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Date: September 8, 2010

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
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:

Eli Lilly and Company appreciates the opportunity to comment on the Financial Accounting Standards Board's (FASB's) Proposed Accounting Standards Update, "Disclosures of Certain Loss Contingencies (the "Proposed ASU"). Eli Lilly is a large, multinational company that creates and delivers innovative medicines that enable people to live longer, healthier, more active lives.

We appreciate the FASB's recognition of the complexity and significant implications of the Proposed ASU and the extension in the comment period deadline.

We support the FASB's efforts to provide meaningful disclosures and transparency to users of financial statements ("users") in assessing the likelihood, timing, and magnitude of future cashflows associated with loss contingencies. However, we strongly disagree that the Proposed ASU's disclosure requirements regarding loss contingencies will further the FASB's mission. We appreciate that the FASB has taken into consideration some of the issues raised by stakeholders in response to its 2008 Exposure Draft, and that it has eliminated certain of the prejudicial disclosure requirements. Yet, the current Proposed ASU contains a number of disclosure requirements that, if adopted, will likely increase companies' litigation exposure, reduce shareholder value, and provide users with disclosures that are ultimately more confusing than useful. We share the concerns expressed in the August 11, 2010 letter from the U.S. Chamber of Commerce.

We acknowledge that the disclosures for loss contingencies are complex and may cause confusion for users. However, we believe much of the complexity and confusion related to loss contingencies is due to the very nature, unpredictability, and sensitivity of loss contingencies, and thus, we believe that the current requirements under SFAS 5 (FAS 5), *Accounting for Contingencies*, provide users with accurate and meaningful information available about loss contingencies.

Our primary concerns with the Proposed ASU relate to the required disclosures of remote loss contingencies, the tabular reconciliation requirement, the removal of the prejudicial exemption, and the proposed effective date.

We address each of these concerns in further detail below.

Remote Loss Contingencies
We are concerned that the Proposed ASU's disclosure requirements regarding remote loss contingencies will cause severe prejudice to companies in pending litigation and not provide meaningful information to users. We strongly believe that the remote concept is inconsistent with other disclosure thresholds and materiality standards, and with the principles-based approach that the FASB has indicated it is ultimately striving to achieve. Our primary concerns relate to the risk of user-confusion, the complexity and cost of compliance, the potential magnitude of disclosure requirements, and the ultimate cost of auditing the data**,** as described below.

- We believe that, despite the FASB's intent, the Proposed ASU's requirement that companies disclose remote loss contingencies with a "potentially severe impact" will *not* provide users with a better understanding of the nature and magnitude of a company's loss contingencies. To the contrary, we anticipate that requiring companies to disclose loss contingencies they consider remote will cause users to focus on matters they otherwise would consider immaterial. By way of illustration, pharmaceutical companies often face numerous lawsuits that they consider remote loss contingencies because the claims asserted have little, if any, factual or legal basis. Under the Proposed ASU's rubric, a company could be required to disclose many of these lawsuits if not *every* such lawsuit – regardless of merit – if the plaintiff asserts or seeks damages that would have a potentially severe impact on the company. As a pharmaceutical company, we are particularly susceptible to being named as a defendant in numerous product liability lawsuits. We refer you to the letter by the senior litigators from six leading pharmaceutical companies dated August 8, 2008, in response to the 2008 Exposure Draft, to further describe the mass tort litigation environment impacting the pharmaceutical industry to give you an appreciation of the significant amount of litigation that may need to be disclosed that may not be useful to users. Consequently, companies could be required to disclose loss contingencies that neither they nor any reasonable investor otherwise would consider to have merit or consider to be material. In short, we believe that, if adopted, these new disclosure requirements may result in the disclosure of confusing, or worse – misleading, information – rather than meaningful information – about a company's financial condition.

- We foresee that, in order to determine whether remote loss contingencies have a potentially severe impact**,** companies will expend additional substantial time, resources and money to implement these procedures and related internal controls to comply with Sarbanes-Oxley 404 requirements. We believe such costs are unreasonable and unjustified, particularly given the lack of meaningful information the new disclosures will provide users.

- We also question the Proposed ASU's requirement that a company disclose the potential magnitude of a remote contingency as such information may prejudice the company in pending litigation. If the FASB decides to adopt the remote contingency disclosure requirement, we suggest that the parenthetical "(if estimable and known)" be inserted after "potential magnitude." This qualification is consistent with the "(if known)" parenthetical that appears after "potential timing."

- Should the FASB adopt the Proposed ASU's disclosure requirements for remote contingencies, we anticipate that the procedures for auditing the data underlying a company's disclosures of remote loss contingencies will be overly complex and expensive, particularly given the inherently speculative nature of a "remote" loss contingency. We are extremely concerned that a company's privileged information regarding litigation contingencies may not be adequately protected in the auditing process. In addition, the American Bar Association and the AICPA will have to negotiate a protocol for legal counsel's responses to auditors' inquiries regarding these contingencies. Such protocol will need to be in place before the disclosure requirements go into effect.

For these reasons, we urge the FASB to remove the requirement of specifically disclosing remote contingencies from the Proposed ASU.

