



LETTER OF COMMENT NO. 57



August 6, 2008

VIA e-mail to: director@fasb.org

Financial Accounting Standards Board
Technical Director
401 Merritt 7
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Norwalk, Connecticut 06856-5116

File Reference: No. 1600-100 — Disclosure of Loss Contingencies

FedEx Corporation has reviewed the Board's proposed Statement of Financial Accounting Standards ("SFAS") regarding Disclosure of Certain Loss Contingencies, and we submit this letter of comments on the proposed statement.

While some companies' disclosures regarding loss contingencies may not have lived up to the spirit of the requirements of SFAS No. 5, we do not support the new rule proposal as presently drafted. As described below, we do not believe the proposed statement is workable and recommend significant redeliberation be undertaken with more input from the legal community. In this regard, we concur with the views expressed in the comment letters from the American Bar Association and the Association of Corporate Counsel.

In order to give proper consideration to all the complex issues raised by the proposed statement, we believe the effective date should be deferred until the proposal can be fully vetted and harmonized with international standards. In the interim, we believe the Board should consider issuing interpretative guidance that clarifies the requirements of the existing standards to address the concerns voiced by financial statement users about more timely and transparent disclosure of loss contingencies. Included in our comments are some specific considerations for such interpretive guidance.

Loss contingencies, particularly those related to pending or threatened legal claims under the U.S. system of justice are inherently difficult to measure, especially early in the proceeding. The amounts claimed by a plaintiff in a proceeding are not bound by a consistent model of logic similar to those applied to record and report amounts in financial statements. Plaintiffs often make demands that far exceed the amount of real harm suffered, or the amount that is ultimately paid in a settlement or judgment. Therefore, disclosure of the amount of each claim would not be meaningful and might encourage some plaintiffs to inflate their claims to

ensure they are disclosed in financial statements. Moreover, in many class action matters, monetary damages are not stated at the outset of the case. Therefore, we believe disclosure of the amount of each claim (as set forth in paragraph 7 of the proposed statement) should not be mandated.

Also, we believe the paragraph 7 requirement to disclose at the onset of each pending claim an entity's best estimate of maximum exposure to loss and the likely future course of events in the claim is impractical and inherently prejudicial in virtually every instance. Not only does such quantitative and qualitative disclosure require the entity to waive the attorney-client privilege by revealing the mental impressions and work product of its legal counsel, but it also has the practical effect of setting a floor for any future settlement discussions. We expect widespread use of the prejudicial exemption by most companies involved in *significant litigation, which will unduly pressure management and their auditors, and subject companies to extensive second guessing by regulators.* Litigation, especially in U.S. courts and before U.S. juries, is inherently unpredictable. Typically, the potential exposure and most likely outcome of a lawsuit cannot be determined, if at all, until late in the development of the matter — well after the matter progresses through discovery and the court rules on important procedural issues, such as class certification and summary judgment. Therefore, in our view, the extensive and detailed disclosure, especially of quantitative information, required by paragraph 7 of the proposed statement defies the practical realities of how legal matters typically develop and their inherent unpredictability.

At their earliest stages, loss contingencies often have the character of risk factors -- important for users of financial statements to be aware of in evaluating the entity, but not objectively quantifiable. In that regard, it may be helpful for interpretative guidance to encourage more qualitative disclosure about the potential adverse consequences of an unfavorable outcome to material loss contingencies. For example, when a loss or range of loss cannot be estimated, it may be possible to assess whether, in management's judgment, the reasonably possible loss is (a) *likely immaterial*, (b) *potentially material to a given period*, or (c) *could have a "severe impact"* as that term is defined in the proposed statement. In addition, incremental qualitative information could address whether an unfavorable outcome could require a substantial one-time settlement payment, impact long-term profitability, cause a material change to business practices, or result in the alteration of one or more of the entity's products or services. This type of information would appear to go a long way towards addressing investor concerns about disclosure practices.

Additionally, the proposed statement would lower the threshold for disclosure to a level that could result in information overload, obscuring the more important contingencies that are required to be disclosed under the current "at least reasonably possible" threshold. We recommend the Board issue interpretative guidance to the existing requirements clarifying disclosure expectations, as opposed to establishing a requirement to disclose virtually the entire inventory of legal contingencies.

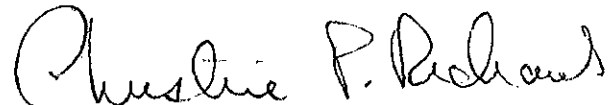
Finally, we believe that implementing the proposed statement prior to completely harmonizing international accounting standards in this area could have a material adverse effect on the U.S. capital markets, further disadvantaging U.S. public companies who compete for capital, customers and employees on a global basis. If foreign companies are not required to report this very sensitive information in the same way, the competitive landscape is tilted and American business is harmed.

We appreciate the opportunity to present our views on this very important topic.

Sincerely,



John L. Merino
Corporate Vice President
and Principal Accounting Officer



Christine P. Richards
Executive Vice President,
General Counsel and
Secretary

JLM: caw