



American Institute of CPAs
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September 25, 2010

Russell G. Golden, CPA
Technical Director
FASB
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: July 20, 2010 Exposure Draft [ED] of a Proposed Accounting Standards Update (ASU), *Contingencies (Topic 450): Disclosure of Certain Loss Contingencies* [File Reference No. 1840-100]

Dear Mr. Golden:

One of the objectives that the Council of the American Institute of Certified Public Accountants (AICPA) established for the PCPS Executive Committee is to act as an advocate for all local and regional firms and represent those firms' interests on professional issues, primarily through the Technical Issues Committee (TIC). This communication is in accordance with that objective. These comments, however, do not necessarily reflect the positions of the AICPA.

TIC has reviewed the revised ED and is providing the following comments for your consideration.

GENERAL COMMENTS

Although TIC appreciates the Board's efforts to address the concerns expressed by respondents to the first exposure draft, TIC believes the revised ED continues to be unworkable, especially for private entities. The Board has not fully resolved the issue of prejudicial disclosure that could have an adverse effect on the outcome of claims/litigation for defendants or the audit issues identified in previous comment letters.

TIC recommends that the recognition, measurement and disclosure provisions of the existing FASB *Accounting Standards Codification* (ASC) Topic 450 remain unchanged for private entities and that none of the proposed amendments be adopted for private entities. Additional requirements that are needed for public companies should be added to the basic standards in a separate section. TIC would also support any solution that moved all additional disclosure requirements for contingencies to the SEC literature.

TIC cannot emphasize enough the need to harmonize GAAP standard setting with the AICPA's Auditing Standards Board and the Public Company Accounting Standards Board (PCAOB). The revised ED cannot be operational unless the American Bar Association and the audit standard setters can appropriately revise their agreement and then subsequently initiate the appropriate due process procedures to put through corresponding revisions to both sets of auditing standards.

TIC therefore believes that an effective date cannot be set until the audit issues are resolved. If the standard is to apply to private entities, which TIC would oppose, a one year deferral beyond the effective date for public entities would be sufficient for private entities.

TIC's views on the questions for respondents are presented below.

SPECIFIC COMMENTS

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

TIC agrees with the Board's objective to provide adequate and timely information to the users of the financial statements to assist them in assessing the likelihood, timing, and magnitude of future cash outflows associated with loss contingencies. However, TIC does not believe the proposed disclosures are operational.

The cost of obtaining information for the additional disclosures significantly outweighs the resulting benefits. The additional required disclosures will add unnecessary complexity to the footnotes and will increase the client's reliance on its outside counsel for assistance. This adds to the cost of preparing GAAP financial statements, especially for smaller entities that are least able to afford such costs. In particular, the disclosure of remote contingencies that may have a severe impact on the entity would not be decision-useful to most users of the financial statements for nonpublic companies and adds to disclosure overload for financial statement users.

One example of a new disclosure requirement that would be costly to implement is the disclosure of "other nonprivileged information that would be relevant to financial statement users to enable them to understand the potential magnitude of the loss." The reference to "other nonprivileged information" is vague and will be subject to varying interpretations. This will be a difficult and costly provision to implement, especially for remote contingencies with potential severe impact. As discussed below, these disclosures may also be prejudicial to the company. TIC recommends that the Board consider eliminating this disclosure since it represents highly judgmental and speculative information that is expensive to develop. It could also cost the company in other ways if the outcome of the case is adversely affected by the disclosure.

Another significant operational issue is the concern expressed by the American Bar Association that the revised ED may still threaten attorney-client privilege, as well as work-product protections, and may be prejudicial to their clients. If these barriers are

not eliminated, TIC is concerned that outside legal counsel may be able to cite the current AICPA – American Bar Association (ABA) treaty as a reason to refuse to provide the information requested for certain disclosures.

Even though the proposed Update is an improvement from the June 5, 2008 Exposure Draft, TIC still believes that the proposed disclosures may be highly prejudicial to certain nonpublic companies. Nonpublic companies with a limited number of loss contingencies may not be able to aggregate, which could potentially result in disadvantages in settlement negotiations by disclosing too much information to the counterparty.

One recurring example of potentially prejudicial disclosure exists within the broker/dealer industry. Lawsuits are fairly commonplace among broker/dealers, yet typically they are small enough to have only one or two lawsuits ongoing at any one time. The inability to aggregate disclosures could be especially prejudicial for this industry.

Under current standards, broker/dealers regularly have loss contingency disclosures, which are always a significant topic of discussion between the CPA and client management as to what is or is not required to be disclosed. TIC members are very concerned about the increased difficulty of those conversations under the proposed standard. The ED indicates that an entity “will need to exercise judgment” in determining whether disclosure is necessary. In particular, the decision to disclose remote contingencies with a potentially severe impact could be highly judgmental. Most attorneys will not be willing to disclose this information. TIC fears that the revised standard would create an environment where CPAs and attorneys become adversaries over disclosure issues. This can only have an adverse effect on private entities and the timeliness of their financial statements.

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

TIC does not believe the proposed disclosures are auditable. Responses from legal counsel to the auditor’s standard request for information regarding pending or threatened litigation, claims, and assessments is limited by the American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information (December 1975) (the “ABA Statement”). Therefore, auditors will not be able to audit the disclosures not corroborated by legal counsel due to the ABA Statement limitations. (TIC refers to the comment letters written by the ABA and the AICPA’s Financial Reporting Executive Committee for further discussion regarding these matters.) TIC would oppose any additional disclosures that would promote an increase in scope limitations or encourage entities to seek GAAP departures from financial statement users.

