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Comment Letter No. 254  
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September 20, 2010

**Via email: [director@fasb.org](mailto:director@fasb.org)**

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

File Reference: No. 1840-100

Dear Mr. Golden:

Medtronic, Inc. ("Medtronic," "we," "our" or "us") appreciates the opportunity to provide the Financial Accounting Standards Board (the "FASB," the "Board" or "you") with our comments on the Board's Exposure Draft regarding Topic 450 – Contingencies, Disclosures of Certain Loss Contingencies dated July 20, 2010 (the "Standards Update"). Medtronic is a global leader in the medical technology industry.

### ***Summary***

We understand the Board's desire to provide investors and other users of financial statements with meaningful information regarding loss contingencies. We also appreciate and recognize the Board for evaluating the concerns raised from over 240 comment letters, the limited field test, and several roundtable discussions related to the June 2008 original proposal (the "Original Proposal"), and making changes to the Original Proposal such as:

- Reducing the demands for "predictive" information regarding litigation loss contingencies, such as no longer requiring estimation of when a litigation loss contingency would be resolved and the maximum loss exposure; and
- Focusing the additional disclosure requirements on publicly available, factual information and allowing the disclosures of similar contingencies to be aggregated.

Nevertheless, we believe the Standards Update creates significant issues for companies, and does not enhance financial statement disclosure in any meaningful manner. We believe that the current loss contingency disclosure framework properly balances the timeliness of disclosures with the difficulty of creating reliable disclosures, best facilitates the proper balance for interactions between management, auditors and legal counsel, and provides management the

ability to resolve most effectively loss contingencies. As a result, we believe the Board should not move forward with the proposals contained in the Standards Update, but should instead prioritize and focus resources on convergence projects with the highest priority to financial statement users and investors.

### ***Costs Outweigh Benefits***

We believe the Standards Update would result in significant costs and consequences to affected companies, without corresponding meaningful benefits to financial statements users. Those costs – both quantitative and qualitative – and consequences include those resulting primarily from litigation loss contingencies, including:

- being required to establish revised internal controls and financial reporting processes to aid in implementing, maintaining and executing those processes on an ongoing basis;
- jeopardizing the attorney-client privilege and other legal privileges, and requiring disclosure of information that likely will adversely affect litigation strategies;
- substantially increased legal and audit fees, and potentially increased losses from litigation contingencies; and
- requiring companies' management to disclose information regarding litigation loss contingencies in their early stages or those that are "remote" but could be "potentially severe" could lead to increased liability to disclosing companies from financial statement users and jeopardize their competitive positions with other industry participants.

We believe that the additional information required by the Standards Update will provide information that is of marginal utility, at best, since the increased disclosures continue to require disclosure of a range of "predictive" information and/or factual information that will not result in a more meaningful understanding of loss contingencies, especially at the early stages of such loss contingencies. The potential, marginal, benefits do not outweigh the significant costs and consequences of providing the disclosures.

### ***Responses to Certain Specific FASB Questions***

#### **FASB Question #1:**

Are the proposed disclosures operational? If not, please explain why.

#### **Our Answer:**

No. As discussed more fully below with respect to litigation loss contingencies, we believe certain aspects of the Standards Update remain prejudicial to a company's legal position.

We also believe the Standards Update assumes companies have access to more meaningful information regarding loss contingencies than they are currently required to disclose in their financial statements. One of the reasons stated by the Board for attempting to improve loss contingency disclosures is that “The initial disclosure of specific information about a loss contingency often does not occur until a material accrual is recognized for that loss contingency, sometimes taking investors by surprise.” However, since current loss contingency standards already require disclosure of loss contingencies that are “probable but not reasonably estimable” and loss contingencies that are not probable but are “reasonably possible,” we believe the view that disclosures are untimely is simply reflective of the inherent difficulty in providing meaningful disclosures at the early stages of loss contingencies. We believe the Standards Update will require disclosure of information that is of little utility to investors and may in fact create confusion in the market place and among other financial statement users.

Another reason stated by the Board for proposing the Standards Update was that “[t]he *at least reasonably possible* threshold for disclosing loss contingencies has not resulted in the disclosure of the full population of an entity’s existing loss contingencies that would be of interest to financial statement users.” We believe this statement is based on the premise that “more disclosure is better disclosure.” We respectfully disagree with this premise. With respect to litigation contingencies in particular, there is a natural tension between disclosures that may benefit financial statement users and disclosures that may be advantageous to plaintiffs in litigation.

In addition, we believe the proposed requirement to disclose remote contingencies with potential severe impact will be extremely difficult and more costly to implement, will require management to make significant judgmental assessments of all potential outcomes possible, and will most likely be based on advice of legal counsel, creating attorney-client privileges that would make it difficult for the proposed disclosures to be operational (and auditable) from a practical perspective. The Standards Update does not contain specific implementation guidance to guide management and/or auditor determinations for when remote contingencies require disclosure, specifically how this determination varies from current materiality determinations.

The final reason stated by the Board for proposing the Standards Update is that “The amounts recognized in the financial statements related to loss contingencies are not transparent to users.” We believe that requiring more detailed disclosure of actual loss accrual/recognition information (i.e., tabular reconciliation) does not add meaningfully to current loss contingency disclosures. That is, tabular reconciliation, especially for aggregated classes of contingencies, would not increase transparency for users – for example by helping to identify trends in loss contingencies.

The Board’s basis for proposing tabular reconciliation was that “...tabular reconciliation will provide users with valuable information about *significant estimates and changes in those estimates that are subject to significant measurement judgment* [emphasis added].” This statement reinforces our view that the Standards Update would result primarily in disclosure of “predictive” information that could result in financial statement users drawing incorrect conclusions about the adequacy of companies’ internal controls for estimating and recording loss accrual liabilities over the life of such accruals. We also believe that disclosing accrued amounts

may benefit the plaintiff in a case and thus be prejudicial to defense litigation strategy and position.