Tabular Reconciliation

We understand that users require both qualitative and quantitative information to better understand the financial statements provided that such information does not undermine the ability of the company to respond to legal challenges. We have several concerns regarding the required tabular reconciliation in the Proposed ASU related to the level of disaggregation required, the significant amount of effort to accumulate this data, and interim reporting requirements as described below:

- The Proposed ASU requires that a tabular reconciliation be disclosed separately for each class of contingencies so that dissimilar contingencies are not aggregated. We are concerned with the proposed level of disaggregation as this requirement could potentially result in an overwhelming amount of detail. We do not believe that this level of information is consistent with the goals of the Proposed ASU and is not necessary in assisting users in understanding the likelihood, timing, and magnitude of future cashflows associated with loss contingencies. In addition, as the Proposed ASU requires quarterly activity disclosed and qualitative explanations regarding the nature of the activity, there is a significant risk of disclosing prejudicial information within the tabular reconciliation based upon the level of proposed disaggregation. For example, if there is a single claim or event that is significant in relation to a company's other loss contingencies for a specific class of contingencies there is a significant risk that prejudicial information will be required to be disclosed based upon the current Proposed ASU's requirements.

- The Proposed ASU provides an assumption through the proposed effective date that this data should be readily available; however, accumulating the data at the level of disaggregated detail required may be operationally difficult. The Proposed ASU recognizes the difficulty in accumulating this data by not requiring the tabular reconciliation for comparative periods. These data may be tracked manually or in multiple systems, and capturing the information at this level of detail may require significant IT coordination. We do not believe the purported benefits of the tabular reconciliation outweigh the costs as users can assess a company's loss contingencies by accessing other qualitative and quantitative information that is available to them.

- The Proposed ASU requires the tabular reconciliation be disclosed on an interim basis. Interim reporting of the reconciliation is inconsistent with the basis of condensed information reported at interim. As noted above, the tabular reconciliation will require a significant amount of work on an annual basis and will be even more burdensome on an interim basis given the operational complexities and the tight timing for quarterly reporting. Again, we believe that other available qualitative and quantitative information is more beneficial without being overly cumbersome to users and burdensome to preparers.

We suggest removing the requirement of the tabular reconciliation as we do not believe it will provide significant added benefit to the users, and the purported benefits will not outweigh the substantial costs to implement the processes to track and accumulate the data and the risk of disclosure of prejudicial information. However, if the tabular reconciliation requirement remains, we strongly suggest requiring the tabular reconciliation only on an annual basis and increasing the level of aggregation required to avoid any potential prejudicial disclosures and provide users the appropriate level of detail without being overwhelming.

Prejudicial Exemption
We appreciate that the FASB has eliminated many of the disclosure requirements that would directly result in disclosure of prejudicial information; however, the Proposed ASU contains disclosure requirements that may prejudice companies in ongoing litigation and may increase their litigation exposure. For example, the level of disaggregation required in the tabular reconciliation and disclosure of potential magnitude of loss contingency may result in the disclosure of prejudicial information. These disclosures may compromise a company's ability to defend itself in litigation, and at the very least reduce its negotiating position. We do not believe that this is the FASB's intent, and thus, we believe it is critical to retain the prejudicial exemption to provide some flexibility to companies given the sensitive and intense nature of the current litigation environment. Therefore, we strongly urge the FASB to include a prejudicial exemption to avoid any potential adverse consequences, and to provide language allowing flexibility for companies to determine the appropriate use of the exemption (i.e., to use a principles-based approach as opposed to the approach used in the 2008 Exposure Draft which indicated use of the exemption should be rare and required substantial additional disclosure).

Effective Date
We are concerned with the proposed effective date for fiscal years ending after December 15, 2010 given the timing of the issuance of the Proposed ASU in Q4 2010. Should the FASB adopt the Proposed ASU, companies will be required to undertake a substantial amount of work to comply with the new disclosure requirements, including: implementing a process to identify and assess the loss contingencies based upon the remote threshold; consulting with legal counsel regarding the qualitative and quantitative disclosures; coordinating the consolidation of the tabular reconciliation at the disaggregated level of detail required; and preparing meaningful qualitative disclosures that are in enough detail without being overwhelming. We do not believe that this is achievable for calendar year companies by December 31, 2010. We strongly recommend that the Proposed ASU effective date begin with fiscal periods ending after December 15, 2011 to allow preparers to effectively and efficiently implement the expanded disclosures.

Summary
We strongly believe that there will be unintentional adverse consequences of the Proposed ASU to companies and their shareholders which have the potential to be severe. We believe that the current

FAS 5 requirements provide users with meaningful disclosures about loss contingencies, and also balance the needs of all stakeholders. In addition, we believe that the purported benefits of the Proposed ASU do not outweigh the substantial estimated costs of implementation and other potential adverse consequences. Finally, in light of the FASB's current convergence efforts with International Accounting Standards, we do not believe it is useful or effective to implement a new standard for loss contingencies that has not been fully reviewed through the convergence process with IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*. Therefore, we strongly recommend that the Proposed ASU not be finalized.

We appreciate the opportunity to express our views and concerns regarding the Proposed ASU. If you have any questions regarding our response, or would like to discuss our comments further, please call me at (317) 276-2024.

Sincerely,

S/Arnold Hanish
Vice President, Finance
and Chief Accounting Officer