Honeywell International Inc. 101 Columbia Road Morristown, NJ 07962-2245



August 6, 2008

LETTER OF COMMENT NO. 43

VIA E:MAIL: director@fasb.org

Mr. Russell G. Golden
Technical Director – File Reference No. 1600-100
Financial Accounting Standards Board
of the Financial Accounting Foundation
401 Merritt 7
P.O. Box 5116
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Re: Exposure Draft - Proposed Statement of Financial Accounting Standards - Disclosure of Certain Loss Contingencies - an amendment of FASB Statements No. 5 and 141 (R)

Dear Mr. Golden:

Honeywell International Inc. (Honeywell) appreciates the opportunity to provide comments regarding the above-referenced Exposure Draft. Honeywell is a large, diversified global company which addresses a broad range of complex loss contingencies in the normal course of its operations. We are writing to express our significant concerns over the proposed expansion of the disclosure requirements for loss contingencies set forth in the Exposure Draft.

For the reasons stated below, we do not believe that the proposed amendments to FASB Statements No. 5 and 141R would achieve FASB's stated objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs. While the concerns raised in this letter pertain primarily to litigation, they are equally applicable to other types of loss contingencies within the scope of the Exposure Draft.

- 1. The proposed amendments would require disclosure in the notes to the financial statements that is speculative, transitory and inconsistent with the level of accuracy and transparency that we strive for in all other elements of our public disclosures.
 - The proposed mandatory quantitative disclosures, including a company's best estimate of its maximum exposure to loss, appears to be based on the premise that it is always possible for a company to make a meaningful estimate, regardless of the stage or complexity of the matter, and that this estimate would be helpful to financial statement users. We strongly disagree with this premise in several respects.
 - In the early stages of litigation, a company often lacks sufficient information to reach meaningful conclusions about the likelihood of or amount of exposure to loss.

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Frequently, complaints do not specify the amount of damages claimed and in several jurisdictions plaintiffs are not permitted to specify an amount of damages. Government entities also do not typically quantify possible claims or penalties at the commencement of an audit, investigation or proceeding. As the matter progresses, a company may be able to determine that it is reasonably possible that a loss may be incurred (and thus disclose the matter in accordance with the current requirements of FASB Statement No. 5), but still not be able to develop an estimate of the range of reasonably possible loss or the maximum exposure to loss.

- Handicapping the outcome of potential loss contingencies is at best an imprecise art which must take into account a wide range of factors including facts that come to light during the course of discovery, quality of witnesses and experts, venue, judge, jury pool, particular circumstances regarding the adversary, and general economic and industry conditions. Because most contingencies are resolved over long periods of time, potential liabilities are subject to change over the course of proceedings due to new developments, changes in settlement strategy or the impact of evidentiary requirements. Consequently, estimates of maximum exposure to loss, especially at the early stages of proceedings (which can last for several months, if not years), would in most cases be premature, require a large degree of speculation and be subject to great variability from quarter to quarter.
- Even more troubling would be the required disclosure of contingencies expected to be resolved within the next year which "could have a severe impact" on the company's operations, regardless of the likelihood of loss. It is difficult to understand why disclosures and estimates of the maximum amount of loss which could be incurred in connection with matters which the company expects to win, believes are frivolous, and where the likelihood of loss is deemed to be remote would be of interest to a reasonable investor. The fact that these disclosures would include lengthy discussions of why the company does not feel that the disclosed risk is likely would only serve to create confusion. This approach also runs counter to well-established concepts of materiality which take into account both the likelihood and impact of a contingency.
- In its commentary, FASB acknowledges that while it will sometimes be difficult for a company to make the estimates which would be required by the proposed amendments, investors would "prefer to have a highly uncertain estimate supplemented with a qualitative description than no quantification of a potential loss." It is difficult to understand how disclosures that require estimates and judgments that may differ greatly from the ultimate loss incurred due to changing facts and circumstances over a long period of time could lead to anything other than confusion or the conveyance of either undue concern or a false sense of security to investors. Furthermore, financial statement users who are existing investors might well prefer disclosure that does not impair the company's ability to minimize its litigation exposure (see discussion below).

