

Verrill Dana_{LLP}

Attorneys at Law

GREGORY S. FRYER
gfrayer@verrilldana.com
direct dial: 207-253-4402

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499

August 7, 2008

Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116
Attn: Technical Director



LETTER OF COMMENT NO. 87

Ladies and Gentlemen:

I appreciate the opportunity to comment on the Exposure Draft, dated June 5, 2008, entitled Disclosure of Certain Loss Contingencies, containing proposed changes to FASB Statements No. 5 and 141(R).

Our law firm has offices in Maine, Massachusetts, Connecticut, and Washington, D.C. We issue several hundred audit letter responses per year, for clients around the United States and in Canada. In addition to our public company clients, we represent a large number of privately held corporations, partnerships, and limited liability companies, ranging from very large, well-established concerns to small, entrepreneurial start-up companies with limited resources.

Within the ranks of corporate and litigation attorneys across the country, your Exposure Draft is controversial in many respects. I anticipate that there will be a large volume of commentary from other law firms. My comments here are brief and do not address issues pertaining to the attorney-client privilege. These comments are my own, and do not necessarily reflect the opinions of colleagues at our firm or those of the firm's clients.

1. As the Exposure Draft recognizes, detailed disclosures about particular pending or threatened claims might reasonably be expected to affect, to the entity's detriment, the outcome of that matter (referred to below as "outcome-adverse disclosures"). You have attempted to mitigate this effect by (i) allowing the entity to aggregate information about loss contingencies in a way that hides matter-specific disclosures and (ii) providing a disclosure exemption in the "rare" case that aggregated disclosure "would be prejudicial." Two comments:

A. The Board's analysis on this point appears skewed toward the context of larger companies. In the case of small and mid-sized companies, aggregation will often (as opposed to "rarely") be ineffective to avoid outcome-adverse disclosures.

B. If the number of claims is large, aggregation of quantitative information may well be effective to avoid outcome-adverse disclosures. However, the Exposure Draft calls for detailed *qualitative* information as well, "sufficient to enable users to understand the risks posed to the entity." In addition to the types of qualitative information routinely disclosed under existing Statement 5, the Exposure Draft calls for "a description of the factors that

are likely to affect the ultimate outcome of the contingency along with their potential effect on the outcome; the entity's qualitative assessment of the most likely outcome of the contingency; and significant assumptions made by the entity in estimating the [quantitative disclosures about the possible size of the contingency] and in assessing the most likely outcome." I do not understand how this kind of qualitative information can be presented on an aggregated basis that is meaningful to users, while still being generic enough to support the Board's expectation that aggregation will usually be sufficient to avoid outcome-adverse disclosures.

2. The Exposure Draft would require that anticipated mitigating recoveries (such as indemnity payments from insurers) be presented separately from disclosures about the maximum potential size of their related loss contingencies. The Board's stated goal is to provide users with useful guidance on future anticipated cash flows associated with loss contingencies. Two comments:

A. The usefulness to users of information on anticipated future cash flows has not led the Board to conclude that financial statements must disclose future anticipated revenues. It well accepted, although still worth noting, that information about negative future cash flows receives greater emphasis under applicable accounting requirements than does information about positive future cash flows. But does that same principle of conservatism necessarily preclude a netting of anticipated recoveries against anticipated future payouts from claims? Users of financial statements already deal with the reality that information about future risks is much sketchier than information about historical performance. In providing them with more details about loss contingencies, is it unreasonable to provide them with netted information rather than separate presentations of possible loss and possible recovery?

B. The Exposure Draft specifically allows the presentation of aggregated information. The stated rationale is "[t]o simplify the disclosure presentation and reduce the possibility of disclosing prejudicial information." Both elements of this rationale would be advanced by allowing entities to net anticipated recoveries within their disclosures of the possible range of loss. Doing so would provide an aggregated picture of the anticipated range of cash flows associated with loss contingencies.

3. For public companies, the increased disclosures called for under the Exposure Draft overlap, to some extent, the qualitative analysis that public companies already must provide in their Management's Discussion and Analysis presentation, outside of the financial statements themselves. Moreover, public companies tend to be larger than non-public companies and thus more able, through aggregation, to avoid detailed disclosures about particular loss contingencies. Thus, the burdens of the proposed change in standards – although significant – are arguably more manageable for public companies than non-public companies. At the same time, users of financial statements for non-public companies have come to expect a lesser level of disclosure than for public companies. Users adapt to the disparity in disclosure levels by many means, such as by requiring non-public companies to make special disclosures to them in the context of business or financial transactions, by requiring added collateral for loans, or by simply not extending credit. Although it is a laudable goal to establish uniform standards for financial statements regardless of entity size, as those standards require more and more rigorous

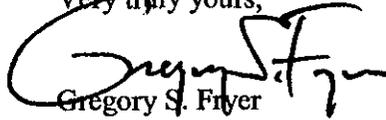
August 7, 2008

Page 3

disclosures of uncertain or competitively sensitive information, consideration should be given to establishing different standards for smaller entities.

I look forward to reading the commentary that your Exposure Draft has generated, and to seeing how this will affect the Board's conclusions about proposed changes to existing disclosure standards.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregory S. Fryer". The signature is stylized with a large initial "G" and a long horizontal stroke.

Gregory S. Fryer

GSF/sss