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1860-100 Comment Letter No. 275

MEMBERS

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October 29, 2010

Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, Connecticut 06856-5116

Re: File Reference No. 1860-100

Our responses to the questions relating to the Disclosure about an Employer's Participation in a Multiemployer Plan, Compensation-Retirement Benefits-Multiemployer Plans (Subtopic 715-80) are discussed on the Attachment. We strongly disagree with the proposed disclosure requirements.

This firm has worked with multiemployer plans since their inception in the mid 1940s. Over a period of time, we have observed how over-regulation and public policy set by uninformed governing bodies have eroded the efficiency of what was once an ideal vehicle for providing a secure retirement for America's workers. It is our belief that much of this erosion has been caused by theoretician regulators failing to recognize the practical differences between single-employer plans and a multiemployer plans. This exposure draft, which seeks to compel an employer contributing to a multiemployer plan to disclose in its financial statements, certain possible liabilities of questionable amounts - along with other arbitrary information, is yet another example of that continued lack of understanding.

We urge the Financial Accounting Standards Board to consider the practical effects of these proposed disclosures on multiemployer plans and to its contributing employers and ask that you to reconsider implementation of the disclosure requirements on employers contributing to multiemployer plans for the reasons discussed in the attachment.

If you have any questions or require additional explanations, please contact Douglas S. Waite, CPA at the above address or telephone numbers or at dwaite@millerkaplan.com.

Sincerely,

mile leaston, and love MILLER, KAPLAN, ARASE & CO., LLP

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Attachment

### Response to Question 1

We do not agree that the proposed quantitative and qualitative disclosures may result in a more useful and transparent disclosure of an employer's obligation arising from its participation in a multiemployer plan. In fact, there are misleading implications easily subject to misinterpretation by an unsophisticated reader of the financial statements. Our primary argument against the proposed standards update is discussed in our response to Question 2.

The following are practical concerns regarding the usefulness of the proposed disclosures:

# 1. Timing and Cost

Most of the multiemployer pension plans we audit use "Beginning-of-Year" actuarial data. For example, for the year ended December 31, 2008 these plans report net assets available for benefits and changes therein for the years ended December 31, 2008 and 2007, but report accumulated plan benefits and changes therein only as of and for the year ended December 31, 2007. Most plans experienced significant investment losses in the year ended December 31, 2008. The actuarial significance was not reported on the plan's financial statement until the issuance of the plan's audited financial statements as of and for the years ended December 31, 2009 and 2008, which issuance, in most cases, was just before October 15, 2010, the date the plan's 2009 Form 5500 was due.

It is likely that much of the information proposed to be disclosed in participating employer's financial statements will come from the plan's audited financial statements. How useful and transparent are disclosures in a contributing employer's 2010 financial statements that relate to the year ended December 31, 2008? Furthermore, all through the proposed standard update, it is assumed that the information required to be disclosed is easily accessible and no consideration is given to the expense to the plan, and ultimately to the contributing employers. The cost of accumulating and actuarially computing the information required for the proposed disclosures will be significant.

#### 2. Speculation as to the Possibility of Future Events

Certain proposed disclosures require the contributing employer to speculate as to the impact of certain future events, including:

- a. The consequences the employer may face if it ceases contributing to the plan.
- b. Expected contributions for the next annual period.
- c. Known trends in contributions, including the extent to which a surplus or deficit in the plan may affect future contributions.
- d. The amount that is required to be paid on withdrawal from the plan or wind-up of the plan.

Speculating as to the consequences to a contributing employer for ceasing to contribute to the plan is merely that - speculation. Since most multiemployer plans are collectively bargained, rarely does the responsibility of making up funding shortfalls fall solely on the contributing employers. More often than not, shortfalls are made up by employer contribution increases in conjunction with benefit reductions, all resulting from the collective bargaining process. To expect a contributing employer to quantify its obligations resulting from future collective bargaining would be pure speculation.

#### 3. <u>Disclosure of Estimated Withdrawal Liability</u>

Disclosing a contributing employers' withdrawal liability would be misleading and confusing to readers of the employer's financial statements. Any amount reported as a withdrawal liability is not a liability to that employer unless and until that employer withdraws from the plan. Unsophisticated readers will interpret the potential withdrawal liability as an actual, unrecorded liability of the employer. The calculated amount of withdrawal liability and the amount the employer would actually pay upon withdrawal from the plan could be significantly different, depending upon the industry in which the employer operates and the results of collective bargaining or litigation.

#### 4. Volume of Actuarial Information

To meet the disclosure requirements of the proposed accounting standards update, contributing employers will be required to disclose a voluminous amount of actuarial data. Some of the employers that contribute to pension plans we audit contribute to ten or more multiemployer plans. The required disclosure for this many plans will overwhelm even the most sophisticated user of the financial statement with a large amount of actuarial information.

The sheer volume of actuarial information required to be presented will also mislead the reader of the financial statements as to its importance. It is doubtful that the average reader of the financial statements can comprehend the complex actuarial information presented and the reader will focus only on the estimated withdrawal liability, which is not an actual liability to the employer and the reported amount of which is questionable.

