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Technical Director
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LETTER OF COMMENT NO. 50

Subject: Proposed Statement of Financial Accounting Standard: *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141R.*

Reference: 1600-100

Dear Technical Director:

Pfizer Inc. is a research-based, global pharmaceutical company. We discover, develop, manufacture and market leading prescription medicines for humans and animals. In 2007, we reported revenues of \$48 billion and total assets of \$115 billion.

On behalf of Pfizer, we ask the FASB to consider the following comments with respect to the proposed changes to the disclosures of loss contingencies. While we appreciate the FASB's view that disclosures and accruals occur later than they would prefer, we do not believe that this proposal will be an effective method to address those issues. Moreover, we believe that financial reporting should report on the performance of the company without directly interfering with the outcome of contingent liabilities which this proposal will do. In summary, we are very concerned about the proposed requirements, notwithstanding the inclusion of a "prejudicial exemption" that is to be used rarely. We ask that the Board give careful consideration to the separate roles of financial reporting and the courts of law within the highly adversarial process which pertains to litigation type contingencies. We share in the mission of ensuring that meaningful financial and other information is provided to the investing public. We believe that the proposal will have far reaching and unintended implications for how litigation is handled and almost certainly will increase amounts which might ultimately be paid to resolve litigation.

Financial Reporting Concerns

We believe that there should be a clear distinction between what is "meaningful" and what constitutes "certain basic facts about an investment" to which a current or potential investor should have access. Some general comments follow.

- Uncertainty should not be masked – We posit that "uncertainty" is often a basic fact associated with contingencies and that the disclosure of that uncertainty as uncertainty may be the most relevant and reliable disclosure. The current standard of disclosure requires meaningful information. Presenting amounts that are probable and estimable is meaningful; presenting the range of reasonably possible loss in excess of amounts recorded is meaningful; and asserting that such estimates cannot be made is *extraordinarily* meaningful. We do not believe that some of the proposed

disclosures, such as maximum exposures even if remote or amounts claimed, will prove meaningful; in fact, it is likely that they will be misleading and/or confusing.

- The expectation gap should not be widened – The inability to meaningfully estimate most contingencies (legal contingencies, in particular) is often reflective of the astonishingly high number of complex and subjective variables involved, most of them unknown for extended periods of time, each of which can impact the outcome, timing and financial impact of a contingency. We note that some litigation can take decades to resolve and that overturned, vacated or modified verdicts are fairly common occurrences. To force disclosures of amounts claimed, contingency amounts deemed to be remote, and maximum exposure to loss, we believe would serve to inflate the expectation gap beyond recognition as these amounts may have no basis in reality (if they did, SFAS No. 5 would already capture them). Requiring companies to publish these amounts in their financials, widens the expectation gap by giving credence to these numbers. Financial statement users attempting to play “arm-chair lawyers” by using such information are likely to make very poor decisions because they would not have the full breadth of understanding despite the voluminous disclosure suggested.
- Amounts claimed and/or maximum exposures will become sound bites – We do not believe that disclosing amounts claimed and/or maximum exposure to loss will enhance a financial statement user’s ability to assess the “likelihood, timing and amount of future cash flows.” And, no amount of qualitative disclosure will erase those numbers from the minds of readers once disclosed and the financial media will run with the sound bite - - perpetuating myth. We believe that the current disclosure requirements (probable, reasonably possible, can’t estimate) are the better mechanism for meaningful disclosure.
- On what basis do we abandon this principles-based standard – SFAS 5, a principles-based standard, has served U.S. markets well for decades. We know that capital markets penalize companies for uncertainty - - this is rational. In fact, for public companies, it is not unusual for stock prices to rise upon the recording of an amount related to when a settlement or other resolution occurs as the removal of uncertainty has great value. Therefore, we would posit that if management were rational and were driven to improve stock prices and shareholder return, they would be anxious to provide estimated amounts if they were really estimable and would similarly rush to disclose those amounts if the cost of that disclosure were not higher than the benefit. We believe that capital markets can be reasonably efficient when dealing with uncertainty as long as there is appropriate disclosure of the *uncertainty*.

