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Technical Director  
File Ref 1840-100

Dear Director,

I appreciate the opportunity to comment on the proposed ASU for Contingencies. I have prepared some thoughts based on the questions for respondents. The proposals are complex and the time to comment very limited. I would suggest that additional time be granted for a more complete analysis of the issues by key constituents in order to facilitate a proper discussion of the effects of the proposed guidance.

**Question 1**

The proposed standard has many provisions I feel are not operational. I feel the disclosures called for still risk exposing privileged information, compromising legal strategies, setting targets for plaintiff settlement demands, and even spawning lawsuits where none may otherwise have materialized. Introducing scientific journals into the mix gives plaintiffs more ammunition in that they can then point to management's consideration of them in fixing judgment or settlement amounts sought. The guidance still needs considerable revision and preferably should be scrapped altogether, in favor of remaining under the SFAS 5 guidance. The Board may be loathe to follow the latter course in view of all the effort expended to date, but should consider the possibility that the costs of achieving the objectives are simply too great in comparison to the benefits to warrant further work. In addition to the costs of actual implementation of the standard the Board must consider the potential costs of increased litigation expenses and inflated lawsuit settlements.

By definition, investments involve risk. Also by definition, contingencies carry uncertainty; that's part of the risk. When the uncertainty deals with lawsuits, it is counter-productive to attempt to give investors all the information they wish they could have. Too much of it is speculative, and what isn't speculative is likely privileged and should stay that way in order to facilitate proper management of the legal process.

**Question 2**

There may be difficulty auditing some aspects of the proposed standard. Paragraph 450-20-50-1C requires disclosure of an unasserted claim if it is considered probable a claim will be asserted even where there has been no manifestation of awareness of a claim by a potential claimant. If no potential claimant appears to be aware and management simply chooses not to mention the matter to the auditor, it would be difficult for the auditor to discover through other audit procedures, even if

management has concluded a claim is probable. Assuming nothing has happened through the date of the report to indicate otherwise, there simply would be no other source through which the potential claim could come to light, no way of determining who to make inquiries of, or even what the inquiries should be.

The 450-20-50-1D “asserted but remote” contingency could also pose a problem: how do you determine the possibility of loss is remote? It may call for a legal judgment which an auditor is not qualified to make. The judgment may be based on privileged information that shouldn’t be made available to an auditor. This could result in a scope limitation. The provisions of 450-20-50-1F(f) cover what to disclose but not how to determine the possibility is remote, much less how to audit that the contingency is fairly presented as remote.

#### Question 3

The preferable course is to eliminate this proposed guidance altogether. However, if the Board decides to proceed, the provision to exempt privileged information should be restored. The reason for this is that in my view, the disclosures called for still compromise privileged information despite the Board’s intention to the contrary. If the result of restoring the exemption is a standard that is no different than SFAS 5 in practice, then so much the better.

#### Question 4

The proposed effective date is not at all operational. The standard will require much work to craft disclosures in a manner that keeps privileged information secure, if that’s even possible. Where applicable and permissible, analysis will also be required in order to properly aggregate contingencies. A delay of at least a year is needed, and two years for nonpublic entities. (But see Questions 6-7 below.)

#### Question 5

The proposed disclosures will not enhance and improve the information provided to financial statement users. The additional information required to be disclosed is likely to result in financial statements that are less understandable. There are too many uncertainties reduced to “black & white”, which are likely to be misconstrued by users as having a level of precision in excess of what they actually possess. I believe this is especially true of the information presented in the tabular reconciliation. The level of detail required in the table belies the nature of the information which it attempts to portray. In general, users are more likely to be confused and/or misled by the new disclosures and presentations.

The notes to the financial statements can already be quite voluminous, and each new disclosure requirement adds to the volume to the point the footnotes are in danger of becoming too clogged and tangled to be easily understood. In a brief session on the FASB ASC, I found requirements for tabular presentations for Deferred Taxes, Investment/Credit losses, Derivatives, Foreign Currency Matters, and Non-primary Beneficiary of VIEs. There are also some fairly extensive tables regarding Fair Value (ASC 820), and more proposed tables and/or tabular analyses in the proposed Financial Statement Presentation project. Furthermore, in cases where ranges are permitted, they would be difficult to fit into such a table. The tabular reconciliation should be eliminated.

#### Question 6

I believe the tabular reconciliation should be totally eliminated, but absent that, nonpublic entities should most definitely be exempt from the tabular reconciliation. Paragraph 450-20-50-1F(g) should be totally inoperative for nonpublic entities. Also, nonpublic entities' disclosures regarding possible litigation loss contingencies should be more heavily tilted toward publicly available information, since the financial statements will certainly be subpoenaed by any plaintiff. This will eliminate any possibility of disclosure of prejudicial information. Aggregation would not protect such information if the population of contingencies is low (or one). The "normal" users of the entities' financial statements should be able to get any additional required information by reason of their relationship with the entity (bank, insurance company, etc.). Including the information about courts, dates, parties, etc. would not be incrementally useful, since the plaintiff(s) would already have that information, the entity's bank and insurance company should request it as a matter of due diligence, and there is typically a very limited number of users outside of this ring.

The best course would be to eliminate this proposed standard altogether, but guidance more similar to SFAS 5 should be retained for nonpublic entities.

#### Question 7

Nonpublic entities are typically operated by persons not experienced in financial statement preparation and related disclosures. They are also generally not technically proficient enough to perform some of the analyses required by this proposal. This could have the effect of inadvertent disclosure of privileged information. A more extended period of time should be given in order for affected entities to become familiar with this standard and requirements. Alternatively and preferably, the standard will not be extended to nonpublic entities at all.

In closing, I would emphasize once again the significant problems in the guidance. Although the language seems to emphasize publicly available information, the practicality is that much of the disclosures still endanger privileged information. They also elevate speculation and estimates to an inappropriate level of implied certainty. The risks created by implementation of the guidance outweigh the risks that the objectives attempt to mitigate or quantify. The best course would be for the Board to simply drop the project and allow the guidance of SFAS 5 to continue to control.

Sincerely,

David L. Wagner, CPA