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August 7, 2008

Via email: director@fasb.org

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

Re: File Reference No. 1600-100, Exposure Draft (ED) on *Disclosure of Certain Loss Contingencies*, an amendment of FASB Statements No. 5 and 141(R)

Dear Mr. Golden,

U.S. Bancorp, the parent company of the sixth largest commercial bank in the United States, with over \$245 billion in total assets, appreciates the opportunity to comment on the Exposure Draft of the Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies*, an amendment of FASB Statements No. 5 and 141(R), issued June 5, 2008 (the "ED"). We support the Board's effort to improve financial reporting related to loss contingency disclosures. However, we have significant concerns with some of the requirements included in the ED. Further consideration of the objectives behind the proposed ED and the potential ramifications of these new disclosure requirements on preparers are warranted, and should include obtaining guidance and recommendations from legal experts as well as preparers.

In our opinion, the ED would introduce additional legal risks to preparers. We are also concerned that the proposed new disclosures will impose an undue burden on preparers. Because of the complexity associated with some loss contingencies (specifically those involving legal matters and/or unasserted claims), the result will likely be more lengthy disclosures that may be misleading or at best unhelpful to shareholders and other financial statement users. In fact, we are concerned that when the proposed disclosures are applied to loss contingencies related to legal matters, the result may add more confusion than transparency for users. We are not convinced that the proposed new disclosures will achieve the objectives of the Board. Our views, including an example of how the ED would have affected an actual litigation matter, are discussed in more detail below.

Objectives and Consideration of a Scope Exception for Certain Litigation Matters

We recommend that the FASB clarify the objective to be clearer about the intended scope, and that it perform additional research with experts from the legal profession to ensure a full understanding of the potential legal ramifications and challenges of the proposed requirements as they relate to litigation matters.

The draft document seems particularly focused on litigation matters. As a result, the ED raises immediate red flags on issues of waiver of the attorney-client privilege and compromising legal positions in pending or possible litigation. This focus may not have been the intent of the FASB. The intent of the draft may have been to provide improved transparency on a wider range of matters, such as contingent liabilities related to cash liquidity and other risks related to off-balance sheet items similar to those that have come to light recently given the liquidity issues in the markets. We foresee that the ED will have significant repercussions from a legal perspective without additional clarification from the FASB or a carve-out exemption for matters subject to litigation.

Key Conceptual and Practical Concerns to Consider

We have several conceptual and practical concerns with this proposal. In sum, the costs to companies and their investors, not only of preparation of the new disclosures but more significantly in terms of prejudice to the company in its legal positions, far outweigh the benefits of any increased information available to financial statement users, which we believe will not in fact be helpful to them on the whole.

- Without a carve-out for litigation matters, the ED requires disclosure of
 information regarding pending legal proceedings that could be prejudicial to both
 investors and the company. We do not believe that investors would want information
 disclosed which may be detrimental to a company's legal position and increase the
 litigation risk to shareholders.
 - Preparation of the required disclosures, both quantitative and qualitative, could result in a waiver of the attorney-client privilege and thereby compromise the company's position.
 - In addition, the required disclosure would give plaintiffs and their attorneys important information about the company's current views of the possible losses or likelihood of success, which would provide them with a strategic advantage.
 - Finally, disclosure relating to possible claims that have not yet been made may expose the company to additional lawsuits, even frivolous lawsuits where the claims have a low likelihood of success but might have some settlement value.

The costs of these disadvantages in the legal process and additional litigation could likely be significant to many companies, which is counter to investors' interests.

- The nature of complex litigation, particularly in the U.S. judicial system, would lead to disclosures about the likelihood, timing and amounts of cash flows associated with litigation-related loss contingencies that are volatile and misleading to investors, and therefore run counter to the objectives of the Board in issuing the ED.
 - These legal proceedings often last for several years or more, and the outcomes of
 interim steps in the litigation may dramatically alter, at various stages, the parties'
 views of the likelihood and amount of possible losses, making any related
 disclosures so volatile and potentially contradictory as to be misleading and even
 confusing to financial statement users.

