1840-100 Comment Letter No. 218



AMERICAN TRUCKING ASSOCIATIONS

950 N. Glebe Road * Suite 210 * Arlington, VA * 22203-4181 www.truckline.com

September 20, 2010

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116
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By mail and email to: director@fasb.org

RE: File Reference No. 1840-100 – Proposed Accounting Standards Update – Disclosure of Certain Loss Contingencies, an amendment of Contingencies (Topic 450)

Dear Mr. Golden:

The American Trucking Associations (ATA) is pleased for the opportunity to comment on the Board's Exposure Draft on the disclosure of contingencies, referenced above. ATA joins with the U. S. Chamber of Commerce in respectfully requesting the Board to withdraw its proposal. We believe that if the proposal were implemented, it would (1) impose burdensome and highly prejudicial requirements on many of the entities subject to them, and (2) be more likely to hamper investors and other users than to provide them with useful information. ATA specifically objects to the disclosures proposed with respect to litigation and to potential withdrawal liabilities associated with multiemployer pension plans. We note that the similar efforts by the International Accounting Standards Board to revise its IAS 37 has encountered serious difficulties related to the same issues. (See, for example, the enclosed press report on the IASB meeting of September 15, 2010, in which a number of Board members are quoted as opposing the continuation of that IASB project. The reasons they cite strongly resemble those we will develop below. See also the IASB Staff Agenda Paper 7, available here: http://www.ifrs.org/NR/rdonlyres/08BFA3EF-9AD6-4770-B738-0968C620E2F6/0/IAS370910b07obs.pdf.)

ATA, based in Arlington, Virginia, is a national federation of all types and sizes of motor carriers, as well as allied industries, individual-member councils, affiliated conferences of specialized carriers, and fifty affiliated state trucking associations, representing altogether some 37,000 members, including every kind of motor carrier in the United States.

Litigation Disclosures

The proposed requirements for disclosures about litigation would likely be the most damaging to our member companies. In the Background Information and Basis for

Good stuff.



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Conclusions section of the Draft, the comments of the Board indicate that the Board believes a balance with such disclosures can be struck between benefits to investors and other users on the one hand and prejudice to the interests of preparers on the other. For reasons such as those laid out by the U.S. Chamber in its comments on the Draft, we believe such a balance is impossible to achieve.

ATA would go farther, however, and suggest that the Board may not have recognized the nature of the litigious atmosphere in which the industry we represent and others as well must operate today. The Chamber characterizes the example of litigation presented by the Board as "simplistic." It may be so; even contract litigation is frequently far more complex and involves far more imponderables than does the example given. For most of our members, however, the most typical litigation is in tort rather than contract. Many observers have characterized the current American civil justice system as unbalanced or out of control. The Board may get a flavor of it by examining Internet sites such as these, chosen almost at random from many others like them: www.truckinjuries.com, www.alabamatruckaccident.net, www.18-wheeler-truckaccident-lawyer.com, or www.truckaccidentlaw.org. These enterprises represent what amounts to a subindustry of the trial bar, aimed at motor carriers and depending entirely on the contingent attorney fees our tort system allows. We believe that other industries, including the medical profession and pharmaceutical industry, to mention only two, are the targets of similar specialists in the trial bar. The kind of disclosures that the Board proposes would provide such attorneys with information of the most valuable kind: the legal theories, the attitudes and practices, even the fears of actual or potential defendants. No degree of aggregation, were it even possible, will prevent this kind of information from being employed to prejudice preparers. The trial bar is organized and energetic and legal ethics as well as self-interest require them to use against defendants whatever information they can find. Such disclosures will be targeted, they will be used to prepare and pursue litigation, and they will damage those entities that disclose it.

American society being what it is, motor carriers and other industries will face tort claims; however, the Board's current procedures for disclosing such contingencies are appropriate. The Board's proposed requirements, because of the assistance they will inevitably give to the legal opponents of business entities in ours and other industries, will result in grave harm to those entities and to those who invest in them.

Regulatory Contingencies

Although this aspect of the Board's proposal may have attracted less attention from commenters, the Draft seems to prescribe for the contingencies created by government regulatory proposals the same kinds of disclosures it prescribes for those created by litigation. Arguably, however, this area is as important, both for the burden on preparers and for the absence of much if any useful result for investors. In the industry we represent, pending regulations on hours of service and on-board recorders will certainly have very significant effects on motor carriers; more broadly, the multitude of rulemakings following in the wake of the health care and financial regulatory legislation

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alone, to say nothing of state and federal environmental and climate regulation, are likely to affect the entire economy significantly. Regulation is certain, the contents for the most part entirely unknown. Nevertheless, the Draft appears to require preparers to indulge in speculation about the effect of such rules on their finances, and to present worst cases that will have little result other than to alarm unsophisticated users. The Board might consider that its pending proposal on the treatment of leases will impose burdens on preparers, and prompt disclosures of a magnitude, at least comparable to the government rulemakings mentioned here.

In this area too, ATA submits that current accounting requirements for the treatment of regulatory contingencies are appropriate and should be retained.

Multiemployer Pension Plans

Some of ATA's members are involved in multiemployer pension plans, from which withdrawal would incur penalties that could be ruinous. We believe that the Board should narrow its proposal with respect to contingencies of this nature, so that they apply only to those entities that have decided on withdrawal from such a plan and have taken steps to do so. In the absence of such steps, disclosures could only be speculative and misleading to investors.

Conclusion

In conclusion, ATA recommends that the Board withdraw its proposal on loss contingencies.

