



**DISCLOSURE OF CERTAIN LOSS CONTINGENCIES
COMMENT LETTER SUMMARY**

Overview

1. The comment period for the July 2010 proposed Accounting Standards Update, *Contingencies (Topic 450): Disclosure of Certain Loss Contingencies*, ended on September 20, 2010. As of October 26, 2010, 339 comment letters were received, which are summarized below.

Respondent Profile

Type of Respondent	Number
Preparer	203
Industry Organization	51
Law Firm	21
Professional Organization	20
Accounting Firm	20
User	9
Individual	12
Consulting Firm	3
TOTAL	339

Overall Position

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	Total	Preparer	Industry Organization	Law Firm	Professional Organization	Accounting Firm	User	Individual
Generally support the proposed Update	4	0	0	0	1	0	3	0
Support the proposed Update but have significant comments	46	17	5	19	11	5	5	1
Do not support the proposed Update	289	186	46	2	8	15	1	11
Total Respondents	339	203	51	21	20	20	9	12

2. The majority of respondents do not support the proposed Update. These respondents are concerned that the enhanced disclosures in the proposed Update would impose significant costs, force an entity to waive attorney-client privilege and work-product protections, and provide prejudicial information to litigation adversaries that would hinder the entity's defense in litigation. Users generally support the proposed Update and commended the Board's efforts for striking an appropriate balance between providing users with adequate information to assess the potential cash flows from loss contingencies and protecting entities from providing prejudicial information to current and future claimants.

Scope

3. The proposed Update would retain the scope of *FASB Accounting Standards Codification*TM Subtopic 450-20. This Subtopic includes all loss contingencies except for transactions related to stock issued to employees, employment-related

costs, uncertainty in income tax, and accounting and reporting by insurance entities because these transactions are addressed elsewhere in the Codification.

Multiemployer Plans

4. The proposed Update could alter the circumstances in which an entity would be required to disclose a potential withdrawal liability from a multiemployer pension plan. Under the proposed guidance, an entity would be required to disclose the potential withdrawal liability if deemed to be an asserted remote contingency with a potential for severe impact. Numerous respondents oppose the changes pertaining to the withdrawal from a multiemployer pension plan unless the entity has taken active steps to withdraw from the plan or expects to withdraw from the plan in the coming year. By requiring the entity to disclose the estimated withdrawal liability, respondents suggested that the disclosure would negatively impact the outlook and financial creditability of the entity if there is a remote possibility that the contingency will occur.
 - U.S. Chamber of Commerce (CL #13A) disagrees with the Board’s decision to alter the proposed disclosure threshold that would change the conditions when an entity must recognize a withdrawal liability from a multiemployer pension plan. The Chamber believes that the disclosure of the withdrawal liability would be “unnecessarily burdensome” and “could negatively skew the financial picture of the company and negatively impact the financial creditability of multiemployer plan sponsors.”
5. Other constituents asserted that the disclosure of withdrawal liability of a multiemployer pension plan may not accurately reflect the financial position of the entity and result in “untimely” and “inaccurate” information. The disclosure of the potential withdrawal liability may result in the delay of financial statements because of the large number of contributing employers, the work necessary to produce these calculations, and the fact that multiemployer pension plans and their contributing employers do not often have the same fiscal year-end. Because of the complex and timely nature of the actuarial calculation of the withdrawal liability, the calculation may not be completed until six to nine months following the plan’s year-end, which could lead to outdated information in the financial statements.

Other Scope Matters

6. Some constituents expressed concerns about the proposed Update's scope. The June 2008 Exposure Draft, *Disclosure of Certain Loss Contingencies*, excluded several loss contingencies such as those related to asset impairment and guarantees.
 - KPMG LLP (CL #237) recommended that the Board clarify whether non-litigation contingencies were to be included within the scope of the proposed Update and provide further implementation guidance to illustrate disclosures for non-litigation contingencies.
7. Specifically, respondents are concerned about the lack of implementation guidance for the broad scope encompassed in Subtopic 450-20. The implementation guidance within the proposed Update primarily addresses litigation contingencies and does not include examples to illustrate other contingencies that are within the scope of the proposal. Constituents noted that it would be highly beneficial for the Board to provide implementation guidance that is applicable to non-litigation contingencies.
 - Ernst & Young (E&Y; CL #157) indicated that "the scope of currently existing loss contingency guidance is broad; however, the implementation guidance predominately addresses litigation contingencies. In addition to clarifying the scope of the guidance, we would find it particularly helpful to understand its application in related areas."
8. Other respondents questioned whether the Board intended to alter the proposal to include other forms of non-litigation contingencies because these contingencies are often addressed by other disclosures regarding those topics. Further clarification is needed within the proposal to address other contingencies and provide more illustrative guidance on other non-litigation contingencies.
 - American Bankers Association (CL #143) believes that many of the contingencies included within the scope of the proposal are typically subject to their own set of disclosure, and that the Board did not intend to include these issues within the scope. The association believes that the Board should explicitly address if these areas were intended to be included and, if so, provide more guidance on how to comply with the proposed requirements.

- United Technologies Corporation (CL #167) recommended that the Board exclude self-insurance programs of reporting entities from the scope of the final standard. It believes that self-insurance programs of reporting entities are similar to insurance entities because both are methods intended to mitigate an entity's risk and should be excluded from the scope of the proposal.
9. Despite the reference to accounting and reporting by insurance entities, as discussed in Topic 944, some constituents wanted further clarification about what types of insurance related contingencies would fall within the proposal.
- KPMG LLP (CL #237) requested that the Board “clarify what types of insurance claims litigations are within the scope of ASC Topic 450 as opposed to ASC 944.”
10. Additional clarification was requested by constituents in regards to the inclusion of asset impairments in the scope of the proposed Update. Current guidance excludes the explicit exception included in the 2008 Exposure Draft and, thus, would be applicable to asset impairments recognized through the allowance of credit losses and reserves for guarantee losses.
- Freddie Mac (CL #88) indicated that its “primary concern about including asset impairments within the scope of the Proposed Update relates to the tabular reconciliation disclosure requirement” because it would be difficult to distinguish between new and existing loss contingencies on small, homogenous loans that are “measured collectively for impairment.”
 - Deloitte & Touche (CL #267) noted that “asset impairments, such as allowances for uncollectible accounts receivable and impairments of loans, should not be subject to the proposed disclosures.” They believe that if the Board intended the subjects to be included in the scope, then it should be clearly stated in the proposal.
11. Including guarantees within the scope of the proposed Update also raised concerns for some respondents.
- Deloitte (CL #267) believes that guarantees should be excluded from the scope of the proposed disclosures and agrees with paragraph A7 of the 2008 Exposure Draft that excluded guarantees from the scope of the proposal due to the various subsequent measurement methods used for guarantees.

12. Other respondents believe that the guidance on environmental-related loss contingencies should be addressed in the final standard. For instance, several disclosure that are “encouraged” under Topic 410 would be required if the proposals are carried forward into the final standard.
 - Financial Reporting Advisors (CL #207) stated that it “encourages the Board to reconsider whether the current guidance on environmental-related loss contingencies is consistent with the requirements in the proposed standard” and it “strongly encourage[s] the Board to retain and update the illustrated disclosures in Topic 410,” which was eliminated in the 2008 Exposure Draft.”

Project Objective

13. In the proposed Update, the Board noted that the objective of this project is to address investors’ and other users’ “concerns that disclosures about loss contingencies under the existing guidance in Topic 450 do not provide adequate and timely information to assist them in assessing the likelihood, timing, and magnitude of future cash outflows associated with loss contingencies” (summary).
14. Respondents generally support the Board’s efforts to provide investors and other users with adequate and timely information to assess the potential nature, timing, and magnitude of cash flows associated with loss contingencies. Many respondents also recognize the Board’s efforts to address concerns raised in the 2008 Exposure Draft.
15. However, many respondents, particularly preparers and attorneys, noted that the proposed Update fails to meet its objective and believe that it would increase an entity’s litigation exposure, create voluminous disclosure that may mislead investors, and provide little benefit to financial statement users. These respondents recommended that the Board retain the current provisions of Section 450-20-50.
 - American Bar Association (CL #280) shares the Board’s goal of “providing investors with meaningful and timely information regarding contingent liabilities,” yet it questions the need for the “Board to make changes to the existing disclosure standards under Accounting Standards Codification Subtopic 450-20.”