2. The proposed amendments would require the inclusion of information that would be far more useful to current and potential claimants than to investors.

- The mandatory quantitative and qualitative disclosures called for in the proposed amendments would provide a roadmap for a company's actual and potential litigation opponents that would prejudice a company's litigation posture. The U.S. adversarial system of justice is predicated on each side being able to carefully guard its strategy and assessments from the other party. Providing details regarding the factors which the company believes are likely to affect the ultimate outcome of the contingency would force the company to describe its changing views regarding the matter on a quarterly basis, reduce the likelihood of success of the company's efforts to dismiss or settle the matter, and expose the company to significant discovery and costs it might otherwise avoid. The valuation of a loss contingency is likely to have an inordinate impact on the company vis-à-vis both its adversaries (could be deemed to fix a floor for settlement discussions or be admissible evidence against the company in determining jury awards) and investors (impact on stock price of disclosure of a large number of individual contingencies) even though such estimates may be predicated on little information and are subject to change over time.
- The proposed disclosure requirements regarding cases with a potential "severe impact"
 which are expected to be resolved in a year, regardless of likelihood of loss, would
 incentivize plaintiffs to make artificially high damage claims in order to leverage
 disclosure obligations into a settlement of otherwise frivolous claims.
- Requiring disclosure of unasserted claims is unnecessary and highly prejudicial to the
 company as it would encourage the assertion of claims with low probability of success
 but which might have some settlement (nuisance) value in light of the disclosure
 obligations, as well as jeopardize potential statute of limitations defenses by highlighting
 the existence of potential claims.
- The proposed amendments call for disclosure of information currently protected by attorney-client privilege and the attorney work product doctrine, and thus would upset the critical balance established under the U.S. legal system between information that must be disclosed to and information that may be withheld from an adversary. Indeed, the level of detail required by the proposed amendments could result in an unlimited waiver of these protections, with potentially severe adverse effects on the company and its shareowners. The protections FASB attempts to provide against disclosure of prejudicial information through a limited exemption from the disclosure requirements and/or aggregation of disclosure would not achieve their intended objectives. The minimum disclosure still required in the limited instances where the exemption could be applicable would more often than not include the very information that is prejudicial. The description of the legal and factual background of the contingencies represented in the proposed aggregated disclosure and the factors likely to affect their ultimate outcome are inherently case-specific and are ill-suited to aggregation.

- 3. The proposed amendments would expose the company to additional litigation risk if the amount or timing of the actual charges ultimately proves to be materially different than the estimates in its disclosures or if the company's disclosures regarding the likelihood and amount of loss significantly change over time due to changes in facts and circumstances.
 - The predictive estimates called for in the proposed disclosures would not be protected by the safe harbor provided for in other forward-looking statements. As noted above, the proposed mandatory quantitative and qualitative disclosures would in most instances require the provision of information that is necessarily speculative, and thus subject to a high risk of error.
 - Companies would be required to change quantitative and qualitative disclosures based on
 what may prove to be transient developments. Snapshots of loss contingencies at a
 particular moment in time lead to disclosures that are volatile, subject to substantial risk
 of error, and inaccurate when measured against the ultimate resolution of the
 contingency.
 - Although disclosure of a company's best estimate of anticipated loss would not be
 required under the proposed amendments, companies may feel compelled to do so to
 place the required disclosure of the maximum possible loss in context. To reduce the
 informational advantage this would provide to its adversaries, companies may feel
 pressure to err on the low side when making this estimate, which would further increase
 the risk of future litigation if the actual liability incurred is materially greater than the
 company's best estimate of anticipated loss.
- 4. The proposed amendments would result in disclosures that would be very difficult to audit and would put companies in the position of having to waive the protection afforded by the attorney-client privilege and the attorney work product doctrine in order to provide the auditor with adequate validation of required disclosures.
 - Under the proposed amendments, auditors are likely to seek more detail from counsel to test the estimates and disclosures reported, thereby adding to risk of waiver of the attorney-client privilege. This would disrupt the balance between audit requirements and a company's litigation posture achieved through the "Treaty" between the ABA and AICPA that has governed lawyers' responses to auditors' inquiries since the mid-'70s.
 - The proposed amendments may lead to pressure from auditors to create reserves at a time in advance of the point at which a loss is probable and reasonably estimable.
 - For companies with a large number and broad range of loss contingencies, assessing the likelihood of loss and estimating the potential exposures from loss contingencies will result in voluminous disclosure and will be costly, time consuming, and subject to substantial risk of error. The proposed amendments could even interfere with the ability