- In addition, the variables in such litigation matters, such as jury behavior, differing laws in various jurisdictions in the same or related matters, complex procedural issues unrelated to the merits of the claim, judge's predispositions and pre-trial rulings and even the experience and reputation of the parties' legal advisors, make any estimation of potential loss highly speculative and potentially misleading. The disclosures contemplated by the ED would require description of these and other important intricacies of the legal process, which do not lend themselves to concise explanation or usefulness for those outside the legal profession.
- Finally, disclosures about likelihood and amount of possible losses made by
 multiple defendants involved in a legal proceeding could vary widely and be
 contradictory, which would also be confusing to investors rather than giving them a
 clearer understanding of the potential losses.
- Management should continue to be able to determine the most relevant and meaningful disclosure to investors and other users of the financial statements, within existing standards. We believe that an accounting standard should not mandate specific disclosure about contingencies that are not significant or have a low likelihood of having a material impact to the company, particularly where that disclosure could prejudice the company's position in a dispute. The existing standard only requires disclosure when the occurrence is "reasonably possible" and is valued only if it is capable of being valued. Moving to a more stringent standard that requires disclosure regardless of the likelihood of loss will not provide better information to investors and other users, but may instead imply a level of risk that does not exist.

Real Life Example of Effects of the ED

We believe it is helpful to examine problems that would have been posed by the ED in connection with an actual litigation matter brought against our bank. In 1998 and 1999, our company purchased a portfolio of second mortgage loans from other financial institutions after due diligence, intending to hold and service these loans. In 2001, class action lawsuits began to be filed against the bank alleging that these loans violated numerous state laws, including laws concerning usurious interest and closing costs. Although the bank did not originate the loans, the complaints alleged that the bank was liable as an assignee under federal lending statutes.

The full scope of the bank's potential liability never became clear. When the first few cases were filed in 2001, the bank had no idea how many actions it would eventually face. By the time the last case was filed in 2004, the bank was named as a defendant in seventy-three second mortgage cases in fourteen states covering a substantial portion of the loans acquired as an investor. Even then, the bank's potential liability remained indefinite. Myriad state and federal laws governed the plaintiffs' claims, and the facts concerning the origination of the loans were murky. In certain states, the bank successfully argued that the courts should limit or dismiss plaintiffs' claims. Courts in other states rejected the same arguments, leaving plaintiffs' claims intact. Thus, although the lawsuits sought total combined damages of hundreds of millions of dollars, the actual value of the claims was impossible to quantify.

The risks inherent in disclosing estimates of the bank's potential exposure throughout the life of this litigation were made starkly apparent by the settlement of these claims. In May 2004, the bank entered into a complex settlement that resolved all but a handful of the second mortgage cases, allowing some claimants to recover immediately and others to make settlement claims as their loans were paid off. Most of the borrowers had to take affirmative action to be entitled to

payment. When the settlement process finally wound down after three years, the total class member payments of less than ten million dollars were not significant. Even that number overstates the bank's ultimate liability, as it obtained contributions from numerous other parties to defray its litigation costs.

If the ED had been in effect in 2001 and disclosures had been compelled throughout this litigation, the ED would have had numerous adverse effects. First, the disclosures would have not correctly reflected the bank's liability. Any disclosed estimates of the dollar value of the second mortgage claims would have varied widely over time as additional lawsuits were filed and favorable and adverse state court rulings were received. More importantly, the estimates that would have been provided, even estimates rendered upon the execution of the settlement agreement, would have vastly overstated the bank's ultimate exposure. Second, it would have been extremely difficult for investors to have understood the disclosures. The legal framework alone, depending on numerous lending statutes and related case law in fourteen different states, would have been impossible to fully describe, much less comprehend. Third, the disclosures would have necessarily depended heavily upon the views of counsel regarding the merits of the bank's legal position, threatening the attorney-client privilege. Plaintiffs' lawyers would have been able to make separate waiver arguments to every court presiding over a second mortgage case, hoping that just one would find that the bank had opened the door to an exploration of the impressions and work product of the bank's attorneys. Fourth, the disclosures would have given plaintiffs and their counsel an insight into the bank's views as to the value of the second mortgage cases, potentially encouraging them to file a far larger number of cases against the bank than were in fact brought, and giving them a strategic edge in the legal proceedings and settlement negotiations.

This litigation matter is illustrative of the some of the complex and unintended negative consequences of the ED.