16. Respondents who recommended retaining the current provisions of Section 450-20-50 stated that existing guidance provides a principles-based framework that adequately balances protecting the interests of investors through increased transparency in financial reporting and protecting entities from prejudicial disclosures that would impair their defense strategy. Current guidance set forth in Topic 450 has been in existence for many years (originally issued as FASB Statement No. 5, *Accounting for Contingencies*) and is well understood by all parties involved, including preparers, users, auditors, and attorneys. A significant number of respondents agree that there is no evidence indicating that Section 450-20-50 needs to be changed.

- JP Morgan Chase & Co. (CL# 70) noted that Topic 450 achieves the Board's stated objectives and "strikes an appropriate balance between providing necessary information to investors while protecting from disclosure of privileged and confidential information." It believes that the Board should reassess whether a significant amendment to existing disclosure requirements is needed.
- Progress Energy (CL #87) stated that the "current guidance in Accounting Standards Codification Topic 450 (formerly Statement 5), which has been in place for over 30 years, is an excellent example of a principles-based standard and has served investors well." They suggested that removing management's ability to exercise judgment will not enhance disclosure of or more accurately predict loss contingencies because contingencies by nature are inherently uncertain.

17. Numerous respondents indicated that the fundamental issue is lack of compliance with Section 450-20-50 rather than a need for increased disclosure. Some respondents believe that if the current guidance under Topic 450 is correctly implemented and enforced, the additional disclosure requirements that would be provided under the proposed Update would be unnecessary.

- Morgan, Lewis, & Bockius (CL #278) indicated that the current guidance under Section 450-20-50 "generates appropriate disclosures when implemented fully." The respondent believes that the Board "should issue guidance as to the types of disclosures companies should be providing under the existing requirements if it believes that compliance with Subtopic 450-20 has been inconsistent."

- The Boeing Company (CL # 172) stated that “the risks of surprises is minimized not through blindly requiring additional detail, but through robust attention to, and enforcement of, existing FASB and SEC rules.” It believes that if users targeted by the proposed Update find the disclosures to be inadequate, then the issue should be addressed by independent auditors and regulatory agencies rather than through the creation of additional disclosures.

Disclosure Principles

18. The Board established two underlying principles to achieve the objective of providing users adequate information to assess the nature, potential magnitude, and potential timing of loss contingencies, namely, (a) providing more extensive disclosure of loss contingencies during later stages of the contingency’s life cycle and (b) aggregating disclosures about similar contingencies to make the disclosures understandable to users.

More Robust Disclosure during Later Stages of the Contingency’s Life Cycle

19. The Board recognizes that certain information in the early stages of the contingency’s life cycle may be difficult to obtain. In order to continue to improve the timeliness of disclosure of loss contingencies while recognizing the constraints of the availability of such information, the Board decided to allow an entity to increase quantitative and qualitative disclosures over the contingency’s life cycle as “additional information about a potential unfavorable outcome becomes available” (paragraph 450-20-50-1B of the Codification).
20. Users generally support the principle of increased disclosure during later stages of a loss contingency’s life cycle, but have concerns about whether the principle would be operational.
21. Some respondents believe that the disclosures in the early stages of a contingency’s life cycle would be prejudicial to an entity and potentially hinder settlement negotiations. Some respondents also believe that the information disclosed in the early stages of a litigation proceeding are highly uncertain and may cause additional

claims if the information proves to be different from that disclosed in the financial statements.

- Various Insurance Trade Organizations (CL #65) believe that only public information should be required to be disclosed during the early stages of a contingency's life cycle and noted that disclosing this information "in the footnotes sooner than it is available to the plaintiffs would be prejudicial to companies and perhaps prohibited if settlement discussions are in process and the parties have agreed to confidentiality provisions."
 - Atmos Energy (CL #95) is concerned that the information presented in the early stages of a contingency's life cycle would require "significant management judgement, which "could lead to inconsistent application between companies" because this information is often very limited. It believes that the disclosures would be misleading to users and "may not present a fair representation of the amounts that will be claimed by plaintiffs."
22. Some respondents asserted that without further implementation guidance to illustrate the information that should be disclosed in the early stages, an entity may resort to disclosing very minimal information.
- Investor Environmental Health Network (CL # 215) noted that "the problem with stating such a broadly principled approach, however, is that without specific operational guidelines about which information must be disclosed at specific points in the process, little information will be disclosed based on this idea of 'more information later.'"

Aggregation of Disclosures about Loss Contingencies

23. Disclosing loss contingencies to be aggregated, by class, on the basis of their nature and characteristics would be permitted by the proposed Update. The proposed principle would require management's judgment to determine the appropriate level of aggregation to "strike a balance between obscuring important information as a result of too much aggregation and overburdening financial statement users with excessive detail that may not assist them in understanding the nature, potential magnitude and potential timing (if known) of the entity's loss contingencies" (450-20-55-1B). The Board also decided to permit the aggregation of loss contingencies to "address concerns about prejudicial disclosure of individual contingencies" (proposed Update, paragraph BC10).

24. Many respondents believe that the aggregation of loss contingencies by class would be an ineffective method to avoid disclosure of prejudicial information that would provide financial statement users with little benefit.
- Eli Lilly and Company (CL # 97) expressed concern with the “proposed level of disaggregation as this requirement could potentially result in an overwhelming amount of detail.” The amount of detail would not enable the users to better assess the potential cash flows associated with loss contingencies and is “not consistent with the goals of the Proposed ASU.” They also believe that the disaggregation of loss contingencies could pose a significant risk of disclosing prejudicial information that would hinder the entity’s overall defense strategy.
25. Many respondents also argued that the aggregation of certain loss contingencies would provide insufficient protection from the disclosure of prejudicial information in cases in which a class consists of a single claim or an entity has relatively few contingencies.
26. Some respondents recommended that the Board clarify the principle for aggregation.
- Deloitte (CL #267) “believes that the principle for aggregation in ASC 450-20-50-1B is not clear and that more implementation guidance is necessary for the aggregation criteria to be operational.” It believes that without further clarification of the aggregation principle, an entity will apply the principle inconsistently, and “significant diversity could occur between entities and make information less comparable for users.”
27. Some respondents also indicated that the proposed paragraphs 450-20-1F(e)(2) and 450-20-50-1F(g) would eliminate management’s judgment in determining appropriate aggregation of loss contingencies in the tabular disclosures.
- Morgan Lewis (CL # 278) disagrees with the Board’s assertion in paragraph BC35 that aggregation of similar claims “would address many of the concerns about having to make prejudicial disclosure.” They believe because the proposed requirements would “permit aggregation in only limited circumstances, it is likely that the disclosure of the amount accrued would be required in circumstances that would advantage plaintiffs to the detriment of companies and their investors.” The implementation guidance included in the proposed Update “would likely be interpreted as a rebuttable presumption against aggregation in most circumstances.” They recommended that the Board retain the “current disclosure requirement pursuant to which companies must disclose the accrued amount to the extent

material to an understanding of the financial statements,” while permitting an exemption “when a company concludes that the disclosure would be prejudicial to its resolution of a loss contingency.”

28. Some respondents indicated that a nonpublic entity will be unable to utilize the aggregation principle because it is generally subject to fewer claims. Because a nonpublic entity may not be able to take advantage of the aggregation principle, it would be forced to disclose quantitative amounts that would be prejudicial to the reporting entity.

- AICPA Private Companies Practice Section (CL #314) noted that “a significant number of nonpublic companies with a limited number of loss contingencies will not be able to take advantage of the amendment in this proposed Update to present information on an aggregated basis with other similar loss contingencies.”

29. Some respondents support the overall objective of the project and the disclosure principles that establish the basis for the proposed disclosure requirements. These respondents, however, believe that the proposed disclosures are inconsistent with the objective and the principles.