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to complete and issue financial statements on a timely basis where claims are made toward the end of the accounting periods or slightly before the financial statements are to be issued. This would increase the risk of subsequent events and provide opportunities for gamesmanship by claimants.

- 5. The existing standards under FASB Statement No. 5 work reasonably well, are consistent with basic accounting and disclosure concepts, and strike the proper balance between protecting the interests of investors through accurate and transparent financial reporting and protecting the ability of companies to defend themselves against and resolve litigation and other loss contingencies (which, in turn, protects the company's shareholders).
 - The current disclosure standards have the advantages of established compliance
 processes, cost effectiveness, protection of the legal rights and strategies of the disclosing
 entity and auditability. The proposed standards fall short in each of these areas and are
 inconsistent with the objectives of reliable financial reporting and the avoidance of
 unnecessary volatility.
 - The Exposure Draft states that the proposed amendments have been developed to address concerns raised by "users of financial statements". We are not aware of any change agendas being driven by broad sections of the financial community. We are also not aware of any empirical data that the current disclosure requirements are not working (e.g., large volume of litigation, SEC enforcement actions, or other substantial adverse outcome resulting from undisclosed contingencies). To the extent that FASB believes that there are disclosure issues, we would query whether these could be addressed through more detailed interpretation and enforcement of the current standards rather than a complete overhaul of the current system.
 - The proposed amendments could lead current or prospective investors to base decisions on an incomplete understanding of the company's loss contingencies or perceived signals that the company did not intend to send. The ability of the financial statement user to understand the merits of the qualitative disclosures of a large volume of individual matters, coupled with changing (and perhaps premature) estimates of the anticipated maximum possible loss from these contingencies, will likely lead to confusion and to "risk clouds" hovering over companies that are far broader than the liabilities that those companies will ultimately incur should merit.

For the reasons stated above, we do not support implementation of the changes proposed in the Exposure Draft in their current form. Honeywell also supports the comments on the Exposure Draft which have been or are expected to be submitted by The Business Roundtable, the Committee on Corporate Reporting of Financial Executives International, the American Bar Association, the Corporate Environmental Enforcement Council, Morgan Lewis and Bockius (on behalf of the Superfund Settlements Project, the RCRA Corrective Action Project and the American Chemistry Council), Bingham McCutchen on behalf of the Asbestos Study Group, and Cleary Gottlieb Steen and

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Hamilton. We would welcome the opportunity to participate in one of the Roundtable meetings FASB intends to hold regarding the Exposure Draft.

In light of the complexity of the issues described above and the critical importance of ensuring the accuracy, clarity, transparency and timeliness of financial reporting, we do not believe that the changes to the disclosure requirements set forth in FASB Statements No. 5 and 141R should be implemented for fiscal periods beginning after December 15, 2008.

Thank you for your consideration of the comments raised in this letter.

Sincerely,

David J. Anderson

Senior Vice President and Chief Financial Officer

Seter M. Kreindler

Peter M. Kreindler Senior Vice President and

General Counsel