We are aware that the SEC and the FASB believe that SFAS 5 leads to “late accruals”; this perception being informed, in part, by “sudden settlements”. Well, in truth, settlements are often sudden - - this is a real-world situation, particularly in the United States - - and may not necessarily reflect the ‘SFAS 5 liability.’ That is, management may not believe that the likelihood that the future event will result in the incurrence of a liability is probable. Given unlimited resources, a company confident in its defenses would litigate for as long as courts would entertain the action. However, recognizing the limits on resources, companies often enter into settlements that are nothing more than an accommodation of the cost/benefit analysis of the litigation decision and a practical response to concerns about (1) the exorbitant cost of proving the “absence of liability”, (2) negative publicity, (3) the impact of uncertainty on the stock price, and (4) management distraction among other factors. In short, “settlement” is not shorthand for “liable”. There may be no

liability related to prior activities, but there may be a settlement which is based on a current, valid business decision.

We believe SFAS 5 works as intended when applied by good-faith preparers.

Litigation Concerns

Our financial reporting obligation is to users of our financial statements. But, our fiduciary responsibility is to current shareholders. We believe that these proposed disclosures would be highly detrimental to our ability to negotiate settlements and/or pursue available defenses. Further, we believe that these disclosures will serve to corrupt the litigation process. As defendants, it will be as if we, on the one hand, are forced to play a hand of very high-stakes poker with all of our cards showing while our opponents, on the other hand, are not required to provide any information. This situation will severely limit our ability to defend ourselves in an adequate manner and will disadvantage current shareholders of our company, particularly when our ability to appeal for fairness is expected to be *'rare.'*

Legal contingencies are born of an adversarial relationship, not an economic transaction between two willing parties. By requesting the proposed information, the Board is unwittingly aiding plaintiffs at the expense of investors - - a transfer of wealth will occur solely due to premature, speculative and prejudicial disclosures.

Furthermore, we share the concerns of the legal profession about these proposed disclosures, such as:

- Exposing new information to the discovery process
- Jeopardizing attorney-client privilege
- Creating a "floor" of liability through disclosure alone
- Encouraging plaintiffs to file baseless lawsuits with exorbitant *'amounts claimed'* that are designed solely to take advantage of the now lopsided litigation disclosure process
- Exacerbating the tendency of auditors, regulators and users of financial statements to substitute their judgment in place of the professional opinion of counsel

Final Comments

The proposal discusses loss contingencies in general, but our objections center on litigation-type loss contingencies. This is because the nature of these contingencies are varied and complex, involve adversarial relationships between one or more parties, are handled differently in different jurisdictions, are subject to varying interpretations of law and potential human biases. More often than not, such cases are not clear-cut and outcomes cannot be forecasted with real reliability because of the extensive amount of time that cases take to wind themselves through the courts and the inherent unpredictability of the human element. Litigation-type loss contingencies can include individual (product liability and other) lawsuits, class action (securities, product liability and other) lawsuits, derivative securities lawsuits, patent litigation, government investigations (U.S. federal and state as well as foreign government) or other government actions taken by state attorney generals with respect to sales of products or business dealings. Each of these types of loss contingencies is subject to a variety of factors and each party is interpreting the law. Some of these contingencies will be decided by a judge or a jury or a government official, each of which can yield unpredictable results. In fact, we have seen cases that are decided by a judge in favor of

one party and then reversed by another court on appeal. This is the nature of the legal system within the United States and the environment in which we operate.

The attached explains our views in more detail. We appreciate this opportunity to comment and encourage the FASB to continue to engage its constituents. If requested, we would be pleased to discuss our comments with you at any time.

Sincerely,

Loretta V. Cangialosi

Loretta V. Cangialosi
Senior Vice President and Controller

Attachments

cc: Frank D'Amelio
Senior Vice President and Chief Financial Officer

EXPOSURE DRAFT Q&A**1. Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not?**

We do not believe that disclosures will be enhanced. We believe the incremental costs will be enormous and the benefit is not justified.