- KPMG (CL #237) noted that during redeliberations of the 2008 Exposure Draft, the Board developed four principles to form the basis of its revised proposal for the disclosure of loss contingencies, which included the following:
 - a. Disclosures about litigation contingencies should focus on the contentions of the parties, rather than predictions about the outcome.
 - b. Disclosures are expected to be less robust early in a case’s life cycle and more robust as it progresses toward a conclusion or as the likelihood or potential magnitude of possible loss increases.
 - c. Disclosures should provide a succinct baseline summary of information that is publicly available about a case and indicate where financial statement users can find more detailed information.
 - d. Disclosures about a loss contingency should merely report events and generally should not affect the outcome of the contingency itself to the detriment of the reporting entity.

KPMG believes that “many aspects of the Exposure Draft are inconsistent with these principles.” For example, it noted later in its letter that disclosure of insurance information provided to the plaintiff could “disrupt the normal process of litigating a dispute, thus potentially causing the disclosure of the contingency to affect the outcome of the contingency itself to the detriment of the reporting entity.”

Disclosure Threshold

30. The proposed Update’s proposed clarifications and changes to the disclosure threshold under current U.S. GAAP were intended to improve the timeliness of disclosures about loss contingencies.

Unasserted Claims

31. The proposed Update retains the current U.S. GAAP requirement to include disclosure of unasserted claims if the claim is considered probable to be asserted in the future and there is a reasonable possibility of an unfavourable outcome. The proposed Update, however, would expand on the current implementation guidance in paragraph 450-20-55-14 by adding the following:

An entity should consider all the information that it is aware of when determining the degree of probability that a claim will be asserted and an unfavorable outcome could occur.

An entity may be aware of the existence of studies in reputable scientific journals (or other credible sources that other entities in the same industry generally review) that indicate potential significant hazards related to the entity’s products or operations. In such circumstances, an assessment must first be made as to whether the assertion of a claim is probable.

32. Many respondents oppose the proposed guidance related to scientific journals because the resulting disclosures could increase an entity’s risk to additional litigation with claims that have not yet been asserted. Also, respondents oppose the proposed guidance because, in their view, these assessments are often subjective in nature and it would be difficult to validate the accuracy of the information.

- Pfizer (CL #27) opposes the proposed requirements related to an entity being “aware of the existence of studies in reputable scientific journals” because the disclosure may “result in asserted action by potential litigants

who would not have otherwise commenced litigation, hence opening the company up to additional litigation exposure.”

- Plains Exploration & Production Company (CL #104) disagrees with the Board with respect to disclosing unasserted claims indicated through the use of reputable scientific journals because “it is very difficult to determine which source of information is actually reputable” and believes that information “have biased motives and opinions that serve their goals and objectives.” It also questions whether the information will be able to be audited.
33. Some respondents believe that additional guidance is needed to clarify the sources for assessment of unasserted claims.
- PricewaterhouseCoopers (PwC; CL #82) indicated that “additional guidance is needed to define terms such as ‘studies,’ ‘reputable,’ and ‘credible’ to make the disclosure of unasserted claims operational for entities and enable financial statement preparers to better interpret this guidance.” Also, it recommended that the Board clarify which sources “other entities in the same industry generally review” because this information “may be outside the expected knowledge of the preparer.”

Asserted Remote Contingencies That Could Have a Severe Impact

34. The Board expanded the disclosure threshold to include certain asserted remote contingencies with a potential severe impact to ensure that loss contingencies are disclosed in a timely manner.
35. Users of public entity financial statements generally support the disclosure of remote loss contingencies with the potential of severe impact and offered additional suggestions to improve its usefulness.
- ITAC (CL # 76) supports the remote threshold for contingencies disclosures and agrees with the Board that a revision of the threshold requirement is needed to increase the timeliness of the disclosure of loss contingencies. They suggested that the description of the threshold *potential severe impact* be replaced with the phrase *potential material impact*.
36. However, many other respondents believe that the disclosure of remote loss contingencies with a potential severe impact may mislead investors by requiring disclosure of information that is not likely to occur.

- Association of Corporate Counsel (CL #41A) believes that the disclosure requirements pose “potentially severe risks confusing longstanding concepts of materiality by requiring disclosure of information that a reasonable investor would likely find immaterial.”
 - Bank of America (CL #107) believes that the disclosure of asserted remote loss contingencies “will be misleading because financial statement users may misinterpret such disclosures as indicating that the probability of loss is, in fact, greater than remote.” The disclosure of certain remote contingencies “will encourage litigants to claim larger damages, while simultaneously encouraging entities to settle frivolous claims to avoid the disclosure of false and misleading information.”
37. The assessment of materiality of remote loss contingencies with potentially severe impact concerns some respondents because such assessments are usually arbitrary and hinder users of financial statements from interpreting the nature, timing, magnitude of potential cash outflows.
- The Clearing House Association (CL #60) suggested that the “inherently subjective nature of the stated disclosure criteria for establishing remote loss contingencies will lead to uneven application of the standard and frustrate the intent of the standard to provide clear and transparent disclosures to users.”
38. Some respondents believe that the cost for an entity to implement systems and assessments to ensure that remote contingencies are disclosed will exceed the little benefit provided to the users of financial statements. Other respondents requested that if the disclosure requirement were to remain in the final standard, further implementation guidance be provided to make the disclosure more operational.
- PwC (CL #82) noted that “the disclosures will likely be onerous for a company to provide, and would increase the overall volume of disclosures for loss contingencies, requiring investors and other users to spend more time discerning which matters have the highest likelihood of actually resulting to a loss to the company. We believe that an adequate threshold for disclosure is provided for in the accounting standard on risks and uncertainties, which does not require disclosures of remote loss contingencies.”
 - Counsel of Major Organizations (CL #261) indicated that “because such contingencies have previously not been disclosure, implementation of this new requirement will require entities to create systems to identify, track,

and evaluate a wide range of contingencies that are, by definition, highly unlikely to occur, and correspondingly difficult to reliably identify and describe. Such a substantial burden is not justified by any real benefits from the additional disclosure.”

Exclusion of Insurance and Indemnification Arrangements in Determining Materiality for the Disclosure of Loss Contingencies

39. The 2008 Exposure Draft did not specifically address the consideration of insurance recoveries in assessing whether a loss contingency meets the disclosure threshold. Based on input from the roundtable participants and comment letter respondents’ assertions about the uncertain nature of insurance coverage, even in circumstances in which the entity believes the loss contingency is fully covered, the Board decided to exclude consideration of possible insurance recoveries and other indemnification arrangements in assessing materiality to determine whether disclosure of a particular loss contingency is required. Numerous respondents criticized the prohibition against consideration of possible insurance recoveries and other indemnification arrangements in determining materiality because they believe that it would increase the number of loss contingencies required to be disclosed. They believe that the proposal fails to recognize the purpose of insurance and other indemnification arrangements, which is to mitigate the reporting entity’s exposure to losses.

- Financial Executives International (CL #262) opposes the Board’s decision to prohibit the consideration of insurance or indemnification recoveries in assessing whether a contingency should be disclosed because the requirement “fails to acknowledge the central role of insurance in risk management and timely claims resolution.” It believes that “to ignore this business reality distorts the picture of a company’s exposure” and it would be inappropriate to “exclude consideration of these common mitigating factors on the ground they are also contingent.” It believes that the disclosure requirement “inappropriately adds to the volume of disclosure and fails to differentiate between these types of contingencies from others for which such recoveries are not available.”

40. Many respondents recommended that the decision to include possible insurance recoveries and other indemnification arrangements in the assessment of determining whether loss contingencies should be disclosed should be left to management judgment. They believe that the exclusion of possible recoveries may be misleading

to financial statement users because the loss contingencies may not be likely to impact the entity after considering the insurance recovery.

- Bank of America (CL #107) disagrees with the Board’s decision to exclude the possible insurance and other indemnification recoveries in assessing the materiality of loss contingencies that would require disclosure. It asserted that while insurance recoveries are often uncertain, the nature of loss contingencies also is uncertain and insurance and indemnification recoveries “are fundamental elements of a company’s risk evaluation and management strategy.” It believes that “companies should take into account all relevant facts and circumstances to determine when disclosure is appropriate, including the likelihood of loss and the likelihood of mitigation.”

