



August 17, 2010

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

RE: File Reference No. 1840-100

Dear Mr. Golden:

The National Retail Federation (NRF) welcomes the opportunity to comment on the FASB's revised exposure draft on Loss Contingency Disclosures (the "proposal"). As the world's largest retail trade association and the voice of retail worldwide, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2009 sales of \$2.3 trillion.

NRF supports sound and transparent financial reporting but is concerned about the proposal. We believe that the existing standards provide a well established framework for the accounting and disclosure of loss contingencies. We question the need for such expanded disclosures. Has there been a preponderance of cases where a plaintiff has successfully contended that a public company has misled investors due to lack of disclosure regarding litigation? Rather than providing additional insight to a company's business, we fear the proposed disclosures have the potential to mislead investors with limited, out-of-context information relating to contingencies and exposes companies to greater risk of loss as a result of arming plaintiffs with critical information that will give them a clear advantage. We ask FASB to take the following concerns into consideration as you develop the final standard:

Operational Issues: Remote and Frivolous Claims

Thousands of lawsuits are filed against retail companies every year. Many of the lawsuits are settled quickly, covered by insurance, and considered a cost of doing business in this customer-facing industry.

Tracking all of the remote claims against a company is an operational burden and a cost that we feel exceeds the benefit. The proposal will not improve transparency and comparability. Rather, it will inject much more judgment into the financial statements. We ask FASB to refocus the final rule on material claims and allow remote and frivolous claims to develop until an intelligent figure can be reported.

We disagree with the proposal to consider and disclose exposures without regard to insurance coverage. It will be misleading to investors to focus on gross exposure, as this does not represent the true risk to the company. The same is true in the franchisor/franchisee relationship. Typically a franchisee indemnifies the franchisor for the cost related to claims which stem from an incident in the franchisee's store. While the plaintiff typically sues the franchisor and the franchisee, the franchisor is reimbursed for any successful claims and thus has no exposure.

Disclosure of Prejudicial Information

Retailers carefully guard information that could be prejudicial to a case, as any prudent party to a lawsuit would do. We understand that the aggregation of disclosures could, in some instances, keep prejudicial information from being disclosed. However, the aggregation model will not protect retailers in all cases.

For example, if a large case does not fit into one of the typical categories for disclosure and the company is required to book an accrual, it will be easy for the plaintiff to identify that amount, hurting the defendant's ability to negotiate. Further, while the very largest companies may have hundreds of lawsuits pending at any time, that is not typically the case for most companies. Even if a retailer aggregated every lawsuit into a single category, there is a good chance that one large lawsuit would be so significant that the aggregated disclosure is in essence a disclosure about that specific case. A large class action suit could easily represent 90% of the total value of all of a company's cases. The plaintiffs' lawyers who work the retail industry recognize that and could easily figure out what has been accrued for their case and the value the retailer believed their case had. This puts companies at a significant disadvantage in settling a claim.

NRF opposes the proposed roll-forward disclosures for several reasons. The requirements are arduous and would almost certainly require additional systems investment and ongoing headcount to maintain. The benefit to investors of this information is questionable – it provides no additional insight into how contingencies could affect the company in the future. And perhaps of greatest concern to us, is the fact that roll-forward information may provide plaintiffs insight into accruals recorded in a period in response to new developments. Presenting period changes in contingency estimates, the reasons for the changes, and the carrying amount of the accruals puts companies at risk. These changes could be identified by the plaintiffs in an ongoing lawsuit and in turn be detrimental to the company's defenses.

In a similar vein, we are concerned that opposing counsel will use the additional disclosure requirements as leverage to obtain a fast settlement. For example, opposing counsel may make claims that could meet the "severe impact" criteria; even though the value of the claim is not the only factor to consider when assessing disclosure requirements, it is one factor, and the effort required to justify, document and review with auditors each position would be burdensome.

The proposal takes the position that if information has been/or could be released through discovery it would not be prejudicial to disclose it in financial statements. This is a troubling and potentially damaging standard to use. Just because something is "discoverable" doesn't mean it will be discovered. Plaintiffs might not seek that discovery. And even if discovered by the plaintiffs in the pending case, it would not be disclosed to other actual or potential plaintiffs. By turning non-public information into a general public disclosure, reporting companies are

seriously prejudiced by the encouragement that this gives to third parties to initiate additional litigation against the company and to refuse to settle claims for lower amounts.

The proposal also requires disclosure of information about possible recoveries from insurance arrangements when the information “is discoverable by either the plaintiff or a regulatory agency”. Again, this is not a good standard. In most cases, information on insurance is covered by a protective order requiring confidentiality to prevent new lawsuits from being filed once it is disclosed that the claim falls within the defendant’s coverage. Disclosing this insurance information could be prejudicial to a company’s defenses, particularly if the plaintiff did not previously have access to the information.

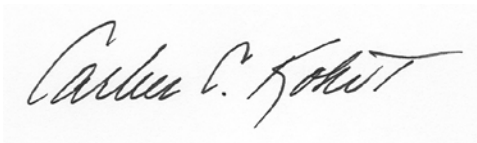
Ability to Audit

We remain concerned about auditing the proposed disclosures. Auditors, understandably, seek independent confirmation of all material elements of the financial statements. There is an understandable tension when that relates to highly confidential legal information. This is what drives the American Bar Association treaty. Requests for independent verification from in-house counsel places an additional burden on the legal department, turning them into a financial estimation department and taking attention away from significant cases.

Timing

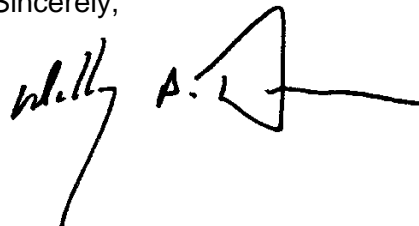
The proposal is effective for fiscal years ending after December 15, 2010; this is an unusually short window of time to comply with a new standard. This proposal will require significant change management in legal and accounting departments that will need to occur and the work that will need to go into linking these disclosure requirements with the audit process. In addition to the initial changes that will need to be implemented, retailers will need adequate time to test run new processes to ensure compliance.

Finally, recognizing the overwhelming concern that was generated by the original proposal, many in the business community anticipated substantive changes to the final release. As such, we would like to make clear to the Board that companies have not been taking steps in the interim to prepare for these disclosure obligations as we awaited a response. Therefore, the two year period since the first exposure draft was released should not be “counted” as part of the allotted implementation process and companies would in actuality have only a couple of months to introduce, test, and modify company-wide process changes to ensure compliance. For retailers, especially, the time frame is a challenge as it falls directly during the busiest season of the year (September through January). On that basis, we ask that compliance be delayed at least one year.



Carleen C. Kohut
SVP and Chief Financial Officer

Sincerely,



Mallory B. Duncan
SVP and General Counsel