- The proposed disclosures will introduce information that will not be reliable and nor will that information be a reliable predictor of the "likelihood, timing and amount of future cash flows." With respect to litigation contingencies, such contingencies can take years to reach a conclusion and legal strategy undertaken can be very different resulting in differing outcomes for what seem like similar cases. Financial statement users without appropriate knowledge of the law will be attempting to make judgments based on information which will be a guess at best in the early stages of litigation and not much more reliable in later stages of litigation. Moreover, by adding the requirement to disclose information for all contingencies other than those that are remote, readers (other than plaintiffs and plaintiffs' counsel) are likely to be overwhelmed by the detail which will need to be provided to cover all contingencies.
- In considering the cost-benefit analysis of such disclosures we ascribe significant costs to the following:
 - The actual cost of preparing this information will be significant in that such information does not lend itself to summary level discussions. We note that our current "Legal Proceedings and Contingencies" footnote is about 8,400 words long comprising 5 pages. We estimate that the disclosures being requested would triple the number of pages. Because such disclosures require expert legal advice, the actual costs of writing such disclosures with the required input from attorneys will also increase substantially.
 - The cost of disclosing such information on active litigation is likely to be enormous because it has the effect of disadvantaging companies who are defendants. This "unleveling" of the playing field will occur as significant transparency is provided to plaintiffs about strategy, a company's estimate of the "liability" and the company's interpretations of law it is relying on. Given the nature of litigation in the United States, and the multi-billion dollar business it has become, we believe that the impact on defendant's businesses is likely far greater than hundreds of millions of dollars.
 - The cost of further eroding attorney client privilege is an added cost to be considered. Many of the proposed disclosure elements will require that privileged information be disclosed either through the preparation of the disclosures by the attorneys involved or through the external audit process as auditors seek to document and audit the disclosures and understand their correctness and try to interpret the law. The cost of eroding privilege is that such information will cause further information asymmetry as plaintiffs are highly likely to seek such information through the discovery process thereby tipping the scales to disadvantage companies who must report such information.
 - The cost of such disclosures will also extend to future litigation that a company may face. Future plaintiffs will utilize such disclosures to understand what legal

strategies a company is likely to employ and to determine how much a company might pay given the value that is disclosed.

- In addition, there will be the cost of defending the company from possible lawsuits in the event that the disclosures about loss contingencies are subsequently changed.

3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?

No. The phrase "regardless of the likelihood of loss" is simply disturbing and should have no place in financial disclosures. Including items deemed "remote" is misleading to users of financial statements and will give the associated amounts a level of credibility that they simply do not warrant. We know that amounts of damages claimed by plaintiffs can be grossly overstated and egregious. In today's legal system demands can be made for any amount and companies can be sued even when there has been no harm. There are instances where billions of dollars can be requested in an attempt to get negotiators to start with a high settlement figure even when there is no credible evidence to support those numbers. Therefore, inclusion will be misleading because it is unreliable and inaccurate. We further believe that additional shareholder lawsuits are to be expected based on information which is unreliable and misleading.

4. Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.

a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?

b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?

c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

The question suggests that "entities often state that the possible loss cannot be estimated." While we realize that users sometimes express the view that the possible loss should be estimable, our experience is that it is often not possible to provide an estimate given the varying factors involved. "Uncertainty" is often a basic fact associated with contingencies and the disclosure of that uncertainty as uncertainty may

be the most relevant and reliable disclosure. And, it is a very revealing disclosure. "We just don't know." That is a powerful statement. Since factors such as interpretations of law, jurisdiction, the perceived biases of an assigned judge, assessments as to actual injury and potential impact on existing business activities are all highly subjective and have a bearing on the ultimate outcome it is often not possible to provide an estimate because the weighting of the factors can and will change based on both events internal to a company as well as external to a company. Two cases which appear similar in nature can have very different outcomes because of the subjectivity of such factors. We believe that disclosure of these elements may prove appropriate when a matter reaches the probable and estimable stage, but not before. We do not believe that augmenting the statement 'we just don't know' with the maximum possible loss, for example, is an improvement, as this amount is likely to have no basis in reality. Publishing demands of the plaintiff, when provided, misleads users into believing they are possible even when management believes them to be remote or baseless.