Qualitative Disclosures

41. The proposed Update includes enhanced qualitative disclosures about an entity’s loss contingencies to enable users to understand the nature and risks surrounding a particular loss contingency. The proposed qualitative disclosures include disclosure of the contentions of the parties during the early stages of litigation and increased disclosure as the litigation progresses, the nature of accrued loss contingencies, the anticipated timing (if known) of the resolution of the individually material contingencies, information to allow users to access additional information from publicly available sources, the basis of aggregation for aggregated contingency disclosures, and other qualitative information to enable users to better assess the extent of possible loss.

Cost-Benefit Analysis

42. Many respondents oppose the enhanced qualitative disclosure requirements because they believe that the information will cost preparers a great deal of time and resources to compile the information, while providing financial statement users with only a marginal benefit. In regards to litigation loss contingencies, the qualitative information surrounding these contingencies will be continually changing and will be difficult for preparers to assess each reporting period.

- U.S. Chamber of Commerce (CL #13A) opposes the additional qualitative disclosure requirements because they would “impose a tremendous practical burden on registrants” and the proposal does not include any cost-benefit

analysis. The Chamber disagrees with the Board's view that "many entities already have the information necessary to fulfill those disclosure requirements." The increased disclosure requirements lack an understanding of the unclear nature of the litigation process by disclosing the "anticipated timing of, or next step in" a litigation process and other qualitative information as the timing and content of these disclosures are often unspecified or uncertain. "In order to make these disclosures understandable, and to avoid claims that its disclosures were misleading," entities would need to disclose litigation strategy and other protected information.

- Wells Fargo (CL #25) indicates that "the cost and burden of providing the 'qualitative information' required by the exposure draft will be substantial." It believes that the time and resources to test and develop the proposed qualitative disclosures would not be "a productive use of resources and not useful to the investing public."

Prejudicial Information

43. Many respondents believe that the additional qualitative disclosures in the proposed Update would provide prejudicial information to the plaintiff in regards to litigation loss contingencies, for example, the disclosures would provide the plaintiff with insight into the entity's defense strategy and may lead to increased risk of loss.
- Telephone and Data Systems (CL #106) believes that the additional qualitative disclosures would be prejudicial to entities because "such disclosure would open up Company information to the claimant that would reveal the Company's judgments relating to the dispute. Thus, the claimant would be able to obtain and use such information from financial disclosures without doing the work currently required to discover such information under our adversarial judicial system. This would be prejudicial to the Company."

Quantitative Disclosures

44. The Board proposed to increase the quantitative disclosures regarding loss contingencies to provide financial statement users with more timely and relevant information about loss contingencies. Often entities may conclude that a probable loss cannot be estimated, and therefore, not accrue for the loss. The Board decided to provide publicly available quantitative information to help users assess the potential loss in reporting periods before settlement or accrual in the financial statements.

Publicly Available Quantitative Information

45. In response to the respondents' comments on the 2008 Exposure Draft, the Board decided to focus the quantitative disclosures on publicly available information. Many respondents agree with the Board's decision because it would prevent misleading disclosures and would not require the disclosure of prejudicial information.

- MetLife, Inc. (CL #79) "agrees with the *Exposure Draft's* focus on disclosure of publicly available and non-privileged quantitative information. Both users and preparers of financial statements are united in their interest in preventing disclosure of prejudicial information that would affect the value of the contingency itself by increasing the cost of resolving class action and other litigation and thereby harming the interests of shareholders and other investors."
- Various Investors (CL #214) support the increased quantitative disclosure because they believe that the additional information would enable investors to better analyze the magnitude, timing, and nature of loss contingencies. They believe that the disclosure requirements will "at least help ensure that disclosures reliant on the known minimum may now be accompanied by other publicly available information that may assist investors in understanding the higher potential outcomes above the known minimum."

46. Other respondents disagree with the Board's decision to increase the level of quantitative disclosures because, in their view, these amounts are often inherently biased toward the plaintiff and inaccurately reflect the amount of the potential loss. Many respondents indicated that management should exercise judgement to determine if the disclosure of additional quantitative information is necessary to prevent the financial statements from being misleading.

- U.S. Chamber of Commerce (CL #13A) noted that in order to make the disclosure of quantitative information understandable "and to avoid claims that its disclosures were misleading, the preparer will have to supply additional context, which will inevitably require it to reveal litigation strategy and other information protected by the litigation privileges."

47. Some respondents also asserted that entities might be forced to disclose more information in the financial statements to justify the claim amounts and other quantitative disclosures and such disclosures would result in the waiver of attorney-client privileges and work product doctrine.
- McGraw Hill (CL #38) indicated that the proposed disclosure of quantitative information is based on “prejudicial information or information that is effectively the work product of matters subject to attorney-client privilege.”
48. Other respondents disagree with the disclosure of publicly available quantitative information because the cost and resources to comply with the disclosure requirements would exceed the benefits provided to the financial statement user.
- Visa, Inc. (CL # 55) is concerned about the disclosure of publicly available, quantitative information as “complex litigation matters often span many years, involve many parties, and generate a very large volume of ‘quantitative information.’” It believes that the disclosure of publicly available quantitative information will not be operational because entities will be required to disclose updated data every fiscal period even if management believes that the data will not enable the user to better assess the potential magnitude, timing, and nature of loss. It believes that “the financial statement user will be faced with voluminous data points, many of which are unrealistic or highly speculative,” and will hinder the user’s ability to accurately assess the potential loss.
49. Some respondents believe that the term *publicly available* is unclear and not defined in U.S. GAAP. They believe that further clarification is necessary to determine the Board’s intent and to prevent the disclosure of prejudicial information.
- Honeywell International (CL #44) noted that the disclosure requirements of *publicly available* information “would be based on open-ended principles that would be difficult to apply.” They asserted that the “details to be provided regarding individual matters would undercut some of the purported benefits of the aggregated disclosure permitted under the Exposure Draft.”
 - FEI (CL #262) believes that further clarification is needed to enable entities to determine “what constitutes publicly available information subject to the disclosure requirements.” It believes that there are varying interpretations, based on the wording in the proposed Update, about whether *publicly available* information “is limited to the information released by the relevant court (or ruling body) or information that is otherwise available regardless of source or the accuracy or reliability of what is being provided.”

Amount Claimed by the Plaintiff

50. The quantitative disclosure requirements in the proposed Update would require an entity to disclose the amount of the plaintiff's claim. The claim amount is often part of court documents, and, therefore, is public information and would not be prejudicial to the reporting entity.
51. Many respondents oppose this requirement because disclosing the claim amount would be misleading to financial statement users and the claim amount often does not accurately reflect the amount of actual loss. Respondents also indicated that the disclosure requirements may differ in different jurisdictions because certain jurisdictions prohibit the claim amount from being filed.
- American Bar Association (CL #280) asserted that the disclosure of the claim amount, "even if the amount bears little relationship to the allegations or reality, could result in the risk of misleading or confusing disclosure." It also indicated that the disclosure requirement may differ depending on the jurisdiction in which a complaint is filed. Certain jurisdictions prohibit the claim amount from being included in the claim filed because "such amounts may have little relationship to the factual or legal claims in the complaint and may potentially have a misleading and prejudicial impact." It noted that the disclosure requirement may encourage claimants to submit inflated damage claims to achieve higher settlements. It also believes that the disclosure requirement may cause investors to provide credibility to the unjustified information and may cause auditors to obtain additional evidence to support the disclosures, which may result in the loss of attorney-client privilege or work product doctrine.

Amount of Damages Indicated by Expert Witnesses

52. The proposed Update includes the amount of damages indicated by expert witnesses as an example of publicly available quantitative information that should be disclosed. Users generally support the disclosure of the amount of damages indicated by an expert witness and offered additional recommendations.
- Various Investors (CL #214) support the disclosure "of any expert estimates advanced as testimony in litigation." They believe that the Board also should require "estimates that have been provided on a non-confidential basis through the discovery process."

