be able to conclude as to whether the disclosures are adequate without clear, candid and complete responses to inquiries of companies’ counsel. We are concerned that these disclosures were not contemplated in the December, 1975 American Bar Association’s Statement of Policy Regarding Lawyer’s Responses to Auditors’ Requests for Information (the ABA/AICPA Treaty).

We note in the Summary of the proposal that the FASB staff intends to work with the Public Company Accounting Oversight Board, the American Institute of Certified Public Accountants, and the American Bar Association to identify and address any potential implications of the proposed requirements for the U.S. auditing literature and the ABA/AICPA Treaty. MHM strongly suggests that this exercise be completed before any additional contingency disclosure requirements are established. We are also concerned that any expansion of the scope of the ABA/AICPA Treaty will be very difficult since attorneys will be concerned about waiver of privilege and violation of the attorney work product doctrine. MHM is therefore very concerned that many of the proposed additional requirements will only result in additional qualified opinions or disclaimers of opinion.

Prejudicial Information
MHM believes there should be an explicit exemption from disclosing information that is prejudicial to the reporting entity. While the proposal permits information to be presented on an aggregated basis, many more reporting entities would be required to present information about a single contingency than would be able to aggregate information about numerous contingencies. Information about a single litigation contingency will be a very effective roadmap for the opposing party and their counsel. Additionally, 450-20-50-1F e.2 would require disclosure of “the amount accrued, if any”. Disclosure of amounts accrued for litigation contingencies would be extremely prejudicial in that it would establish a floor for any settlement negotiations or could be used as self-created evidence against the reporting entity at trial. In this area, the exposure draft goes beyond existing GAAP which states “in some circumstances the amount accrued may be necessary to prevent the financial statements from being misleading”. MHM believes there should be an explicit exemption from this disclosure particularly when the entity is only disclosing information about a single contingency.

Public – Nonpublic Entity Considerations
We understand that the constituency requesting the increased disclosures is primarily investment analysts and others who are interested in the value of public companies. We do not believe the users of private company financial statements normally have the same concerns. Our experience indicates that investors and creditors of private companies have much more direct and effective means of obtaining this information than would result from requiring the expanded disclosures in financial statements.
MHM therefore does not believe any of the proposed expanded disclosures should apply to nonpublic entities.

**Acceptable Alternative**

As noted above, our primary concern with the Exposure Draft relates to the auditor’s dependency on an entity’s legal counsel for corroboration of management’s assertions regarding the disclosures. The fact is we do not have the professional expertise to make these judgments on our own. Consequently, even for public entities, we do not believe the disclosures will be auditable. Therefore, we suggest that the FASB abandon this project. If it is determined that disclosures such as those proposed are necessary for public entities, we suggest the requirement be developed by the staff of the SEC and included as required disclosures under Regulation S-K. This alternative would remove the disclosures from the financial statements and eliminate the audit requirement. It would have the added benefit of the disclosure requirements being developed primarily by legal professionals who should have the expertise to understand whether they would be operational.

While we do not support the continuation of this project, we appreciate the opportunity to provide comments and hope they will be considered should the Board decide to issue a final standard. Please contact Ernest F. Baugh, Jr. (423-870-0511) if you have any questions regarding our concerns.

Very truly yours,

_Mayer Hoffman McCann P.C._