August 8, 2008



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 Norwalk, Connecticut 06856-5116



LETTER OF COMMENT NO. 141

RE: Exposure Draft, Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)

Dear Mr. Golden,

Safeway Inc. (Safeway) appreciates the opportunity to comment on the above-referenced Exposure Draft. We support the Board's objective of enhancing financial communication and transparency. Statement No. 5 has passed the test of time extremely well because its concepts are broad and apply well to many situations. Our responses to the questions from the Exposure Draft appear in Exhibit 1. First, we would like to emphasize a few points that we feel very strongly about.

Litigation and prejudicial disclosures. We believe that the proposed disclosures as they would be applied to cases of material litigation, would result in disclosure of prejudicial information in almost every instance. For the remainder of situations where Statement 5 is applied we do not foresee significant problems with potentially prejudicial disclosures.

Litigation is a highly unpredictable event as to process, course, timing and monetary outcome. The process is fluid with sharp turns, reversals and unanticipated changes of course in pursuit of a resolution with both sides presenting differing views of the same case. Opposing counsel will inevitably argue to a judge or jury that any disclosed estimate of damages or reserves is an admission of responsibility and damages.

Safeway's Senior Vice President and General Counsel, Robert Gordon, is very concerned about the prejudicial impact of the proposed disclosures and the affect on attorney-client privilege. He has read the comment letter submitted to the Board by the Association of Corporate Counsel and strongly endorses it's comments. We did not want to repeat the legal arguments from that letter, but cannot over emphasize our opposition to the proposed disclosures as they pertain to litigation.

Additionally, while there are parallels to income tax contingencies comprehended by FIN 48, the dispute resolution environment for tax matters is substantially different from that of general litigation. The Board should not consider any comparison to FIN 48 to conclude they are on the right course.

Insurance and recoveries. We support the Exposure Draft addressing insurance programs and other recoveries. Safeway has risk management programs to prevent or limit situations that can lead to litigation. Significant components of these programs are our insurance coverages, processes for subrogation of claims, and other methods of recovery from other responsible parties. Our insurance partners frequently play an important role in the management of cases and their resolution. Our management treats insurance and recoveries as an integral part of claims management.

Our only reservation is the acknowledgement of insurance might embolden plaintiff counsel. We would reserve the right of nondisclosure if we thought this was prejudicial.

Reconciliations. Loss contingencies is a broad topic that covers several balance sheet items. A requirement to reconcile every amount on the balance sheet covered by Statement 5 would result in an excessive number of reconciliations or the combination of several unrelated items. Due to the all-inclusive nature of reconciliations, they fail to have a clear relationship to materiality, resulting in the potential disclosure of many unrelated, immaterial items.

A reconciliation of litigation reserves has the potential for revealing prejudicial information. Where there is only one case or changes to only one case at a time, aggregation will not be effective.

We believe that disclosure of material year-end balances for liabilities and recoveries is appropriate.

The attached exhibit contains our responses to the specific questions raised in the Exposure Draft.

We would be pleased to discuss our comments with you at your convenience.

Sincerely,

David F. Bond

Senior Vice President,

Finance and Control

Exhibit 1

Response to Individual Questions Raised in Exposure Draft, Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)

1. Will the proposed statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental cost?

In general we do not believe the benefits exceed the costs of prejudicial disclosure, particularly as it pertains to litigation. Safeway supports increased transparency in financial reporting and believes there are good aspects of the Exposure Draft, but also some damaging ones.

For example, we support additional disclosure about recoveries from insurance, subrogation or other third parties. Evaluation of recoveries is an integral part of assessments of litigation by management and counsel. We have programs to limit risks of litigation and insurance is an important component. There should be integrated disclosure of potential losses and recoveries.

2. Do you agree with the Board's decision to include within the scope of this proposed statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5?

We agree with the treatment of unfunded benefit obligations arising from multiemployer plan withdrawal in a manner consistent with other contingencies.

3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity?

We believe companies should disclose all cases that if resolved unfavorably could have a catastrophic effect. Restricting the disclosure of any cases to a one-year period until resolution is unworkable and of questionable value.

First, as we discuss elsewhere in this letter the unpredictable nature and variables involved in resolving litigation and disputes makes it nearly impossible to predict with any accuracy the timing of when a case may be resolved.

Second, because of the unpredictability of the process of litigation we sometimes win cases we thought we might lose and sometimes we lose when we thought should win.

However let's not force management to make disclosures that would prejudice the case in any way.

4a. Do you believe that this change (" the Board decided to require entities to disclose the amount of claim or assessment against the entity, or, if there is no claim or assessment amount, the entities best estimate of maximum possible exposure to loss") would result in an improvement in the reporting of quantitative information about loss contingencies?