53. However, many other respondents do not support the disclosure of the amount of damages indicated by an expert witness because the disclosure would mislead the financial statement users.

- Home Depot (CL #49) asserted that the disclosure of damages indicated by an expert witness would be detrimental to entities and “lead to disclosure of misleading or confusing information of questionable value.” It stated that the disclosure will “always support the plaintiff’s assessment of value of the claim, which is frequently higher than any reasonable assessment by the entity.” Due to the disclosure, an entity would be forced to respond to the asserted claims in the notes to the financial statements and may waive attorney-client privilege or work product doctrine as a result. Furthermore, the expert witness testimony may be rejected during the litigation process after it has been already disclosed in the financial statements, creating even more confusion for the financial statement user.
- Emerson Electric Co. (CL #123) is “concerned with the status the proposal bestows upon ‘expert’ witnesses and the requirements to disclose their assertions regarding potential damages. The “expert” witness claims are often biased and “at odds” with the interests of the entity. The disclosure should not be classified “as superior to other testimony or even particularly useful disclosure.”

Information about Possible Insurance and Indemnification Recoveries

54. The proposed Update includes the disclosure about “possible recoveries from insurance and other sources” when such information “is discoverable by a plaintiff or regulatory agency.” Many respondents oppose the required disclosure of information regarding possible insurance and indemnification recoveries as the information may entice potential claimants to pursue litigation and damage the outcome of current litigation. Some respondents view the disclosure requirement as in conflict with the Board’s objective to provide disclosures that would not affect the outcome of a litigation contingency.

- Securities Industry and Financial Markets Association (CL # 191) asserted that the disclosure requirement is “both vague and extremely broad, as it suggests that disclosure is required whenever the law would permit discovery of insurance coverage, whether or not the information has been disclosed during discovery, or even was requested.” The association also is concerned that the disclosure would increase the litigation exposure of an entity and

encourage potential claimants to submit claims due to the possibility of insurance coverage.

- KPMG LLP (CL #237) indicated that “disclosing information about insurance coverage if that information is discoverable by, but has not yet been provided to, the plaintiff could disrupt the normal process of litigating a dispute, thus potentially causing the disclosure of the contingency to affect the outcome of the contingency itself to the detriment of the reporting entity.” It recommended that the disclosure requirement be limited “to information that has already been provided to the plaintiff” to prevent the disclosure from hindering the outcome of a litigation contingency.

Tabular Reconciliation

55. For public entities, the Board decided to include a requirement for a tabular reconciliation in the proposed Update to improve transparency about the effects of loss contingencies on the financial statements. The tabular reconciliation will enable a financial statement user to better assess the potential nature, timing, and extent of loss contingencies by providing information about estimates of significant loss contingencies and the changes in those estimates on a quarterly basis.

General Comments

56. Users generally support the tabular disclosure requirements and some encouraged the Board to require additional information in the tabular reconciliation to allow users to better assess loss contingencies.
 - Investor Environmental Health Network (CL #215) supports the tabular reconciliation and suggested that the Board require additional disclosures “so that investors can have sufficient information to understand loss contingencies.” They recommended expansion of disclosure about the accrued amounts to require separate disclosure for “new loss contingencies, pre-existing loss contingencies not previously recognized, and the liability for loss contingencies assumed in business combinations or other business transactions.”
57. However, most other respondents oppose the tabular reconciliation requirement because they believe that the information provided in the disclosure would be prejudicial to the entity, therefore, damaging the litigation defense, and be costly to establish and maintain on a quarterly basis.

Prejudicial Information

58. The Board indicated that the tabular reconciliation requirement would not be prejudicial to the reporting entity because the disclosure is based on amounts already accrued in the financial statements and it can be aggregated “by class.” However, most respondents disagree. They believe that the tabular disclosure that is aggregated by class still would be prejudicial to the reporting entity.

- U.S. Chamber of Commerce (CL #13A) asserted that the “tabular reconciliation process required for recognized loss contingencies will provide the preparer’s litigation adversaries with an ongoing window into the preparer’s assessment of the litigation.” The information provided through the tabular reconciliation will provide the plaintiff with information based on “privileged communications between the preparer and its counsel” and will consequently “inflict very significant prejudice on the preparer.”
- Counsel of Major Organization (CL # 261) asserted that the tabular reconciliation of accrued loss contingencies would be prejudicial because changes to the accrual reveal how the entity has assessed a contingency in response to developments in the litigation. This concern is particularly relevant in situations in which there are only one or few contingencies in a particular *class*.
- American Bar Association (CL #280) asserted that the tabular reconciliation disclosure would “risk substantial prejudice to a[n] [entity’s] defense position in litigation” and “provide an adverse party critical insight into a[n] [entity’s] views regarding the prospects of the litigation.” It indicated that entities may need to disclose further qualitative information to support the accrual in the tabular reconciliation, which may potentially result in a waiver of attorney-client privilege and loss of work product protection.

Cost-Benefit Analysis

59. Some respondents argued that the tabular reconciliation will impose a great cost for an entity to prepare. The entity will have to devote substantial resources to develop, implement, and continually assess systems to accurately compile the required information.

- SanDisk Corporation (CL #169) stated that the “proposed tabular roll-forward information by class may be costly to implement, may not provide additional disclosure benefit, and could be prejudicial in certain cases.” They recommended that the “aggregated accruals with no tabular reconciliation by class would accomplish the Board’s objective without the

problems associated with the proposed disclosure.” They asserted that “the precision to support the new tabular disclosures will be at a much more detailed level as compared with the current broad balance sheet disclosure” and “to track these individual amounts over time would require changes to our internal reporting processes, which will take time and more to implement.” They recommended that the requirement only be applicable in circumstances in which it “may be necessary for the financial statements not to be misleading.”

Tabular Reconciliation in Interim Reporting Periods

60. Many respondents recommended that the Board delete the proposed interim reporting requirement and instead require an entity to provide the tabular reconciliation only for annual reporting periods because changes in accruals would be more difficult to trace to particular events over a longer span of time (that is, 3 months versus 12 months).

- Home Depot (CL #49) noted that “given the duration of most litigation matters, quarterly reconciliation are too frequent and would serve to provide plaintiffs with regular updates on our assessments 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.”

61. Some respondents also believe the tabular reconciliation requirement, on a quarterly basis, would not be operational with current reporting deadlines.

- Citigroup Inc. (CL #51) believes that the tabular reconciliation should not be required, but if the Board decides to maintain the proposal, the tabular reconciliation should be required “only in the annual report and that reporting entities be permitted to aggregate all recognized loss contingencies in the same table.”

Contingencies That Arise and Are Settled in the Same Period

62. The Board decided not to require the disclosure of certain loss contingencies whose underlying cause and ultimate settlement occur during the same period because the Board questioned whether these claims would meet the definition of a *contingency*. Some respondents requested that the Board further clarify its intention about what constitutes a loss contingency that arises and is settled in the same period. The

proposed Update does not clarify if the *same period* noted in the proposal refers to an annual reporting period or a quarterly reporting period. Also, respondents are unclear if the Board intended entities to disclose in interim tabular reconciliations contingencies that are resolved in an annual period but unresolved over two quarters.

- BDO USA LLP (CL #222) believes that losses “whose underlying cause and ultimate settlement occur in the same period should be excluded from the tabular reconciliation.” It believes that further clarification should be provided for proposed paragraph 450-20-50-1F “so it is clear what is required by public companies that will provide the reconciliation quarterly as well as for year-to-date and annual periods.”

Prejudicial Exemption

63. The proposed Update eliminated the prejudicial exemption that was included in the 2008 Exposure Draft. The Board decided that the prejudicial exemption was no longer necessary because the 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.

The Board also eliminated the prejudicial exemption in the 2008 Exposure Draft because of some respondents’ concern about its operationality.

