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August 18, 2010

Mr. Russell G. Golden
Technical Director, FASB
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Via email: director@fasb.org

Re: File Reference No. 1840-100: Proposed Accounting Standards Update,
“Disclosures of Certain Loss Contingencies”

Dear Mr. Golden:

The issues surrounding the FASB’s update to the standard on Disclosure of Contingencies are of sufficient importance to have warranted an editorial in today’s *Wall Street Journal*. Although the *Journal* is a business newspaper, it is still noteworthy that its editorial board decided to comment on what most laypeople (including many of the *Journal*’s own readers) would view as a technical accounting proposal. Their comment is evidence that a “mere” accounting proposal can have broad public policy implications. In the case of the proposed update to FAS No. 5, those implications involve fundamental due process rights—the right to adequate legal representation, which includes the right to legal counsel and the protection of communications with that counsel.

To some extent, I can see why the FASB’s proposal fails to adequately address the legal rights of potential defendants with respect to loss contingencies that they might face. The FASB seems to have little interest or knowledge of what due process truly entails, as evidenced by the FASB’s process for soliciting comments on exposure drafts. Based on my prior interactions with the FASB staff, I suspect that this statement will draw strong response from many at the FASB who believe that the FASB has put in place excellent procedures that assure due process.

While I acknowledge that the FASB has a transparent process leading up to the release of an exposure draft, I believe the FASB and its staff are naïve if they believe that everyone who is affected by the promulgation of accounting principles is closely following every development posted on the FASB’s website as it formulates an exposure draft for release. Those participating in that preliminary process are engaged in a game of inside baseball. Its only after an exposure draft is released, that a much wider audience focuses on the issues posed by the exposure draft. The concerns of that audience should not be lightly discounted because their concerns

FASB Comment
August 18, 2010

often involve larger policy issues, which technicians often overlook, rather than the minutia that technicians love.¹

Given my concerns regarding the FASB's rulemaking process, my purpose in submitting this letter is to comment on the FASB's flawed process for releasing exposure drafts for comment rather than substantive issues relating to the proposed update to FAS No. 5.

The Initial 30-Day Comment Period. When the FASB released the exposure draft on July 20, 2010, it provided a 30-day comment period, which was scheduled to end August 20, 2010. There are several obvious problems with that timeframe. First, while we all claim to be working 24/7, 365 days a year, the fact remains that August is prime period for vacations, particularly the early part of August before people's children head back to school. The FASB ignored this simple fact, with the result that it probably did not receive a number of useful comments.

In my case, I learned about the release while on a three-week business trip to Australia, one of the purposes of which was to discuss U.S. accounting principles and practices as they relate to nonprofit corporations with Australian nonprofit leaders, accountants, lawyers, and academics. I might have submitted comments on the FASB's exposure draft, but that was not feasible given distance and my travel schedule, which brings me to my second objections to the 30-day period. A 30-day comment period is far too short of a period, even in this age of instant communication. The members of the FASB and technicians in the large accounting firms undoubtedly pay close and daily attention to accounting developments. I can assure you, the rest of the world does not. Most of the people who will be affected by FASB's proposals learn about the proposals from newsletters and at meetings held by trade and professional associations. It takes more than a day or two for these organizations to get the word out, particularly when those working for these intermediaries must parse what are often dense proposals. This process cannot be effectively completed within a 30-day timeframe.

While text messages are instantaneous, truly thoughtful discussions of issues still take place in face-to-face meetings. The problems created by a 30-day comment period for an organization with monthly member meetings should be self-evident. Those problems are compounded for organizations that meet three or four times a year. The item must be put on an agenda, notices must be sent out, discussion leaders and experts must be lined up, and any resulting recommendations (which may be turned into comments to the FASB) must be drafted, circulated, and approved. All in 30 days?

¹ As a tax lawyer, I certainly have dealt with minutia and have enjoyed doing so, but I also recognize that those who are not focused on the details that so fascinate me often bring valuable insights to the exercise.

