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September 20, 2010

VIA E-MAIL

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

File Reference No. 1840-100

Re: Proposed ASU Contingencies (Topic 450) Disclosure of Certain Loss Contingencies Exposure Draft

Dear Mr. Golden:

Norfolk Southern Corporation (NS) respectfully submits these comments on the updated Exposure Draft of the Proposed Statement of Financial Accounting Standards regarding Disclosure of Certain Loss Contingencies, issued by FASB on July 20, 2010. NS is one of the nation's premier transportation companies. Its Norfolk Southern Railway subsidiary operates approximately 21,000 route miles in 22 states and the District of Columbia, serves every major container port in the eastern United States, and provides efficient connections to other rail carriers. NS operates the most extensive intermodal network in the East and is a major transporter of coal and industrial products. NS joins the comments submitted by the Association of American Railroads and intends for these additional points to elaborate on and supplement the referenced letters.

Privilege

While the revised Exposure Draft is a significant step forward from the June 2008 version, the Board has still failed to achieve its goal of eliminating "certain disclosures based on management's predictions about a contingency's resolution." Questions for Respondents, Question 3. In fact, the stated belief that this goal has been accomplished demonstrates a fundamental misunderstanding of the reality of corporate litigation.

Mr. Russell G. Golden September 20, 2010 Page 2

The Exposure Draft requires disclosure, "for all contingencies that are at least reasonably possible" of the "possible loss or range of loss and the amount accrued if any." 450-20-50-1F(e)(2). To arrive at these quantitative disclosures, the board recommends utilizing "publicly available quantitative information, for example, in case of litigation contingencies, the amount claimed by the plaintiff or the amount of damages indicated by the testimony of expert witnesses." BC24(a). This suggestion, however, cannot be reconciled with the Board's observation that "a plaintiff's amount of damages claimed, by itself, does not necessarily determine whether disclosure (of remote loss contingencies) is necessary because, in some cases, the claim may be frivolous with an artificially inflated amount." BC14 (emphasis added). Either the Board is requiring disclosure of amounts claimed by plaintiffs in public filings, which it acknowledges can be misleading, or the Board is requiring management to substitute its own analysis of the magnitude of a possible loss. Both of these possibilities run counter to the Exposure Draft's stated goal.

Additionally, the Exposure Draft requires disclosure under Section 450-20-50 for unasserted claims where the filing of a suit or claim is probable and an unfavorable outcome is possible. Such a situation may arise following a "catastrophe, accident, or other similar physical occurrence." 450-20-55-14(a). In these situations, by definition, no suit has yet been filed and therefore no public litigation filings can be relied upon for arriving at the possible magnitude of loss. Therefore, management would be required to disclose its own judgment of the possible magnitude of the case.

The scenarios discussed above demonstrate that in some circumstances management will be required to make disclosures based on privileged information. NS is concerned that as auditors fulfill their duties to verify the numbers disclosed, even in cases where values are aggregated and so individual case analysis may not be readily evident, privileged information that is critical to individual cases will be necessarily disclosed to auditors and the privilege potentially waived. The requirement to disclose the possible magnitude of loss will inevitably put management in the impossible position of deciding between preserving privilege and disclosing in accordance with FASB standards.

Value to Shareholders

Question 5 asks if the "proposed disclosures will enhance and improve the information provided to financial statement users?" The answer to this inquiry can be affirmative only if litigation adversaries are the target financial statement users. The requirement to disclose not only the possible magnitude of loss, but more directly the accruals on individually material and aggregated cases is a weight that will tip the delicate balance of corporate litigation in favor of the opponent. Public disclosure of this information will undermine all negotiation of settlements and will immediately drive upward the expense to defend and resolve litigation. In other words, there can be little hope of favorable resolution on individual cases where the adversary already knows precisely how management values the case at hand. When introduced at trial, the tabular reconciliations will serve as a floor for judges and juries to determine damages. The net result of

Mr. Russell G. Golden September 20, 2010 Page 3

this significantly increased expense will be a loss in shareholder value that is substantially greater than the incremental gain in knowledge.

The "prejudicial" exemption would serve to offset a great deal of the harm to shareholder value. Particularly for non-aggregated cases, a requirement to disclose *any* non-public information puts management at a decided litigation disadvantage. In such circumstances, the prejudicial exemption could allow for a full disclosure of pertinent information to shareholders without the accompanying harm to the company.

Additional Liability

In addition to the effect on litigation, the required disclosures themselves promise additional liability risk for public companies. As part of a corporation's public filings, these disclosures will be subject to the anti-fraud rules under the Securities Act and Securities Exchange Act. While some disclosures within the financial statements are historical in nature, the estimate of possible loss or range of loss, assessments of threatened litigation, analysis of remote contingencies and other disclosures required by the proposed standard are by necessity forward-looking, inherently uncertain and subject to factors outside the control of the reporting company. However, as part of the financial statements, the required disclosures are not subject to the safe harbor for forward looking statements found in the Private Securities Litigation Reform Act of 1995. As a result, should the disclosures prove to be inaccurate or misleading, the company faces the real risk of a securities fraud suit without the protection of the safe harbor.

We appreciate the opportunity to comment on the draft and the additional time afforded companies to prepare these comments. Should you wish to discuss these comments further or if additional information will be helpful, please do not hesitate to contact me.

Sincerely,

James A. Hixon

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