

From: [Tracy Stewart](#)
To: [Director - FASB](#)
Subject: File Reference No. 1840-100
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August 20, 2010

Russell Golden, Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Comment on Exposure Draft - Disclosure of Certain Loss Contingencies: Amending FAS 5 - File Reference No. 1840-100

Dear Mr. Golden,

Shareowner Education Network is a new organization that was formed to help all shareowners become educated and empowered, largely through the use of technology. Complete information is a central component needed for owners to provide monitoring and make informed voting decisions. It is particularly crucial for investors to have complete and accurate information about liabilities in financial statements. We are writing to comment on the July 20, 2010 FAS 5 exposure draft on loss contingencies. We believe important gaps remain in the required disclosures as drafted in this rule revision. However, these changes do represent an important step toward providing investors the full breadth of information they need. We urge you to consider the following provisions which we promote in conjunction with several other investor groups on this timely issue:

1. Clarify further the categories of non-privileged information that should be disclosed in financial statements. We support the elements of the new proposal calling for additional disclosures of non-privileged qualitative and quantitative information on contingent liabilities in financial reports to allow investors to better analyze the magnitude of potential liabilities. Of particular importance is the proposal to require disclosure of any expert estimates advanced as testimony in litigation. This disclosure requirement should also include any such estimates that have been provided on a non-confidential basis through the discovery process. In addition, the finalized version of the Statement should clarify that relevant publicly available information may also include settlements and judgments in litigation facing other companies in similar matters, so that such information must also be disclosed to allow investor benchmarking of liabilities.
2. Additional examples needed to clarify disclosure principles and duties. The

Exposure Draft provides inadequate guidance on the kinds of information that should be disclosed in particular liability scenarios to render phased disclosure to be operational in practice. Therefore, the Board should provide additional examples prior to finalization of the Statement. These should include, among other things, examples of the kind of information that must be included in the event of product liability claims such as product toxicity scenarios.

3. Scientific literature indicative of risks of products or operations is relevant to long-term liabilities as well as accruals. We are supportive of the newly added Statement that the appearance of issues in scientific literature regarding hazards of corporate products and operations can serve as a trigger for disclosure. However, the final version should clarify that such scientific literature can trigger other contingent liability disclosures beyond the question of accrual of liabilities. These emerging issues in scientific literature may also be a trigger for disclosure of potentially severe long-term liabilities, or as yet unasserted claims, and the final Statement should clarify this.
4. Ensuring disclosure of remote and severe liabilities. Additional guidance is required regarding disclosure of remote or severe liabilities. The new requirement for disclosure of remote or severe liabilities creates, in principle, an expanded obligation for disclosure, but leaves a loophole of discretion allowing the financial statement preparer to fail to disclose a large claim if the management deems such claim to be “frivolous with an artificially inflated amount.” Clarification is needed to prevent this exception from circumventing the new disclosure requirement.
5. Disclosure of unasserted claims where outcome could be severe. The exposure draft does not require disclosure of the asserted claims unless the financial statement preparer concludes both that it is probable that a claim will be asserted and there is a reasonable possibility that the outcome will be unfavorable. This is an inappropriate threshold in situations when the management is aware of potentially severe liability scenarios, even though no claims have yet been asserted. A qualitative disclosure requirement should be included for potentially severe liabilities, even when those claims may be unasserted and viewed as remote by the management.
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6. Eliminating the “prejudicial disclosure” exemption. We agree that now that the board has eliminated a requirement for the management to disclose its worst-case liability estimate, and has based the principal disclosure obligations on publicly-available, non-privileged information, it is no longer necessary or appropriate to include a separate prejudicial disclosure exemption within the Statement.

Thank you for your consideration. Please feel free to contact me if you require any additional information.

Sincerely,

Tracy Stewart
Executive Director
Shareowner Education Network

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