In many cases, it will be corporate issuers of financial statements that will want to comment directly to the FASB rather than indirectly through a trade association. The technicians in these organizations cannot act and should not be forced to act instantaneously, either. They need to raise the issues with others in their organizations. They might want to discuss the response with the organization's audit committee, board, and public accountants. Once again, all in 30 days?²

The 30-Day Extension. I learned from a member of the American Bar Association today that the FASB extended the comment period by 30 days. The very fact that the FASB extended the deadline proves that my earlier comments are on the mark. Extensions are problematic for a number of other reasons. First, and foremost, an extension does not reverse the harm resulting from an initial comment period that is too short. Had the original period been 60 days, the head of a trade or professional association who learned of the comment period might have been able to put the issue on the schedule for a September quarterly meeting. By mid-August, the agenda for that meeting is full, speakers have been lined up, and the calendars of potential experts likely contain scheduling conflicts.

Second, some people who were on vacation and chose not to comment will have moved on, waiting for the release of the final pronouncement. This makes it more likely that they will not find out about the extended opportunity to comment. Moreover, if people found the original 30-day period inadequate, a fresh start of 30 days is no less an inadequate timeframe when the extension is announced toward the end of the initial comment period. Let's not forget that the job description of many who might wish to comment does not make comments to the FASB a primary job responsibility, meaning that comment letters are often written at night or on weekends over a more extended period of time.

Third, some who rushed their comments to meet the initial deadline may amend those comments, but experience suggests that many commentators will not bother because of other pressing matters. Once again, the FASB denied itself the benefits that come from thoughtful deliberation by those who submit comments.

A Proposal. FAS No. 5 was issued in March 1975, which means we have been living with it for 35 years. While the passage of time and resulting developments may necessitate rethinking and updating the original pronouncement, I can assure you that the Republic isn't going to fall if that doesn't happen within the next 30 days. I suspect that holds true in the case of most, if not all, accounting pronouncements. With that in mind, I propose a minimum comment period of 120 days for minor

² I acknowledge that the list of those who have commented on the exposure draft do include some public companies, but that proves little. How many public companies did not comment because there was insufficient time given? And of those who commented, how many might have been more candid had they been able to thoroughly vet the issues within their organizations?

amendments to pronouncements and 180 days for new pronouncements and major revisions to existing ones. More realistic timeframes for comment would assure comments from a wider range of stakeholders and more thoughtful comments from those who regularly comment on proposals. It would also eliminate the need to extend comment periods, which proves to be an inadequate solution when the FASB miscalculates the appropriate length of time for comments. Finally, I have noticed that there are frequent extensions of comment periods, delayed implementation dates, and revisions within a few months or years after new accounting and auditing pronouncements are issued—SAS No. 112 and Fin No. 48 come immediately to mind. If there were a more thorough vetting of proposals, such costly and inefficient post-issuance responses might be unnecessary or they might at least be minimized.

Respect and Credibility. Returning to the editorial in today's *Wall Street Journal*, the editors wrote:

FASB has shown a tendency, once it initiates a project, to stubbornly insist on plowing ahead, as if it is the sole authority on virtuous disclosure.

Whether the FASB likes it or not, unrealistically short comment periods lend credence to this view. The FASB and its staff obviously devote a great deal of time to exposure drafts before releasing them, but they must remember that they are an insular group that can lose sight of big picture issues when thinking about the details. A 30-day comment period, particularly during the peak summer vacation season, carries the clear implication that the process is akin to a Stalinist show trial. It screams, "We're not really interested in your comments." I suspect that the members of the FASB and its staff will disagree with that statement, but that is the conclusion people naturally draw when any rulemaking body employs a process that elevates form over substantive due process.

By denying the public a meaningful opportunity to comment, the FASB undercuts the credibility of its pronouncements and generates disrespect for itself as a rulemaking body.

Sincerely yours,



Jack B. Siegel, Principal and CPA

cc: United States Senator Carl Levin
James L. Kroeker, SEC Office of the Chief Accountant