Sincerely,

Robert C. Pitcher

Vice President, State Laws

Admi & Pich

American Trucking Associations

Enclosure



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Troubled Contingent Liabilities Standard

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Accounting

IASB Members Vote to Continue With Update Of Troubled Contingent Liabilities Standard

LONDON—The International Accounting Standards Board voted Sept. 15 to press ahead with its project to replace International Accounting Standard 37, Provisions, Contingent Liabilities and Contingent Assets, with a new international financial reporting standard.

But responding to fierce criticism of the project from a wide range of constituents on both sides of the Atlantic, the board resolved to address some of the issues with the IAS 37 project that have given rise to those concerns.

Despite the tentative agreement to press on with the project, a date for wrapping up the effort remains unclear. Of the likely timetable for completion, IASB Chairman David Tweedie said, "We can't rush it. If we can do it by June [2011], terrific." However, he cautioned that the board should not plan to push the project ahead of others with higher priorities and said that if the project could not be completed by June 2011, "we have to accept we can't.... We just have to accept the [other projects] take priority."

Asked whether the board would have to issue a full exposure draft to solicit comments from constituents, Tweedie said, "I think we have to."

Staff Sees Three Options

Introducing staff papers on the project to the board, IASB project manager Joan Brown told the meeting it was now "time to wrap up the project one way or the other."

Staff put together a package of three options for the board to consider:

- drop the project;
- proceed to a new IFRS without replacing the existing IAS 37 measurement criteria; and
- continue with a new IFRS based around the expected-value measurement model but address concerns about measurement, reliability, and cost.

In relation to the option of leaving IAS 37's existing measurement criteria intact, staff noted that "all that would be left by changes would be guidance on clarifying the meaning of the term liability and how to identify them, and you might take the view that these changes aren't sufficiently worthwhile on their own to merit changing a standard."

Staff said building a new standard around the expected-value measurement model "would retain expected value information in principle but reconsider four particular aspects of the requirements with a view to addressing the reliability and cost-benefit concerns." This option would also require the board to consider how IAS 37's successor standard would address lawsuits.

The main thing for the board to consider is simplified or alternative measurements for some situations, such as litigation, "where it is difficult or impossible to measure expected values reliably," the project manager said. Possible solutions open to the board are either an alternative measurement basis or no measurement at all in such situations, she explained.

Other Possible Changes

As for areas the board might revisit under option 3, Brown noted, one possible change would be to "add a 'more likely than not' threshold to the judgment about existence" of a liability. The board also might reconsider the risk adjustment, "because there were quite a few concerns about whether it can be measured reliably for liabilities within the scope of IAS 37."

"Quite a few people pointed out that it is different from insurance; measurements are more difficult because you don't necessarily have a portfolio, you can't use accepted techniques such as quartile methods, ... and you don't have the premiums as a backstop for the measurement," she added.

Staff said they were confident of being able to come up with solutions for issues that have plagued the IAS 37 project and been at the fore of constituent concerns. "It would be important to do the changes in a way that can be done quickly, but I think that's possible if that's what you wanted to do," said Brown.

"There's a simple solution to all of these problems if you were willing to take it. I think that even with the simplified solution, ... you'd end up with measurements that were clearer than those in IAS 37 at the moment."

Need for Amendments Questioned

Apparent during the meeting was the extent to which the board has failed to communicate why it is seeking to amend IAS 37. IASB member Elke Knig, who only recently joined the board, argued, "I'm not really convinced that IAS 37, though it's old, is totally broke. I would question whether this is a project that we need to pursue now."

Knig continued, "We have to put a lot of effort into valuation, but it might be potentially worthwhile to drop it for now and take it back onto the agenda as a framework decision on liability measurement."

Earlier, Brown told the meeting, "To some degree I think it's because [constituents] think they know how liabilities should be measured and they can find the words in IAS 37 to support it." She concluded that "[if] you came to IAS 37 with no idea about how to recognize and measure liabilities, you would struggle at the moment to apply it."

But although 10 IASB members voted in favor of addressing some of the measurement issues in IAS 37, strong opposition to that course of action was clear among some board members. Jan Engstrm said, "I think is a failed project, and we should treat it as a failed project. We have failed to convince people of ... the problem we are trying to solve....

We have failed to convince them of the solution to the problems that people don't see. I think the only decent thing to do is to drop this project."

The former preparer later warned that the board risks losing credibility over the project. "In some parts of the world ... they think this is absolutely crazy. If we can't communicate what problems we are trying to solve, ... I think this will be really bad for our image, even our acceptance as a standard setter," he said.

The decision to press on with the project came at a time when the board's work plan is heating up. In the final half of this year, the board is scheduled to publish seven exposure drafts. Finalized IFRSs are also due on consolidations, derecognition-related disclosures, joint ventures, and financial statement presentation.

Further complicating the standard-setting scene is Tweedie's retirement in June 2012. And, after June 2010 only three board members—Engstrm, Warren McGregor, and John Smith—will remain of the group of board members that issued the first IAS 37 amendment exposure draft in 2005. Having considered public feedback on those proposals, IASB decided to clarify the requirements relating to liability measurement (15 DTR I-4, 1/24/07).

IAS 37 is widely seen as the catch-all liabilities standard under international financial reporting standards. IASB Jan. 5 published a partial re-exposure for public comment of further amendments to IAS 37 (2 DTR I-1, 1/6/10). At a June 15 board meeting, staff reported the board's latest round of proposals had received a largely negative reaction from constituents (114 DTR I-2, 6/16/10).

By Stephen Bouvier

Text of observer notes for the board's discussions are available at http://www.ifrs.org/Meetings/IASB+Board+Meeting+15+September+2010.htm.

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