We do not believe that asking preparers to come up with its best estimate of the maximum exposure to loss when the amount of a claim is not given by a plaintiff is in the best interest of investors. Asking preparers to do this is akin to asking them to bid against themselves to settle the liability even if they had enough knowledge to come up with an estimate. In many cases, the claims are simply not estimable as 'discovery' has not yet occurred which means that there are many facts which are unknown and factors which are unpredictable or cannot be readily or adequately assessed. Furthermore, such estimates are reasonably likely to establish a "floor" for amounts if negotiation discussions take place. We believe that disclosures which have the effect of becoming self-fulfilling prophecies for the outcome of such contingencies by the simple fact of them being disclosed and utilized by the opposing side in this adversarial process are not appropriate when the goal is to report on the performance of the company. We believe that the financial reporting process becomes tainted when it goes beyond reporting and begins to have significant influence on the outcome of contingencies.

The current standard of disclosure requires meaningful information. Presenting amounts that are probable and estimable is meaningful; presenting the range of reasonably possible loss in excess of amounts recorded is meaningful; and asserting that such estimates cannot be made is *extraordinarily* meaningful. We do not believe that some of the proposed disclosures, such as maximum exposures even if remote or amounts claimed, will prove meaningful; in fact, it is likely that they will be misleading and/or confusing.

5. If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

We believe that SFAS 5 currently would yield an appropriate outcome for these situations. If the company can estimate an amount that is probable and estimable, the amount would be recorded and disclosed if material. That would be meaningful. If the company can estimate the amount of reasonably possible loss in excess of amounts accrued, those amounts would be disclosed. That disclosure would also be meaningful. If the company could do neither, the disclosure of that fact would be meaningful. Using approaches such as cost to defend vs. cost to settle, Monte Carlo simulation, etc. will all provide very different results and for litigation with highly unpredictable factors (which describes most of what we see), will most often result in an estimate that management does *not* believe to be reliable. We ask the Board to consider whether users are served by having preparers come up with estimates that are *not* reasonably reliable because of

the unpredictability of the litigation process. Given the inherent unreliability of such information, does the intent of providing meaningful information become meaningless or misleading? Investors who believe that they will be able to second guess and forecast what will happen will be disappointed as most of these situations are highly complex and dynamic; however, if the idea is to make such amounts self-fulfilling prophecies by establishing a liability *floor*, then these disclosures will surely do that.

Requiring a reporting defendant to provide either its maximum potential loss or a range of possible losses where the plaintiff has been unwilling or unable to do so is problematic. As we have learned from the legal community, the estimate itself might establish a "floor" of liability where perhaps no real liability existed. The disclosure would actually create evidence that could and would be used against them in a court of law - - most certainly corrupting the outcome.

6. Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?

We agree with the Board's decision.

7. Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?

No. Current financial reporting and disclosure requirements already compel preparers to disclose material activity associated with loss contingencies. Revealing additional activity that is not significant or material to a company's financial statements or operations is not meaningful. Further, if the loss contingencies are recognized, those amounts will be classified as short- or long-term, according to their nature, which already assists investors in understanding and assessing future cash flows. We are unclear as to the incremental benefits of the tabular reconciliation.

8. This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

Yes, but the problem with aggregating disclosure at a level higher than the nature of the contingency is twofold: for many entities, either a single claim or a group of claims (such as a group of mass tort claims or a major shareholder class action suit) will constitute a disproportionate part of the total exposure from such matters with the consequence that aggregation may not provide a meaningful shield for the information. Frequently, large claims are known publicly and anyone evaluating the aggregate disclosure is likely to know that the great bulk of the exposure comes from a particular claim or group of claims. In addition, to the extent that all estimates of claims are uncertain, aggregation may merely compound the possibility of error that is inherent in each individual evaluation, leading to a composite disclosure that is prone to error and nearly meaningless.

Also, we are concerned with the concept that instances should be "rare" as we believe that the Board has underestimated the issue of prejudicial information. If aggregation is not meant to extend beyond certain classes or like-kinds of contingencies, the issue of prejudicial information being made public is more frequent. For example, if a company had one large product liability case, one large shareholder lawsuit and one large government investigation could the three be aggregated? If so, is that information really meaningful? (We think not.) And, if not, it would seem that the exemption would not be "rare". We believe that the FASB should carefully consider its criteria of "rare". Furthermore, we would also ask the Board to consider the harm that comes from disclosures which can then be used by future potential litigants in determining their legal strategies, demands, etc. against a company that is required to make these disclosures which will also influence those outcomes.