64. Numerous respondents oppose the elimination of the prejudicial exemption from the proposed Update. Respondents believe that management should be able to exclude specific disclosures they deem to be prejudicial to the entity to ensure that the entity is adequately protected from releasing information to the plaintiff that would be damaging in litigation proceedings.
65. Examples of required disclosures that many respondents believe are prejudicial include disclosure of amount accrued, tabular reconciliation when there is only one or few lawsuits, tabular disclosures by class, tabular disclosure for quarterly periods,

insurance information disclosures, average settlement amounts, and the disclosure of the entity's basis for defense.

The Treaty and Auditability Issues

66. The term *the Treaty* refers collectively to two documents: AICPA Statement on Auditing Standards (SAS) 12, *Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments*, and the American Bar Association's *Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information*. These documents were drafted in 1975 and set forth the kinds of information auditors may request and expect to receive from a client's attorneys.
67. Many respondents believe that the disclosure requirements under the proposed Update may cause an entity's legal counsel to be unwilling to provide adequate information to auditors to obtain sufficient evidence about the disclosure of loss contingencies due to the Treaty and, thus, cause auditors to be unable to evaluate the sufficiency of an entity's disclosures. The respondents suggested that further communication is necessary between the FASB, American Bar Association, PCAOB, and the AICPA before issuance of the proposal.
 - Counsel of Major Corporations (CL # 261) indicates that the proposed disclosure requirements pose the "risk of waiver of attorney-client privileges and attorney work-product- through either the disclosure itself or the process of auditing it." They believe that if the qualitative information is not already disclosed by the entity to justify disclosures that cause the waiver of attorney-client privilege, the auditor will be forced to further inquire about the loss contingency and waive these privileges as a result.
68. Respondents also raised concerns about the audibility of the additional disclosure requirements in the proposed Update. Many respondents noted that the additional disclosure requirements are often speculative in nature, and the auditors will need to further rely on attorney's representations to assess the sufficiency and accuracy of such disclosure.
 - PwC (CL #82) believes that the "nature and subjectivity of certain of the proposed disclosures that will create a challenge for auditors to understand management's assessments and obtain sufficient evidence to support them.

For example, corroborating management’s assertions about which remote contingencies meet the disclosure threshold, whether insurance arrangements are ‘discoverable’ in a legal proceeding, information management asserts is ‘privileged,’ and the use of a prejudicial exemption (if such an exemption were included in the final standard) may be challenging.” It asserted that the proposed requirements will increase “the importance of detailed communications between a company’s legal counsel and the company’s auditor” to provide assessments of management’s assertions that the auditor does not have the expertise to evaluate. Management may be reluctant to provide such information as “providing such information could expose a company to claims that the attorney-client privilege, attorney work-product doctrine, and other legal protections have been waived.”

69. Some respondents expressed particular concern regarding the audibility of remote loss contingencies because auditors will have difficulty verifying the disclosures.

- E&Y (CL #157) believes that “the legal counsel and other parties involved frequently will conclude that they are unable to provided (or will be unwilling to provide) estimates required by the Proposed Update to determine whether an asserted remote loss contingency may have a severe impact.” Auditors will “be left with using either the amount of an asserted claim or an amount judgmentally determined by management that is not able to be verified by others.” Financial statement preparers may be reluctant to disclose information from legal counsel regarding remote contingencies to the auditors in fear of waiving attorney-client privilege.

70. Other respondents believe that the proposed Update would not require revisions to *the Treaty* and auditors would be able to continue to assess the disclosure requirements.

- The American Bar Association (CL # 280) stated that it “[does] not at this time believe that the revisions proposed in the Revised Exposure Draft... would require any changes to the ABA Statement.” The association believes that no changes would be necessary because the “ABA Statement does not detail the information a lawyer is to provide an auditor regarding claims and therefore no change is necessary to reflect any enhanced disclosure requirements.” The association also indicated that it may be necessary for the ABA’s Business Law Session’s Committee on Audit response to “issue a statement reflecting the foregoing.”

Convergence

71. Many respondents proposed that the project be delayed until convergence with the IASB's standard on this subject is achieved. They recommended that the FASB and the IASB work together on a common project to minimize the creation of guidance that would increase cost and resources to implement.
- Apple Inc. (CL #113) noted that "it seems counter-productive to substantially alter disclosures regarding loss contingencies that differ from the IASB standards that are currently being deliberated." It believes that "the FASB should work with the IASB to issue a single, converged standard that results in globally consistent treatment for the disclosure of loss contingencies."
 - Liberty Global Inc. (CL #132) opposes the current proposal because it is inconsistent with the convergence efforts and believes that the project should be delayed until the Boards decide to make the project a convergence project.

Private Entities

72. Some respondents argued that the users of private entity financial statements already have access to the information required by the proposed Update. They believe that the proposal would require additional cost that is of minimal benefit to users of private entity financial statements.
- Koch Industries (CL #108) believes that the disclosures in the proposed Update would not benefit the users of private entities. Users of private entity financial statements consist of key shareholders, rating agencies, and financial institutions, which are either involved in the entity's operation or are able to obtain additional detailed financial information on a "confidential basis" without the need for additional disclosure. Compliance costs would place a "disproportionate burden on privately held [entities]" and create disclosures that pose significant harm to private entities in litigation.
 - AICPA Private Companies Practice Section (CL #314) believes that the proposed Update will impose "new cost burdens on all private entities," "extend the time needed to complete an audit, review or compilation," and create prejudicial disclosures. It asserted that the users of private entity financial statements are not requesting additional disclosure of information related to loss contingencies, and, therefore, the cost cannot be justified. The group recommends that the Board continue to permit private entities to use current guidance under Topic 450 or to "develop additional contingency disclosure for public entities under SEC Regulation S-K."

- Private Company Financial Reporting Committee (CL #129) believes that existing guidance under Topic 450 provides adequate disclosure of loss contingencies for private entities when it is properly implemented. It believes that the subjective nature of the disclosure may hinder settlement negotiations and create an added cost review, compilation, and audit engagements because most private entities do not currently have in-house counsel.
73. Some respondents support identical loss contingency disclosures for private companies because they believe that the users of private entity financial statements also would value the additional disclosures. They also indicated that the increased disclosures may place public companies at a significant disadvantage against their private competitors because customers or investors may view the entity of having greater risk.
- Jacobs Engineering Group Inc. (CL #35) it believes that private companies should be exempt from any of the disclosure requirements in the proposed Update. They asserted that its clients may not “understand there will have been no fundamental change in the net accounting for contingencies” and may conclude that public entities may have become riskier “as compared to an entity whose disclosures are unchanged from the prior year.” This area is of particular concern for those construction and engineering firms whose main competitors consist of private entities.
 - Fortune Brands (CL #40) “believes any disclosure requirements enacted for public [entities] should apply equally to private companies.” It does not believe that “U.S. GAAP should define different standards for public and private entities as it erroneously presumes the needs of users are fundamentally different depending upon the manner in which the [entity] finances itself.”
 - Salesforce.com Inc (CL #103) indicated that while certain users of private entity financial statements may have access to detailed information concerning an entity, other potential users, such as some lenders, suppliers, etc. do not have access to detailed information. Therefore, they believe that the disclosure requirements should be consistent for all public and private entities to ensure that all users have access to information to evaluate the potential cash outflows of an entity.

Effective Date

74. The proposed Update was projected to be effective for annual financial statements issued for fiscal years ending after December 15, 2010, and for interim and annual financial statements thereafter. However, many respondents stated that the proposed Update cannot be successfully implemented for fiscal years ending after December 15, 2010. They argued that this effective date would not allow sufficient time for the FASB to complete its due process, for preparers to establish new processes to collect and analyze the necessary information, and for the American Bar Association and audit profession to reassess the provisions of the Treaty. Most respondents recommended that the effective date be deferred for at least one year after the proposal's issuance.

- Association of Corporate Counsel (CL #41A) strongly urged the Board to “reconsider this effective date for public companies given the significance and scope of the proposed changes.” The council believes that the “proposed requirements would entail significant effort” because entities would need to: survey all contingencies to develop new disclosures and control processes, evaluate with audit committees and external auditors the guidance and implementation specific to the entity, and audit and review the information relevant to the disclosures.
- Morgan Lewis (CL #278) recommended that the Board “defer the effective date of any new adopted disclosure requirements for at least a year” to allow entities to identify and develop the disclosure for all loss contingencies that meet the disclosure threshold, to allow sufficient time to review the disclosures with the audit committee and external auditors, and to consult with their external counsel.