We applaud the Board for attempting to limit new disclosures under the Standards Update to publicly available or other “factual” information. However, we have the following specific concerns regarding even this aspect of the Standards Update:

- 1) If a plaintiff brings a claim or its expert witness maintains a position against a company for damages that are inconsistent with management’s reasonably estimated range of loss (which is almost always the case), we believe disclosure of such claimed damages would likely be misleading unless management includes disclosure that it believes the plaintiff’s claim amount is not within a reasonably possible range of loss.
- 2) We believe that requiring aggregation criteria for disclosures and aggregation criteria for the tabular reconciliation of loss contingencies for which an accrual has been recorded should not be based on the same criteria. This requirement could result in disclosure of information with respect to individual legal claims that do not satisfy aggregation criteria (i.e., that cannot be aggregated with other claims).
- 3) We believe the Standards Update should not require disclosure of the basis of plaintiffs’ claims (to avoid creating “copy-cat” claims), the basis for insurance recovery (to avoid creating negotiating leverage for plaintiffs) and the basis of defense (to avoid jeopardizing legal strategy and legal privileges).

FASB Question #2:

Are the proposed disclosures auditable?

Our Answer:

No. Litigation is almost always based on specific facts and circumstances that make each case uniquely unpredictable. We believe compliance with the Standards Update would require, with respect to litigation loss contingencies in particular, protracted evaluation and reconciliation of the judgments and opinions of multiple groups (e.g., our management, internal legal counsel and financial reporting personnel, outside legal counsel and outside independent auditors), which would be excessively time consuming, costly and ultimately result in ineffectual disclosure. As a result, many of the new disclosures would not be auditable in a reliable manner. In addition, requiring auditors to verify underlying assumptions necessary to create the new disclosures could jeopardize attorney-client privileges and otherwise require auditors to reach legal judgments they are not experienced (nor likely legally authorized) to make.

FASB Question #3:

The June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposed Update would: (a) Not require any new disclosures based on management's predictions about a contingency's resolution, (b) Generally focus on information that is publicly available, (c) Relate to amounts already accrued in the financial statements; and (d) permit information to be presented on an aggregate basis with other similar loss contingencies?

Our Answer:

No. The Standards Update continues to require disclosure of a range of information regarding litigation loss contingencies that could prejudice the disclosing company and thus adversely affect its shareholders. Examples of these areas include (1) the requirement to disclose the basis for an entity's defense and the timing of resolution – if known, and (2) the need for auditors to have access to privileged client information to evaluate/audit companies' assessment of whether a claim is individually material, whether a claim is severe but remote or whether the basis for aggregation is consistent with the Standards Update. We believe that the Original Proposal's proposed "exemption from disclosing prejudicial information," which essentially permitted a higher level of loss contingency aggregation, would be insufficient to alleviate prejudice resulting from these factors.

If the Standards Update is adopted in some form, we believe the Board must make clear that if an issuer, in consultation with its outside legal counsel, determines reasonably and in good faith that disclosure of information that would otherwise be required under the Standards Update would be prejudicial to the issuer, the issuer would not be required to disclose such information. The issuer could retain documentation of such conclusions (though not necessarily the detailed basis for reaching such conclusions) for review and verification by its auditors.

FASB Question #4:

Is the proposed effective date operational?

Our Answer:

No, we believe the proposed effective date is not operational for public companies. Given the time and effort that would be necessary to develop additional internal controls and reporting processes, and the need to understand whether and to what extent auditors will request additional information to attempt to audit (see FASB Question # 2 above) the proposed disclosures, we believe that public companies should be given at least the same amount of time to implement the Standards Update as is being provided for private companies. Thus we believe that any required updates be effective for fiscal years beginning **after** December 15, 2010.

FASB Question #5:

Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing (if known) of loss contingencies?

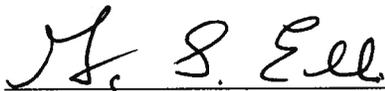
Our Answer:

No. We do not believe the current disclosures under existing Topic 450 on loss contingencies warrant change. The increased disclosures involve in many instances disclosure of information that is “predictive” or otherwise unlikely to provide meaningful insight (e.g., disclosures of a plaintiff’s claim for damages or damages indicated by the testimony of an expert witness, which often are extremely different than losses actually incurred at trial or in settlement). “Predictive” information, especially in the context of litigation contingencies, carries the strong likelihood of misleading users as to management’s views (if any) regarding the actual outcome of such litigation given the adversarial and complex nature of most material litigation, and could be used to the detriment of the disclosing companies. Where the increased disclosures are based on factual information (e.g., publicly available information contained in court records), we believe that the information will not provide users with meaningful information regarding the nature, potential magnitude or potential timing of loss contingencies – especially litigation contingencies – but rather likely would further overwhelm users with uninformative information.

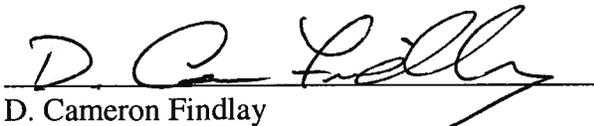
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For the foregoing reasons, we believe the Board should not move forward with the proposals contained in the Standards Update. If the Board nevertheless elects to move forward with the Standards Update in any form, we respectfully ask you to review carefully and evaluate all comment letters received, and specifically to consider carefully the issues identified in this comment letter.

Very truly yours,



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Gary L. Ellis  
Sr. Vice President & Chief Financial Officer



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D. Cameron Findlay  
Sr. Vice President, General Counsel & Corporate Secretary