BAKER NEWMAN NOYES LLC

INTEGRITY · SERVICE · SOLUTIONS

LETTER OF COMMENT NO. 42

August 6, 2008

Technical Director – File Reference No. 1600-100
Financial Accounting Standards Board
401 Merrit 7
P.O. Box 516
Norwalk, Connecticut 06856-5116

Re: Comments on Proposed Amendment to FAS 5

Thank you for allowing our firm the opportunity to comment on the *Exposure Draft For Disclosure of Certain Loss Contingencies – an amendment of FASB Statement No. 5 and 141(R).* Baker Newman & Noyes has three offices in Maine and New Hampshire and serves numerous private companies throughout New England.

Our firm takes quality financial reporting seriously and our clients have told us repeatedly over the years that they "want to do the right thing." However, we believe the proposed amendment would be too burdensome on our private company clients. Our specific comments follow.

Regarding question 1, we are not convinced that the costs of adoption will exceed the benefits. Our concern revolves primarily around the apparent lack of educational effort and input from attorneys. Virtually all of our clients are private companies or not-for-profit organizations that do not have in-house counsel, but instead are dependent on external counsel for input regarding any litigation. In our experience, attorneys are very reluctant to offer any statement on the likelihood of an unfavorable outcome to litigation or a range of possible loss. In addition, should FASB vote to adopt this amendment, we strongly believe that a December 15, 2008 implementation date would not provide enough time to educate attorneys on how to determine an estimate of loss, or a range of loss, especially when no damages have been specified. The American Bar Association might have concerns about this requirement; we urge you to consider their input carefully.

We recommend that the implementation date for public companies be delayed until December 15, 2009 and that private companies be exempted. Without specific information from FASB about which users specifically had concerns, we see no reason to require private companies and their counsel to attempt to develop the required disclosures.

On question 2, we have no comment.

On question 3, we disagree with the notion that disclosing items with a remote likelihood of occurrence provides useful information; rather, we contend that it distracts from more relevant disclosures.

Regarding question 4a, FASB is asking preparers and their counsel to estimate a maximum possible exposure in cases when there is no dollar claim made by plaintiffs. It also requires preparers and their counsel to provide such disclosures even if a case has just been filed and there is no time to carefully evaluate the case to provide the required disclosures, putting preparers in an un-winnable situation.

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On question 4c, we are not convinced that there are any cost-effective quantitative disclosures available for preparers of financial statements of non-public entities, given the frequent need to involve outside counsel.

On question 5, we doubt that preparers will have the ability to provide meaningful disclosures due to the lack of information, the need to coordinate and educate outside counsel, and, in some cases, the lack of time if claims are presented near the financial statement preparation date.

Regarding question 7, we fail to see how disclosure of past claims would have any bearing on future cash flows, which seems to be an overriding consideration in issuing this Exposure Draft. In addition, if all claims have been settled then presumably there are no such future cash flows. We also contend that disclosing detailed information could be prejudicial in cases where private companies may only have one, or a very few, claims at any one time.

For questions 8, 9 and 11, we agree that this exemption should be retained should FASB vote to adopt the statement. As noted previously, private companies may only be facing one claim. Aggregation of disclosure provides no relief in this case, so detailed disclosures could very easily be prejudicial. We agree with the two-step method but would go further and exempt preparers from providing an estimate if there is no claim amount. We agree with the definition of *prejudicial.*

There are no other specific comments we wish to offer. We do offer the following general observations.

It has been reported that FASB desires to move to a more principles-based approach, such as with Statement No. 159 that articulated objectives that trumped the accounting. This proposed statement appears to be a step back from that direction. It is not clear that FASB considered this in its deliberations.

In several places, the Exposure Draft addresses the point that preparers often state that an "estimate cannot be made". It is not clear that FASB determined whether this is actually the case. We see no evidence that FASB has investigated users' assertions that preparers use this current provision when it is not justified.

In paragraph A12, FASB asserts this will result in "more timely" disclosure. However, given our concerns about management's ability to prepare the required disclosures when claims are filed near year end or as subsequent events, we do not believe "better" disclosures will necessarily follow.

The Exposure Draft discusses international convergence but does not address why FASB has gone beyond IAS37. We believe more justification about this decision would be informative.

Thank you for considering our comments. If you have questions or would like further comment from our firm, please contact me at (207)879-2100.

Sincerely,

Carl Chatto
Principal