Appendix A: Responses to Specific Questions Posed in the Exposure Draft

Operationality of the Proposed Disclosures

Question 1: Operationality of the Proposed Disclosures	
Generally Agree	17
Generally Disagree	204
Unclear/Not Stated	118
TOTAL	339

75. Many respondents are concerned about the operationality of the proposed disclosure requirements because they believe that significant management judgment is needed to compile and prepare the proposed qualitative and quantitative disclosures and because of the extensive costs and resources needed to prepare the proposed disclosures. They agree that the Board has eliminated a number of the subjective disclosure requirements from the 2008 Exposure Draft that would require management's predictions, yet they feel that further clarification is needed in some cases. Respondents are concerned that the subjective nature of the proposed disclosures would lead to inconsistency in reporting and decrease comparability of financial statements. Respondents also believe that certain disclosure requirements, such as the tabular reconciliation, would require a large amount of resources to obtain, analyze, and accurately report the appropriate information, and yet these disclosures would provide financial statement users with little benefit.

- Hewlett-Packard Company (CL #89) believes that "there is a high degree of subjectivity and management judgment concerning loss contingencies and additional disclosures that could significantly increase the amount of judgment used in compiling and quantifying the additional data." It believes that "companies would inevitably quantify and aggregate items differently, making it difficult for financial statement users to interpret the aggregated

data or the disclosures on a consistent basis among reporting entities.” They also believe that the unpredictable and dynamic nature of contingencies will add to the complexity of the disclosure requirements. The disclosures could become operational “but would require a significant increase in resources devoted to gathering, interpreting, and quantifying the data, as well as preparing the tabular and additional disclosures, particularly if the tabular disclosures are required on an interim basis.” The proposed disclosure would result in additional costs for the entity while providing a marginal benefit to financial statement users.

76. Some respondents believe that without clarification of some requirements, there would be differing interpretations and noncomparable financial statements that would harm financial statement users.

- Grant Thornton (CL#241) is concerned that the proposed requirements are “overly broad” and, thus, entities may find the disclosure requirements difficult to ensure completeness of the disclosure and ensure its accuracy.

77. Some respondents believe that without further clarification, requiring disclosure of other “non-privileged information” would not be operational because it would result in additional costs with potentially misleading disclosures.

- Honeywell (CL #44) noted that the “Exposure Draft calls for disclosure of “non-privileged” information, which could include all information exchanged during discovery process, even if it is not publicly available.” It believes that this would result in “costly and time-consuming review of discovery materials for a purpose other than that for which they were prepared, resulting in disclosure of which is likely to either provide minimal insight into a contingency or be confusing or misleading.”

78. Many respondents believe that the assessment of *severe impact* for the disclosure of remote loss contingencies is subjective nature and would distort materiality concepts.

- American Bar Association (CL #280) believes that the assessment of *severe impact* would be a “theoretical and speculative exercise” and, therefore, inconsistent with the basis for conclusions in which the Board formulated the proposal with the intention of not including disclosures that would require management’s predictions.

79. The disclosure of possible insurance coverage “if discoverable” also poses operational concerns in the view of some respondents. These respondents believe that it would be difficult for any entity to determine whether such information “is discoverable” or it may be protected until the court rules the information to be discoverable.
80. Some respondents recommended that other terminology in the proposal should be clarified to make the proposed Update more operational. These terms include *more extensive* in regards to additional disclosure as information becomes available during later stages of the contingency’s life cycle, *publicly available information*, *reputable scientific journals*, and *individually material contingencies*.
81. Some respondents recommended that the proposal further clarify the appropriate aggregation requirements in the tabular reconciliation to make the proposal more operational. They believe that the aggregation principle and the related implementation guidance contradict one another and additional examples are needed to ensure management understands how to appropriately disclose such information.
82. Many respondents indicated that the proposed disclosure requirements would result in significant costs for preparers and would provide only an incremental benefit for financial statement users, thus questioning the operability of the proposal.
83. The potential waiver of attorney-client privilege and work product doctrine also raised concerns for respondents in regards to the operability of the proposed disclosures (see earlier discussion under the issue related to the Treaty and auditability of the disclosures in paragraphs 69–73).
84. While respondents are concerned about the operability of the proposed disclosures, they indicated that the proposed requirements may be operational if further implementation guidance is provided to illustrate the the Board’s intentions.

Auditability of the Proposed Disclosure

Question 2: Auditability of the Proposed Disclosures	
Generally Agree	6
Generally Disagree	114
Unclear/Not Stated	219
TOTAL	339

85. Respondents believe that certain disclosures such as the disclosure of remote loss contingencies would require significant management judgement and estimates that would be difficult for an auditor to assess the completeness and accuracy of the disclosures without relying heavily on the inquiry with legal counsel. This issue is discussed further earlier in this memo in paragraphs 69–73.

Prejudicial Exemption

Question 3: Prejudicial Exemption	
Generally Agree	6
Generally Disagree	212
Unclear/Not Stated	121
TOTAL	339

86. See discussion earlier in this memo in paragraphs 66–68 and also under individual issues.

Effective Date

Question 4: Effective Date	
Generally Agree	10
Generally Disagree	152
Unclear/Not Stated	177
TOTAL	339

87. This issue is discussed in paragraph 77.

Enhancement and Improvement of Information to Users

Question 5: Enhancement and Improvement of Information to Users	
Generally Agree	9
Generally Disagree	202
Unclear/Not Stated	128
TOTAL	339

88. Users of public entity financial statements support the additional disclosure requirements under the proposed Update because they believe that the proposed disclosure requirements will increase the timeliness of disclosure of loss contingencies and provide users with the appropriate information to better assess the nature, timing, and potential cash outflows due to loss contingencies. They believe that under the existing disclosure requirements, entities often do not disclose appropriate estimates of loss contingencies until a settlement has been reached. Users believe that the disclosure requirements of the 2010 proposed Update will

improve financial statement disclosures while adequately protecting entities from disclosing prejudicial information.

- Group of Investors (CL #214) “agree with the Board that under the existing contingency disclosure, formerly Financial Accounting Statement 5, financial statement disclosures typically contain inadequate information regarding many of the liabilities faced by a reporting entity.” They believe that despite the modifications made to the 2008 Exposure Draft, “the modest changes now being proposed still may portend some improvements in financial statement disclosure.” The investors believe the proposed disclosure requirements protect entities from disclosing privileged information, while helping to “ensure that companies do not issue intentionally misleading financial statements.”
- Investor Environmental Health Network (CL #215) is “supportive of the Board’s proposal to expand the amount of information available to investors regarding contingent liabilities.” It also believes that the Board “has struck an appropriate balance between the needs to protect privileged information and for investors to be able to place reasonable reliance on company disclosures.” It encouraged the Board to provide additional disclosure guidance on which information an entity should disclose in specific stages of a contingency’s life cycle, clarify the categories of nonprivileged information that should be disclosed, provide additional details in the tabular reconciliation, and “clarify that scientific literature can trigger other contingency liability disclosures beyond accruals.”

89. Most other respondents, however, believe that the proposed Update will not enhance and improve the information provided to financial statement users. These respondents asserted that the proposed disclosure requirements will create voluminous disclosures containing speculative information that will be misleading and will benefit litigation adversaries. Many respondents believe that disclosures, such as disclosure of plaintiff claim amounts, unasserted claims from scientific journals, and claims asserted by expert witnesses, are inherently biased toward the plaintiff, will provide inflated disclosures that will not accurately represent the actual amount of potential loss. Many respondents also believe that the disclosure of remote loss contingencies will provide misleading information that will overshadow loss contingencies that have a greater risk of loss.