In response to your specific questions, we provide the following comments:

Question 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?

In summary, we believe the Statement would not provide enhanced disclosures about loss contingencies because it will promote misleading disclosures. If required to provide these disclosures, management will have to spend substantial time and effort to ensure that users of financial statements understand that the disclosures do not reflect the actual risk of the contingencies. It seems counter productive to require disclosures that management often believes are misleading. For further discussion, please see our comments above under "Objectives and Consideration of a Scope Exception for Certain Litigation Matters."

What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement?

The ED requires a company to collect, evaluate and document potential legal issues before an asserted claim exists and before a claimant comes forward. It also requires this exercise for all claims to determine and document whether they are material to the company. In addition,

contingencies will need to be continuously monitored, and the company will need to modify the contingencies disclosed on a quarterly reporting basis. Additional resources and staffing with expertise in legal and accounting matters will be required to assess significantly more exposures, determine valuation ranges and document this information including regular status meetings with management, internal counsel, external counsel and valuation consultants, as necessary.

In addition to these costs, the process of gathering and disclosing information associated with unasserted claims will encourage other plaintiffs' lawyers to file similar claims, increasing the litigation costs and the pressure on companies to settle those claims more quickly and, as a result, at potentially higher amounts.

How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

The Board should introduce a standard that is more principles-based, at a higher level and less granular. This would place increased reliance on professional interpretation of which issues are material to a company and meaningful to disclose for the benefit of investors and other users of the financial statements. At a minimum, the Board should consider a carve-out for litigation matters.

Question 2- Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?

We have no comment on this matter.

Question 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. We believe the existing standard of SFAS 5 works reasonably well and is consistent with basic accounting concepts. The existing standard only requires disclosure when the occurrence is "reasonably possible" and is valued only if it is capable of being valued. Moving to a more stringent standard that requires disclosure regardless of the likelihood of loss will not provide better information to investors and other users. In fact, detailed descriptions and predictions about such a broad scope of matters would have the opposite effect, by diluting the value of the financial disclosures and unduly alarming or confusing investors, and could prejudice the company making the disclosure. Management should be responsible for determining appropriate disclosures based on the likelihood of loss and accountable for making adequate disclosure of the significant risks to their company. Dilutive disclosures, in the name of transparency, reduce the value of the financial reporting process.

Question 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". The Board decided to require entities to disclose the amount of the claim or assessment against the entity or a range of loss.

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?

No. The change may increase the amount of reporting of quantitative information about loss contingencies but it will not improve the reporting. Such a high level of explicit granular reporting of quantitative information will confuse investors and other users and would likely be a detriment to the company's legal position. Disclosing estimates about the possible loss of an unresolved and yet to be litigated issue would be most advantageous to the opposing side. It would put the company in the difficult position of balancing between the risk of disclosing a high range that would disadvantage the company because this information will become available to the plaintiffs or other potential claimants and the risk of disclosing a low range that subjects the company to litigation from investors who may claim that there was misrepresentation. In either case, the company will be penalized for protecting its interests and those of its investors.

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?

No. We believe that disclosing the possible range of losses should not be required. Management should continue to determine the most relevant and meaningful disclosure to investors and other users of the financial statements. We believe that an accounting standard should not mandate specific disclosure about contingencies that are not significant, are extremely difficult to estimate, or have a low likelihood of having a material impact to the company, particularly where that disclosure could prejudice the company's position in a dispute. If required to provide these disclosures, management will have to spend substantial time and effort to ensure that users of financial statements understand that the disclosures do not reflect the actual risk of the contingencies. It seems counter productive to require disclosures that management often believes are misleading. The decision about what to disclose with respect to a matter in litigation should be made by management and legal counsel based on the facts and circumstances of the matter.

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?

When sufficient information is available to management that enables them to assess the resolution of a dispute whose impact is likely to be material to the company's financial statements, the information should be disclosed on a timely basis.

Question 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?

In most cases where a claim amount has not been specified, the company will not be able to provide a reliable estimate of the maximum exposure to loss. Complex litigation involves many interim stages that will increase or reduce possible exposures many times before final resolution. Once a claim amount is determined, monetary damages or settlement demands may vary significantly from initial or interim expectations. This effect is exacerbated if juries are involved or if there is a possibility of a punitive damages award. For further discussion, please see our comments above under "Real Life Example of Effects of the ED."

