



**Investment Office**

P.O. Box 2749

Sacramento, CA 95812-2749

Telecommunications Device for the Deaf - (916) 795-3240

Phone: (916) 795-3400

August 19, 2010

Via e-mail: [director@fasb.org](mailto:director@fasb.org)

Russell G. Golden, Technical Director  
FASB Members  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

Dear Mr. Golden & Board Members:

Re: File Reference No. 1840-100

I am writing on behalf of the California Public Employees' Retirement System (CalPERS), the largest public pension fund in the United States with approximately \$206 billion in global assets and equity holdings in over 9,000 companies. CalPERS provides retirement benefits to over 1.5 million public workers, retirees, and their families and beneficiaries. As a significant institutional investor with a long-term investment horizon, CalPERS has a vested interest in maintaining the integrity and efficiency of the capital markets. CalPERS philosophy is to promote best practices that facilitate integrity in financial reporting.

Thank you for the opportunity to comment on the Exposure Draft (ED) on proposed accounting standards update, Contingencies (Topic 45), Disclosure of Certain Loss Contingencies. CalPERS supports the Financial Accounting Standards Board's (FASB, Board) proposed changes of the disclosure threshold. The proposed threshold expands the population of loss contingencies and leads to more timely disclosure of remote loss contingencies.

Although this ED scales back some of the improvements proposed in 2008, CalPERS is generally supportive of this and agrees that enhanced disclosures of loss contingencies recognized as liabilities in a statement of financial position improves current accounting practices and provides financial statement users with important, timely information. CalPERS, as a long-term investor, believes that disclosing contingent liabilities, such as quantifiable environmental liabilities, assists investors in assessing future cash flows associated with loss contingencies. We agree that disclosures should include information about the risks loss contingencies pose to an entity and its potential and actual effects on the entity's financial position, cash flows and results of operations.

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CalPERS believes it is important to require the disclosure of expert estimates advanced as testimony in litigation. This requirement should also include estimates provided on a non-confidential basis through the discovery process. CalPERS is concerned that the ED provides inadequate guidance on the types of information and scenarios to disclose. Specifically, liability scenarios that render these staged disclosure principles to be operational in practice. Prior to finalizing the Statement, the Board should provide additional examples, including the types of information that must be included in the event of product liability claims.

CalPERS supported and commented in August 2008<sup>1</sup> to the FASB on the need to improve and increase disclosures of certain loss contingencies that would assist users in assessing the likelihood, timing and amounts of cash flows associated with loss contingencies. Additionally, we reinforced the need for extensive disclosure in addition to quantitative disclosures (claim amount for asserted litigation contingencies), other relevant nonprivileged information and information about possible recoveries from insurance in a tabular reconciliation. CalPERS continues to support the decision of the Board to require tabular reconciliation in interim and annual financial statements, and believes the significant benefits in these disclosures add additional value to investors.

As referenced in our previous letter, CalPERS does not agree that a contingency or contingencies must meet a “severe impact” standard, which is a higher threshold than material. We do not believe it is in the best interests of investors to increase the threshold from material to severe impact since material is defined as matters that are important enough to influence a user’s decisions. The new requirement for disclosure of remote/severe liabilities creates, in principle, an expanded obligation for disclosure, but leaves a loophole of discretion that may allow 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 will prevent this exception from diluting the intention of the proposed standard.

Since the Board eliminated a requirement for management disclosure of its worst-case liability estimate and based the principal disclosure obligations on publicly available, nonprivileged information, CalPERS supports aggregating the qualitative and quantitative disclosures, provided all reasonable estimates and details of the claim are included. CalPERS believes transparent disclosure benefits all users of financial statements and provides a tool to gauge risks that impact a company’s financial position. This tool further assists in identifying the risks and rewards of a company. CalPERS does not support the exemption of

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<sup>1</sup> CalPERS Comment letter to FASB, Rile Reference No. 1600-100 Proposed Statement – Disclosure of Certain Loss Contingencies – FASB Statements No. 5 and 141 © Business Combinations, August 8, 2008.

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nonpublic entities from the tabular reconciliation disclosures or the deferment of the effective date.

Lastly, CalPERS supports the Securities and Exchange Commission's requirements to provide financial statement information in the Extensible Business Reporting Language (XBRL) interactive data format. This format should include the qualitative disclosure and quantifiable tabular requirements in this ED.

Thank you for considering our comments. If you would like to discuss, please call me at (916) 795-4129.

Sincerely,



MARY HARTMAN MORRIS  
Investment Officer  
Global Equity

Enclosure: August 8, 2008 Letter on File # 1600-100 – Disclosure of Certain Loss Contingencies

cc: Joseph A. Dear, Chief Investment Officer – CalPERS  
Eric Baggesen, Senior Investment Officer – CalPERS  
Anne Simpson, Senior Portfolio Manager – CalPERS

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August 8, 2008

Russell G. Golden

Technical Director

Board Members

Financial Accounting Standards Board

401 Merritt 7

P.O. Box 5116

Norwalk, CT 06856-5116

**Via E-Mail: [director@fasb.org](mailto:director@fasb.org)**

**File Reference:** No. 1600-100 Proposed Statement – *Disclosure of Certain Loss Contingencies – FASB Statements No. 5 and 141(R) Business Combinations*

Dear Mr. Golden & Board Members:

I am writing you on behalf of the California Public Employees' Retirement System (CalPERS). CalPERS is the 4th<sup>1</sup> largest retirement system in the world and the largest public pension system in the United States. CalPERS manages approximately \$248 billion in assets providing retirement and health benefits for nearly 1.5 million members.