Tabular Reconciliation Exemption for Nonpublic Entities

Question 6: Reconciliation Exemption for Nonpublic Entities	
Generally Agree	20
Generally Disagree	45
Unclear/Not Stated	274
TOTAL	339

90. Of the respondents that chose to assess whether nonpublic entities should receive an exemption from the tabular reconciliation requirement, the majority of respondents do not support Board’s proposal to exempt nonpublic entities.
- New York State Society of Certified Public Accountants (CL #53) “does not agree that nonpublic companies should be exempt from tabular reconciliation of disclosures required in the amendments in this updated Exposure Draft.” It asserted that the information disclosed in the tabular reconciliation would be useful to both public and nonpublic entities’ users in assessing the potential cash outflows from loss contingencies. It believes that the time required to compile the disclosure would be insignificant, and therefore, should be provided by nonpublic entities.
 - Camden Property Trust (CL #39) “does not agree there should be a distinction between public or nonpublic GAAP for either the tabular reconciliation disclosures or any other aspects of the amendments.” It believes that by permitting different disclosure requirements for public and nonpublic entities, financial statements will become less consistent and comparable across all types of entities and this should be avoided.
 - United Technologies Corporation (CL #167) does not support the tabular reconciliation exemption for nonpublic entities because it believes that the final standard should be applied consistently to both nonpublic and public entities. It believes that nonpublic entities “seeking financing through debt or private investment should be required to disclose contingencies in a consistent manner with that of publicly held entities.”

- Allergan, Inc. (CL #17) “believes that all for-profit, non-governmental enterprises should account for financial information in the same way, under a single set of high quality accounting standards.” It believes that different treatment for nonpublic entities due to size or public registration on a stock exchange decreases comparability of information in financial statements for similar transactions, and should be eliminated.
91. Most of the respondents believe that the tabular reconciliation disclosure requirement should be deleted for all entities—both public and nonpublic—because the information provided in the tabular reconciliation would be prejudicial and provide little benefit to the users of financial statements.
92. Other respondents support the Board’s proposal for the tabular reconciliation exemption for nonpublic entities because they believe that nonpublic entities users have more access to detailed information that would be provided in the tabular reconciliation. Therefore, they believe that the tabular reconciliation would not meet the cost-benefit test for nonpublic entities.
- BDO (CL #222) “agrees with the proposed exemption for nonpublic entities from the tabular reconciliation of accrued contingencies.” They believe that nonpublic entities “are generally smaller businesses and generally have fewer litigation contingencies” and as a result “they are most likely to disclose the accrual for a single litigation contingency in the tabular roll-forward by class, which might be detrimental to the outcome of their case.”
 - Mayer Hoffman McCann P.C. (CL #94) supports the tabular reconciliation exemption for nonpublic companies because the users of these entities do not typically have the same concerns over lack of disclosure of loss contingencies as public entity users. It asserted that these “investors and creditors of private companies have much more direct and effective means of obtaining this information as a result from requiring the expanded disclosures in financial statements.”

Nonpublic Entities–Deferral of Effective Date

Question 7: Nonpublic Deferral of Effective Date	
Generally Agree	27
Generally Disagree	31
Unclear/Not Stated	281
TOTAL	339

93. Many respondents believe that the effective date should be deferred for both nonpublic and public entities. They asserted that the proposed disclosures would require more time to allow management to reassess contingencies to comply with new disclosure threshold for asserted remote contingencies, to develop systems to comply with the other disclosure requirements, and to allow auditors to develop processes to evaluate the adequacy and accuracy of disclosures.

- Allergan Inc. (CL #1) “believes that all for-profit, non-governmental enterprises should account for financial information in the same way, under a single set of high quality accounting standards.” It believes that different treatment for nonpublic entities due to size or public registration on a stock exchange decreases comparability of information in financial statements for similar transactions, and should be eliminated.

94. Some respondents believe that the effective date for nonpublic entities should not be different from their public counterparts as they are subject to the same additional disclosure requirements and, thus, both types would need additional time to allow for proper adaptation to the new requirements. Respondents argue that nonpublic entities often have fewer contingencies to disclose and, therefore, would not need additional time to prepare the increase disclosure requirements in comparison to public entities.

- Apple Inc. (CL #113) proposed that the effective date to be deferred for both public and nonpublic entities “to ensure neither had an informational advantage during the said deferral period.” It also believes that public companies would have more difficulty than nonpublic entities in the implementation of the proposed guidance due to international operations complexities and SOX compliance efforts.

95. Other respondents believe that nonpublic companies should have a later effective date because they often have limited resources and do not have in-house counsel at their disposal to quickly provide the information needed for the additional disclosure requirements.

- American Bar Association (CL #280) recommended that the Board defer the effective date of the proposed Update for both nonpublic and public entities, yet it believes that the effective date for nonpublic entities should be deferred an additional year. It noted that “a similar one-year deferral should be made for private companies so that they can benefit from the experience of public companies and have additional time to deal with the revised requirements.”

96. The majority of respondents request a one-year deferral of the effective date for both nonpublic and public entities to allow them to adequately adapt to the additional disclosure requirements.

XBRL Element Sufficiency

(Note: The FASB staff has provided to our XBRL group with those portions of the comment letters that address specific suggestions to improve XBRL content on this subject matter.)

Question 8: XBRL Element Sufficiency	
Generally Agree	19
Generally Disagree	11
Unclear/Not Stated	309
TOTAL	339

97. Of the respondents that chose to evaluate the sufficiency of XBRL elements, the majority of them believe that the proposed and existing XBRL elements are sufficient to meet the SEC’s requirements to provide financial statement information in the XBRL interactive data format. Some of the respondents believe that additional elements are needed that are specific to loss contingencies.

- California Public Employees' Retirement System (CL #52) believes that the proposed and existing XBRL elements are sufficient to meet the SEC's requirements and that the "format should include the qualitative disclosure and quantifiable tabular requirements" in the proposed Update.
- E&Y (CL #157) agrees that the proposed and XBRL elements are sufficient to meet the SEC's requirements. It believes that the Board needs to "consider the effects of using the same element pre-and post-adoption of the proposed element," specifically when element definitions change to ensure that the comparability of information would not be reduced as a result.
- Illinois CPA Society (CL #306) believes that "the proposed and existing XBRL elements appear to cover sufficiently the common types of loss contingencies and the proposed disclosures required for those contingencies."
- Dresser-Rand Group Inc. (CL #186) believes that "certain existing XBRL elements would be sufficient to meet the requirements to provide high level components of the contingencies disclosures in the XBRL interactive data format." They asserted that many entities may aggregate disclosures differently that would reduce comparability of reported information that would be further reduced by detailed tagging.

98. Other respondents believe that the proposed and existing XBRL elements provide too much detail and the number of XBRL elements should be limited. These respondents noted that the detail of the XBRL tagging would cause entities to apply the taxonomy inconsistently and, thus, would decrease comparability among entities. Some respondents also asserted that the tagging of XBRL elements would be overly burdensome on entities and would provide little benefit to financial statement users due to the time consuming, and complex tagging process.

- J.P. Morgan Chase & Co. (CL #70) believes that "the proposed and existing XBRL elements related to the proposed Update provide a level of detail that is contrary to the goal of XBRL, which is to provide investors with information to facilitate comparability and analysis of companies' financial information." It believes that the use of "block tags" provide the appropriate level of information and the proposed elements would be "unduly burdensome for preparers, does not appear to be required under SEC rules, and would not enhance the XBRL disclosures." It also believes that it would be "difficult to provide XBRL elements to disclose new contingencies or update existing disclosures for new developments during the tight reporting time frame."

- Progress Energy (CL #87) believes that “the proposed Update will result in a significant increase in detailed XBRL tagging.” It believes that the proposed guidance will “require custom elements that eliminate any comparability among entities” and will be of little benefit to the users of financial statements. They suggested that the SEC “reconsider the requirement to provide detail tagging of the footnotes in the XBRL interactive data format.”
- Hewlett-Packard Company (CL #89) agrees that the proposed and existing XBRL elements are sufficient to meet the SEC’s requirements, but believes that “there would be varying degrees of aggregation and segregation by different companies requiring unique taxonomy so that any comparisons on any basis other than the changes in the total amounts accrued would not be practical or meaningful.” It also believes that “the number of tags available would lead to inconsistent selection based upon the nature and progression of litigation and other contingencies throughout its existence.”