Question 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?

No. Settlement offers by either party should not be disclosed. The Board reasoned correctly that settlement offers often expire quickly, so the information may only be accurate for a short time. In addition, required disclosure would serve as a disincentive for parties to engage in settlement discussions, as neither party would want the settlement offer to be viewed as an admission or valuation of liability. This would further increase the costs and duration of litigation.

Question 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?

The tabular reconciliation of loss contingencies that are significant to the company's financial statements would likely be useful if a scope exception is included for legal issues. If legal issues are required to be included, disclosure on an aggregated basis would not protect a company in the case (which is not unusual for a large company) where there is only one material loss contingency.

Question 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. We agree that an exemption from disclosing any prejudicial information must be provided to protect the interests of the company and its investors. If no exemption were provided, it would be difficult not to waive the attorney-client privilege in the process of analyzing and preparing the disclosures for auditor review. A waiver would put the company at a competitive disadvantage in reaching a satisfactory resolution in the litigation. However, as discussed below, the "limited exemption" provision as currently proposed is much too narrow and needs to be expanded. Any contingent claim that has not been resolved or litigated needs to be protected in order to protect the interests of the investors.

Question 9- If you agree with providing a prejudicial exemption, do you agree with the twostep approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

No. We believe the exemption is much too narrow and needs to be expanded to cover any prejudicial information. The proposed two-step approach would not be effective for many companies because of the small number of material litigation matters, making it difficult or impossible to mask information by aggregating exposures. In addition, paragraph 11 suggests that only in "rare instances" should this prejudicial exemption be used. Most legal disputes involve financial consequences which, if disclosed to the public, would compromise the judicial process and put the company and its investors at a competitive disadvantage. Therefore, the exemption would likely apply in many circumstances, and could, in effect, "swallow the rule."

Question 10- The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37. 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 (verses the FASB term "rare"). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

See our response to questions 8 and 9. We believe it is difficult to compare the IASB standard because the litigation environment and processes in the U.S. are very different from other countries. As a result, the use of the current IASB exemption may in fact be rare. We encourage the staff and Board to gather additional insight into how the litigation environment in the United States differs from that in other countries.

Question 11- Do you agree with the description of prejudicial information as information whose "disclosure... could affect, to the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define prejudicial information and why?

Prejudicial information is information that could place the company at a disadvantage or provide information that places another party at an advantage in a pending or unasserted legal matter. The definition used in the draft is not significantly different.

As discussed earlier, we believe it is important to provide an effective carve-out for legal matters.

Question 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?

No. Without an effective carve-out for legal issues, it is not operational for entities to disclose this information for interim and annual reporting periods. As explained above, complex litigation involves many interim outcomes that will increase or reduce possible exposures at various points in time before final resolution. As a result, providing such disclosures for several interim periods before a final outcome is reached is not practical, nor would the information be useful to investors and other users due to the volatility of the interim outcomes and the inherent uncertainty of the resolution of the subsequent stages. We believe that the information is likely to be misleading, rather than instructive, and would undermine the Board's objective.

In addition, as discussed earlier in this letter, we are concerned that reporting companies would be placed at a disadvantage in the judicial process by providing this information which would otherwise not be available in the public domain.

We also are concerned about the additional resources that would be required to assess potential legal issues and prepare these disclosures on a quarterly basis.

Question 13- Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statements? If so, what other information would you require?

No. We believe no other disclosures about loss contingencies should be required.

Question 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. We believe it is not practical or reasonable for the Board to require an accelerated effective date given the significant effort that will be required for companies to implement procedures to comply with the proposed new requirements. The operational difficulties of vetting the necessary information with management, internal and external counsel, drafting qualitative information with appropriate quantitative information for all loss contingencies regardless of the likelihood of loss will require significant effort and professional judgment. Much of this information may not exist, especially for unasserted claims.

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We appreciate the opportunity to submit our views and would be pleased to discuss our comments with you at your convenience. Please contact me at (612) 303-4352 with questions or if you need additional information.

Sincerely,

/s/ Terrance R. Dolan

Terrance R. Dolan
Executive Vice President and Controller