It would absolutely not result in improvement. If a plaintiff has made a claim for a specific amount, that is factual and should be disclosed. However, management cannot assume the position of the plaintiff and make a legitimate estimate of damages. This is conceptually unrealistic.

Additionally, it would be very damaging to disclose a maximum possible exposure since the opposing counsel could present as an admission of responsibility. No matter how well the disclosure is worded and regardless of the company's actual responsibility, it will not be portrayed fairly in court.

4b. Do you believe that disclosing possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure?

Again we think it would be very damaging to disclose ranges of possible loss. Such estimates would be highly prejudicial to the outcome.

4c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill user's needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

We think in most cases cautionary wording can be crafted to give indications that an adverse result, or especially an unexpected one, could be a large number. The vagaries and unpredictability of litigation make establishing any estimate a very unreliable process. Just because it is a number does not make it a quality number.

5. If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss that is meaningful to users?

We believe that any estimate provided in such circumstances would amount to mere conjecture.

The maximum possible loss cannot reasonably be estimated until discovery proceedings are completed, all relevant facts are learned and damages are assessed. Even then, estimates of maximum possible loss are subject to significant change. Each case is unique and past experience is not necessarily indicative of future outcome. For example, it is impossible to predict what a particular jury might award.

When faced with such a subjective estimate, the natural tendency of most companies would be to make the most conservative estimate possible. This further dilutes any benefit a reader might gain from such a disclosure.

Finally, the amount of such an estimate and how the company derived such an estimate might be used against the company in legal proceedings.

6. Should disclosure of the amount of settlement offers made by either party be required?

No. We agree with the Board's conclusion on this subject.

7. Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in amounts recognized in the financial statements?

We have a number of concerns about the proposal for a tabular reconciliation.

Loss contingencies is a broad topic that covers several balance sheet items. A requirement to reconcile every amount on the balance sheet covered by Statement 5 would result in an excessive number of reconciliations or the combination of several unrelated items. Due to the all-inclusive nature of reconciliations, they fail to have a clear relationship to materiality resulting in the potential disclosure of many unrelated, immaterial items.

In the situation where there is only one major case or one major change at a time this new disclosure might allow a plaintiff to assess changes in reserves which we find prejudicial.

We believe that annual disclosure of total accruals for liabilities and recoveries would be a good alternative solution.

We also believe the Board's conclusion that there is no right of offset because there are potentially more than two parties involved is technical escapism. While there are almost always multiple parties participating economically, there are usually just two sides, the payers and the recipients. We also sense it is the Board's view that recoveries and losses are unrelated events and not worthy of appearing together. We strongly disagree.

8. This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

We agree that there should be an exemption from disclosing prejudicial information whether it is on an individual case basis or on an aggregate basis. However, we do not believe that the need for such an exemption will be rare.

9. If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11?

No. We do not believe that it is possible to aggregate the required disclosures at a level that would prevent linkage to a specific case and still provide the qualitative disclosure called for by the proposal. How do you aggregate qualitative information and be informative? Additionally, if you have only one significant case at a time or multiple cases but only one material change at a time, any changes will be obvious and the aggregation fails its purpose.

We do not believe that prejudicial exemption should be rare, since we believe that the required disclosure will almost always be prejudicial to the company.

10. The existing disclosure requirements of International Accounting Standards 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rate. This proposed Statement includes languages indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare. Do you agree with the Boards decision? If not, what do you recommend as an alternative?

We cannot comment on the experience of the international community. However based on our experience in the legal environment in the United States where we primarily operate, we believe that the required disclosure will almost always be prejudicial to the company.

We believe that the standard should be that the Company may rely on the opinion of outside counsel as to whether a particular case qualifies for the prejudicial exemption.

11. Do you agree with the description of prejudicial information as information whose "disclosure could affect, to the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define prejudicial information and why?

We believe this standard should be expanded to include any information whose disclosure might constitute a waiver of attorney-client privilege or attorney product immunity.

12. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should tabular reconciliation be required only annually?

We believe that the current rule should be applied to any new disclosure. That is, the footnotes to the interim financial statements should refer the reader to the prior annual financial statements and provide any material updates. We are not in favor of tabular reconciliation for the reasons specified earlier in the accompanying letter. If the Board persists presentation should be no more often than annually. Again, we believe reconciliation will lead to disclosure of prejudicial information.

13. Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement?

No.

14. Do you believe it is operational for entities to implement this proposed statement in fiscal years ending after December 15, 2008?

No, we believe that this exposure draft raises significant issues that cannot be adequately addressed by the upcoming year-end.