TIC would also like to remind the Board that the scope of this proposal is not limited to audited GAAP financial statements. It will also apply to those that are compiled or reviewed. Therefore, TIC believes the Board should consider how the revised ED will

affect those engagements. Although CPAs who perform compilations and reviews are not required to correspond with legal counsel about contingent liabilities, the client may need to work with its attorneys to meet its GAAP disclosure requirements. If the attorney declines to provide the information requested by GAAP, this may create a scope limitation. In a review engagement, the accountant cannot issue a report if a scope limitation exists. Therefore, it is important for the Board to understand that, in some circumstances, the proposed disclosures may be “unreviewable” as well as “unauditable.”

- 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 disclosures 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**
 - d. Permit information to be presented on an aggregated basis with other similar loss contingencies.**

If not, please explain why.

TIC believes there should be an explicit exemption for nonpublic companies from disclosing information that is “prejudicial” to the reporting entity. The revised ED will require nonpublic companies to disclose certain remote loss contingencies, which, as mentioned above, might be problematic and prejudicial to the entity’s interests.

A significant number of nonpublic companies with a limited number of loss contingencies will not be able to take advantage of the amendment in this proposed Update to present information on an aggregated basis with other similar loss contingencies.

- 4. Is the proposed effective date operational? If not, please explain why.**

TIC does not believe the proposed effective date is operational since the Board should continue to work with the AICPA, PCAOB and ABA to address any pending major concerns prior to issuing the final proposed Update.

- 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.**

TIC does not believe the proposed disclosures will enhance and improve the information provided to financial statement users for nonpublic companies.

The following cite from the August 20, 2010 J. P. Morgan Chase & Co. comment letter to the Board supports TIC's view that users of private company financial statements are not seeking and do not need the enhanced disclosures proposed in the revised ED:

In our experience as a user of financial statements, we have found that the disclosure requirements included in ASC 450 provide an adequate foundation for disclosures regarding the risks associated with loss contingencies. While we acknowledge that certain enhancements could be useful (for example, increasing consistency in practice regarding the level of disclosure), the Firm understands that disclosure of too detailed information by an entity would be adverse to the Firm's interests as a lender or investor and that providing such prejudicial information represents a significant "cost" to the entity and its stakeholders. As such, we believe that the existing ASC 450 disclosure requirements achieve the appropriate balance: it ensures that information related to the loss contingencies is made available to investors, while information regarding strategies and management estimates that may adversely affect the entity's interests in the resolution of contingencies are shielded from disclosure.

The Board assumes that the additional, proposed disclosures will "enable users to make a more informed assessment of the likelihood, timing and amount of future cash outflows relating to loss contingencies." TIC believes that enhanced disclosures would not provide users with the ability to predict future events with more certainty. TIC understands that investors don't like surprises, but simply providing more information will not allow financial statement users to predict the unpredictable, especially for remote contingencies with a potentially severe impact.

TIC understands and appreciates the Board's urgency to correct disclosure deficiencies that have been cited by public company users. However, TIC believes that the cost/benefit equation for private entities has been sacrificed in the name of theoretical purity and the need to satisfy public company investors. Before adopting these new requirements for nonpublic entities, TIC recommends the Board engage in an outreach effort with the financial statement users within TIC's constituency to determine whether more disclosure is really needed.

- 6. Do you agree that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not, please explain why. Are there any other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.**

TIC agrees that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update. TIC believes the tabular reconciliation may not be as useful as narrative disclosures. Nonpublic entities

typically have a limited number of contingencies that are being recognized, and the substance of each issue is better explained in a narrative fashion.

However, as discussed in the General Comments section above, TIC believes that nonpublic entities should be exempt from all of the proposed revisions in the revised ED for the following reasons.

- It will force new cost burdens (discussed above) on all private entities with contingent liabilities that prepare their financial statements in accordance with GAAP and have them audited, reviewed or compiled.
- It will extend the time needed to complete an audit, review or compilation such that users will have to wait longer to obtain an entity's financial statements.
- Some of the disclosures may be prejudicial.
- Financial statement users within TIC's constituency are not asking for new disclosures.
- The excessive cost cannot be justified for disclosures that discuss highly speculative matters.

TIC believes two possible alternatives would be preferable. One alternative is to leave ASC Topic 450 as is for nonpublic entities and insert a separate section within the topic for additional requirements applicable to public entities. The second alternative was presented in the September 2, 2010 comment letter from Mayer, Hoffman & McCann, P.C., and would involve abandoning this proposal in favor of asking the SEC to develop additional contingency disclosures for public entities under SEC Regulation S-K. As discussed in that letter, this alternative would eliminate the "auditability" issues and would have other stated advantages.

7. The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.

Please refer to Question #4. The final standard should not become effective until all ABA treaty/audit issues are resolved. If the Board decides to adopt some or all of the proposed revisions for nonpublic entities, the transition period should be at least one year longer than the transition period for public companies.

8. Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.

Not applicable to nonpublic companies.

TIC appreciates the opportunity to present these comments on behalf of PCPS member firms. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Philip J. Santarelli". The signature is written in a cursive style with a long horizontal line extending to the right.

Philip J. Santarelli, Chair
PCPS Technical Issues Committee

cc: PCPS Executive and Technical Issues Committees