10. The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, Provisions, Contingent Liabilities and Contingent Assets, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

Since the move to international accounting standards is now considered a matter of 'when, not if,' we believe that convergence is imperative prior to the FASB issuing this proposed standard. The IASB's use of the "extremely rare" criterion as the level of disclosures required under IAS 37 is similar to those under SFAS No 5 and nowhere near as detailed as the proposals suggested by the FASB. Furthermore, we reviewed the disclosures of our competitor companies who utilize International Accounting Standards and found the disclosures to be similar or less than what we currently are disclosing under SFAS No. 5. We found no prejudicial information of the type that the Board is suggesting be disclosed in either the current IAS 37 or proposed amendments.

12. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

We do not believe that it is meaningful to make such ongoing disclosures on matters that are not at the probable and estimable stage. At these earlier stages, changes in strategy can occur frequently as information reveals itself over time and until a matter reaches the probable and estimable stage, we don't believe that that the proposed disclosures are appropriate for users. Capturing all of these changes for contingencies which are more than remote is significant, is, in fact, cost prohibitive in the context of providing user benefit. Please also see our response to question 7.

14. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

No. The risk of the proposed disclosures is so great and the potential harm is incalculable. We ask the Board members to allow themselves enough time to appropriately consider all comments received, to incorporate all roundtable concerns and to appropriately field test the proposals. Then, whatever the outcome, if a final standard is issued, we ask that preparers be given adequate time to compile, draft and vet all of

the required disclosures. We ask the Board to appreciate the enormous and complex undertaking that these proposed disclosures represent as well as the associated risk.

Other Comments

Attorney Client Privilege

Because of the numerous subjective factors that go into an assessment of a lawsuit, as well as the possibility of critical factors that are not presently known, auditing quantitative disclosures about litigation will be very challenging. To the extent that the disclosing entity's judgments and estimates are based on privileged communications between a preparer and its counsel, auditors will feel obligated to seek privileged information from counsel in order to audit the disclosures and provide documentation for their workpapers. This could lead to loss of the attorney client privilege and make all of the documents on which the disclosure is based be the subject of discovery. Increasing the pressure on auditing litigation contingencies would risk erosion of those fundamental protections.

Insurance

The Board has asked for both a qualitative and quantitative description of insurance that could lead to a recovery of some or all of the possible loss. More often than not, the terms of insurance are actually quite complex consisting of multiple insurance companies with overlapping risk, various layers of coverage for specific years and specific products or matters and there can be "gaps" in coverage. In fact, assessing insurance recoveries can be as complex as assessing the outcome of the contingency itself! The insurance recovery itself can be lengthy with insurers more often than not denying claims, asking for more or different information, objecting to the payment structures with other insurers and the insurance itself can be the subject matter of litigation with insurers. At times, insurers will attempt to negotiate a lower figure with quicker payments to claimants rather than pay according to the terms of the insurance. Providing the details of this information will likely mislead investors into thinking they can rely on insurance to recover the loss when in fact the process can be quite lengthy or can result in lower recovery than set out by the relevant terms. In many cases, there may be no way to predict this process and management may not be able to make a reliable assessment of what the recovery will be.

Legal Strategy

Legal strategy determines how a case is litigated and its eventual outcome. For example, similar cases may not be handled in a similar manner because of differing judges, jurisdictions or plaintiff's attorneys, among many other factors. In addition, legal strategy can change over time which can impact the timing of an accrual. Requiring companies to disclose the factors that are likely to affect the ultimate outcome of the contingency, potential effect on the outcome, and the assessment of the most likely outcome will provide the plaintiff with a roadmap of the company's legal strategy. While the timing of settlements can sometimes appear arbitrary, the nature of litigation is highly dynamic and, as new facts, public interest considerations or opportunities to settle at reasonable amounts present themselves to management, a decision to settle needs to be considered against whether to continue to incur legal defense costs. A review of our own litigation indicates that resolution of litigation can range from 3 years to over 10 years with an average period of about 5 years. Attempting to assess all the factors of what may or may not happen will likely yield highly unreliable information.