#### 5. Pension Protection Act of 2006

The Pension Protection Act of 2006 requires multiemployer plans in endangered or critical status to adopt funding improvements or rehabilitation plans to cure funding deficiencies. At the present time because of the large investment losses experienced in 2008, many multiemployer plans are developing these funding improvements or rehabilitation plans. Given enough time, these improvements or rehabilitation plans should cure current funding deficiencies and provide a mechanism for self correcting any problems in the future. Once corrected, this proposed disclosure requirement will provide little useful information to the financial statement user.

The existing disclosure requirements for contributing employers participating in multiemployer pension plans are adequate. These proposed disclosure requirements include many "what if" scenarios. Is it the intent of the Financial Accounting Standards Board to make it the responsibility of the accounting profession to disclose the ramifications of every "what if" event that could adversely affect a company's financial statement?

#### **Response to Question 2**

We do not believe that disclosing the estimated amount of withdrawal liability, even when the withdrawal is not at least reasonably possible, will provide financial statement users with decision-useful information. In fact, we believe this disclosure to be irresponsible!

A contributing employer is not liable for its portion of unfunded vested benefits (withdrawal liability) until that employer actually withdraws from the plan. This is the major flaw of this proposed accounting standards update. Why would any note disclosure be required until the employer has withdrawn from the plan, expressed its intent to withdraw from the plan or it is determined that the employer's withdrawal is at least probable or reasonably possible?

It has been our experience that it would be much more likely that a contributing employer in the manufacturing industry, for example, would close a facility than withdraw from a pension plan. So, applying the convoluted "what if" logic of this proposed update, why not require all companies in the manufacturing industry to disclose the financial effects of a possible plant closure? What about requiring all companies that are parties to a collective bargaining agreement to disclose the estimated financial effects of a strike or other work stoppage? What about requiring disclosure of the effects of a tornado destroying a major operating Midwest facility? Better yet, how about a contributing employer in the wholesale business disclosing the financial effect of selling its major product for two or three times its current selling price? The point is that no disclosure should be required unless something occurs — a plant closure, a work action or a contributing employer withdrawing from a multiemployer pension plan.

It would be ridiculous to require or even allow these disclosures in the financial statements of a contributing employer because it is simply speculation. There was no plant closure, or work stoppage, or tornado destruction, or spikes in demand for a product, and therefore, no such disclosures are required. The contributing employer did not withdraw from the plan. Why then would it be required that this employer disclose all this information, especially the estimated amount of withdrawal liability, simply because that employer participates in a multiemployer (pension) plan? Unless it is determined that it is at least probable or reasonably possible that the employer will withdraw from the plan, the proposed note disclosure only raises unfounded concerns with its implication that the employer has a significant off balance sheet liability.

# Response to Question 3

There will be significant implementation as well as ongoing costs to the contributing employers associated with complying with the proposed disclosure requirements. The largest part of the costs will be actuarial fees and the cost of time spent accumulating, computing and transmitting the necessary information to contributing employers, which will be incurred by the plan. These costs must either be reimbursed to the plan by contributing employers or, if deemed to be plan costs, will be paid by increased employer contributions.

In our discussions with actuaries, it is estimated that the cost of computing the estimated withdrawal liability for each contributing employers would range between \$2,000 and \$3,000. In the aggregate, that is a significant plan expense, and for what reason? The major employer who participates in 10 multiemployer plans will directly or indirectly incur some \$25,000 in expenses for information that makes it appear that the employer has significant unreported liabilities! Add to that the cost of the significant amount of time for the accounting staff of a contributing employer to accumulate this information for the financial statement note(s). Finally, include the additional auditing costs to the contributing employers as their auditors familiarize themselves with the actuarial information, assist in the drafting of required notes and validate the disclosure information.

## Response to Question 4

Although the effect of imposing requirements on public entities is more significant, the proposed effective date matters little because this is a flawed requirement. If it is to be implemented, the longer the delay the better for all concerned. As a practical matter, because of the financial condition of plans with the unfavorable economic conditions of the last two years, and because the Pension Protection Act of 2006 requires multiemployer plans in endangered or critical status to adopt funding improvement plans, the more time plans have to correct funding deficiencies, the more favorable the actuarial data will appear if or when disclosure is required on the financial statements of contributing employers.

#### Response to Question 5

See the response for question 4.

### Response to Question 6

No. However, for many nonpublic entities forced to comply with the proposed requirements, the additional implementation and ongoing costs could be significant. Many smaller nonpublic companies require audited financial statements to meet bonding insurance requirements or bank covenants. Required disclosure of the entity's estimated withdrawal liability will likely be misinterpreted and could ultimately lead to higher insurance premiums and interest rates for contributing employers. In this economic climate, contributing employers need efficiency, not more senseless accounting pronouncements that will result in additional costs.

### Response to Question 7

Not applicable. No response.