Thank you for the opportunity to comment on the proposed statement of financial accounting standards as it pertains to disclosure of certain loss contingencies and amendment of FASB Statements (SFAS) No. 5 and 141(R). As an investor and provider of long-term of capital, CalPERS has a great interest in the improvement of financial reporting. We agree that existing guidance does not provide sufficient information in a timely manner to assist users in assessing the likelihood, timing and amounts of cash flows associated with loss contingencies. CalPERS believes that improved disclosures should ensure that investors and other users of financial statements are not surprised by previously undisclosed liabilities and settlements that are material to the financial reporting of the entity. We believe that improvement in contingent liabilities disclosure will assist in promoting the integrity, efficiency and transparency of the capital markets.

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<sup>1</sup> [Pensions & Investments](#), "P&I/ Watson Wyatt world's 300 largest retirement plans", 2007 Data book, Page 28, December 24, 2007.

### **Improvement in Current Accounting Practice**

CalPERS agrees that enhanced disclosures about loss contingencies that are (or would be) recognized as liabilities in a statement of financial position will improve current accounting practices and provide financial statement users with important, timely information. CalPERS, as a long-term investor, believes that disclosing contingent liabilities such as quantifiable environmental liabilities will assist investors in assessing the likelihood, timing and amount of future cash flows association with loss contingencies. We agree that disclosures should include information about the risks those loss contingencies pose to the entity and its potential and actual effects on the entity's financial position, cash flows and results of operations. As an investor, it is important to know the maximum potential exposure, the range (low and high) the contingency may fall between, best estimate of actual liability and key assumptions going into any calculations. Also, as legal filings are amended, CalPERS believes changes in the status of the contingency, including requests for damages or relief should be updated.

CalPERS agrees that if a contingency or contingencies are expected to be resolved in the near term (period time not to exceed one year), an entity should disclose quantitative information about the exposure to loss from the contingency and qualitative information about the contingency sufficient to enable investors to understand the risks posed to the entity. We do not agree that the contingency or contingencies must meet a "severe impact" standard, which is a higher threshold than material. CalPERS does not believe it is in the best interests of investors to increase the threshold from material to severe impact since material is defined as matters that are important enough to influence a user's decisions. If a matter is important enough to influence or impact a user's ability to make an informed decision and better allocate their capital (to maximize returns), then it should be disclosed as described in Paragraph 7 of the proposed amendments to SFAS No. 5 and 141(R).

### **Disclosure Principle and Threshold**

CalPERS supports the Financial Accounting Standards Board's (Board) decision to expand the population of loss contingencies that are required to be disclosed as well as disclosure of all contingencies where the entity is unable to assert that the likelihood of loss is remote. CalPERS agrees with the Board's decision that disclosing the claim or assessment amount would provide relevant, timely information about the maximum potential for loss and an entity should provide a discussion of the risks associated with loss contingencies and their actual and

potential effects on financial reporting. Clear transparent disclosures benefit all users of financial statements and provide an objective amount to gauge the risks an entity is exposed to which may impact its financial position.

We believe an entity should disclose claims against it, provide a description of the contingency, the amount of monetary claims, the anticipated timing of its resolution and a summary of any arguments or defenses the entity makes in a response to a complaint, including reasons why the entity does not believe it is liable for a loss contingency. Since a legal complaint is a public document, the information in it is not prejudicial.

### **Prejudicial Exemptions and Aggregation of Loss Contingencies Disclosures**

CalPERS does not believe a prejudicial exemption consistent with the notion of neutrality should be provided to reporting entities in disclosing contingencies on the basis that disclosure of the information could affect the outcome of the contingency itself. If the Board determines an exemption should be granted, then CalPERS believes the exemption should only be granted in extremely rare instances.

If this threshold of extremely rare is met and it is determined that disclosure of certain information about the contingency may be prejudicial to an entity's position, then aggregating the qualitative and quantitative disclosures would be acceptable as long as reasonable estimates are provided and, once it is determined the contingent disclosure is no longer prejudicial, the entity provides details of the claim.

### **Tabular Reconciliation**

Users of financial reporting information will benefit from the requirement for a tabular reconciliation for recognized loss contingencies in an entity's statement of financial position at the beginning and end of the period. CalPERS is in agreement that the tabular reconciliation will provide greater benefit to investors and other users of financial information if business combination contingencies, SFAS 141(R), are shown separately from amounts for loss contingencies that are accounted for in SFAS 5. CalPERS believes if the reconciliation is to be meaningful that the minimum disclosure as outlined in Paragraph 8 should be required. These include:

Russell G. Golden  
Technical Director  
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- Increases for loss contingencies recognized during the period,
- Increases resulting from changes in estimates of the amounts of loss contingencies previously recognized,
- Decreases resulting from changes in estimates or derecognition of loss contingencies previously recognized,
- Decreases resulting from cash payments (or other forms of settlement) for loss contingencies, and
- Included in pro forma, any subsequent events determined after the date of an entity's financial statements but prior to financial statements issued.

CalPERS agrees that the effect of recognized loss contingencies in a tabular reconciliation format should be required for both interim and annual financial statements.

CalPERS is in agreement that investors and all other users will benefit if enhanced disclosures on contingent liabilities are required for annual financial statements issued for fiscal years ending after December 15, 2008, and for interim and annual financial statements thereafter. CalPERS agrees that enhanced disclosures provide investors and other users a more informed assessment of the likelihood, timing and amount of future cash flows as well as the risks with more robust disclosures of contingent liabilities.

Thank you for considering our comments. If you would like to discuss any of these points, please do not hesitate to contact Mary Hartman Morris at 916-795-4129.

Sincerely,



Anne Stausboll  
Interim Chief Investment Officer

cc: Eric Baggesen, Senior Investment Officer – CalPERS  
Mary Hartman Morris, Investment Officer - CalPERS