



LETTER OF COMMENT NO. 93

August 7, 2008

Technical Director – File Reference No. 1600-100 Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06858-5116

Dear Technical Director:

On behalf of BIOCOM, the Southern California life science community trade association with more than 550 members including biotechnology and medical device companies, universities, basic research institutions, and service support firms, I am writing to indicate our opposition to the proposed amendments to FASB Statement No. 5, Accounting for Contingencies (FAS 5). The proposed amendments would require disclosures about loss contingencies, regardless of the likelihood of loss, if the contingencies are expected to be resolved in the near term and if the contingencies could have a severe impact on the entity's financial position, cash flows or results in operations.

These proposed amendments to FAS 5 change the standard in significant ways by both lowering the disclosure threshold and increasing substantially the amount of information that must be disclosed for all loss contingencies. In addition, for loss contingencies meeting the disclosure threshold, both quantitative and qualitative disclosures will be required.

While BIOCOM understands that the amendments have been proposed to address certain constituencies' concerns that the current guidance does not provide sufficient information to assist users in assessing the likelihood, timing, and amounts of cash flows associated with contingencies, BIOCOM is concerned that the proposed amendments instead may require companies to disclose information for which often they cannot even begin to speculate and which has the potential to place many companies, and our members in particular, in a significantly disadvantageous legal position.

BIOCOM member companies have taken issue with the proposed amendments:

- 1) Requiring companies to provide their own estimate of maximum loss exposure when the claimant has not stated a claim amount.
- 2) Requiring companies to make qualitative disclosures as this may reveal a company's internal strategy when dealing with a claim. Until now, such information has been carefully guarded in adversarial proceedings.
- 3) Requiring these additional disclosures may result in evidence that will then be used against the companies and could alter the outcome of the proceeding; or, to quote an August 7, 2008 editorial in the Wall Street Journal.

"Bad guesswork would also put a company at risk of more lawsuits. Estimate the possible liability too high, and the plaintiffs bar may extract more loot. Estimate too low and the company could get hit by shareholder suits questioning whether there was intent to mislead investors. Suddenly, every lawsuit against a corporation would contain its own downside and a secondary collateral risk. That gives trial lawyers added leverage to force premature settlements."; and

4) Eroding the attorney/client privilege. Since the required disclosures will be based on confidential communications between companies and their counsel, there is a risk that the disclosures will constitute waivers of the attorney/client privilege – a foundation of the legal profession.

The concerns outlined above are of particular importance to our members, who compared to companies in many other industries depend to a greater degree on the value of their intellectual property portfolios, the primary value of which is often derived from intangible rights such as barriers to entry or exclusive rights to practice a particular technology. The scope and validity of these rights and their resulting inherent value are continually the subject of legal challenges that, depending on the outcome, have the significant potential to materially adversely affect our members and erode value, market share and competitive advantages that serve as the cornerstone of their existence.

For these reasons, BIOCOM is opposed to the proposed amendments to the FAS 5 and we respectfully request that the Financial Accounting Standards Board not adopt them.

Sincerely,

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Vice President of Public Policy and Communications

**BIOCOM**