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VIA E-MAIL ([director@fasb.org](mailto:director@fasb.org))

Mr. Russell G. Gordon  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

Re: File Reference No. 1840-100; Exposure Draft - Proposed Accounting Standards Update (Disclosure of Certain Loss Contingencies)

Ladies and Gentleman:

Whirlpool Corporation appreciates the opportunity to offer its comments on the Financial Accounting Standards Board (FASB) proposed accounting standards update "Disclosure of Certain Loss Contingencies" (the "Exposure Draft"). Whirlpool is the world's leading manufacturer and marketer of major home appliances which are sold to consumers in nearly every country in the world.

While Whirlpool appreciates FASB's thoughtful revisions to its June 2008 exposure draft to delete some of the most troublesome and burdensome elements contained therein, we believe that the Exposure Draft remains deficient in a number of areas. First, we believe that the Exposure Draft, if implemented as currently drafted, would provide users of financial statements with potentially unclear or misleading information with respect to a company's loss contingency profile. Second, we believe that the new disclosures required by the Exposure Draft would have a detrimental impact on a company's ability to effectively defend itself against threatened and pending litigation. Finally, the expedited effective date of the Exposure Draft for fiscal years ending after December 15, 2010 will impose substantial costs on preparers and increase the risk of late Form 10-K filings for fiscal 2010, particularly in light of the complexity of the disclosure requirements and the significant number of additional new disclosure burdens faced by preparers as a result of recent legislative and regulatory reforms.

### **A. Implementation of the Exposure Draft Would Require Potentially Misleading Disclosures to Users of Financial Statements and Would Obscure Important Disclosures**

We believe that expanding the scope of contingencies which must be disclosed, as well as the additional quantitative and qualitative disclosures required by the Exposure Draft, will detract from, rather than enhance, the disclosure of meaningful information provided under the current ASC Section 450.20 (formerly FAS 5).

As a multinational manufacturer and marketer of major home appliances, we are involved in various legal actions that arise in the normal course of our business in the United States and other jurisdictions. Under the current ASC Section 450.20, we disclose the legal actions that could have a material impact on Whirlpool and have a reasonable possibility of an unfavorable outcome. Under the Exposure Draft, we would be required to provide disclosures concerning all loss contingencies, including remote contingencies, if the realization of such loss would have a severe financial impact on the company in the near term. To disclose detailed information about losses that are not at least reasonably possible, will only result in more complicated and lengthy disclosure which is likely to obscure the importance of the relevant information we provide under the current standard. Further, users of the financial statements may well be unnecessarily alarmed, rather than enlightened, by disclosures of outcomes that are not only remote but also highly speculative.

Under the current ASC Section 450.20, where we can reasonably estimate the loss associated with a claim that has a reasonable possibility of an unfavorable outcome, we disclose our estimate, if material. These estimates are based on the professional judgment and reasoned analysis of legal professionals with experience in these matters. In contrast, the amount of claimants' demands or damage estimates provided in testimony by claimants' expert witness, which would be disclosed under the Exposure Draft, may have no legitimate basis whatsoever. If, as is frequently the case, the claimant does not make a specific demand for damages, the Exposure Draft would require disclosure of our best estimate of the maximum possible loss exposure. Disclosure of such information could present a misleading representation of the current loss contingency profile of a company to users of such company's financial statements. In addition, other parties will likely need evidential support for the disclosure, which might result in inquiries of legal counsel that risk a loss of the attorney-client privilege or work product protection.

## **B. Implementation of the Exposure Draft Would Have a Substantial Prejudicial Impact on Companies' Ability to Effectively Defend both Current and Potential Litigation**

Implementation of the Exposure Draft would have a substantial prejudicial impact on our ability to effectively defend Whirlpool in litigation. This result stems from the Exposure Draft's required disclosure of a company's internal risk assessment as well as such company's sources of recovery for a loss contingency.

Under the current ASC Section 450.20, information relating to a company's accruals for loss contingencies need not be disclosed unless the failure to do so could make the financial statements misleading. In contrast, under the Exposure Draft, a company is required to provide qualitative disclosures and a tabular reconciliation of accrued loss contingencies in any reporting period. These itemized and specific disclosures would offer plaintiffs a substantial advantage in litigation by providing insight into our confidential assessment of our potential exposure in any specific case or group of similar cases eligible for aggregation. At the very least, plaintiffs could use such disclosures to create a "floor price" for any settlement negotiations.

The Exposure Draft also requires companies to disclose information relating to possible sources of recovery if such information has been provided to a plaintiff or if it is "discoverable." In many instances, it is difficult for a company to properly ascertain whether such information is discoverable as such determination is generally made by the courts and, if discoverable, is often ruled inadmissible by a court as prejudicial. Further, in the event that a company discloses the existence of any insurance policy or other possible source of recovery, the Exposure Draft would make such information available to other plaintiffs' attorneys who may be tempted to bring claims they believe will be covered under a disclosed insurance policy in the hope of getting a quick settlement from the insurer.

## **C. The Timeline for Implementation of the Exposure Draft is Insufficient, Particularly in Light of Other Disclosure Related Obligations for Preparers**

We do not believe the timeline for implementation of the Exposure Draft allows sufficient time to prepare for the expanded disclosure requirements.

The number of parties involved and the scope of work entailed in order to comply with these requirements for fiscal year 2010 is daunting, particularly for global corporations such as Whirlpool. If the Exposure Draft is adopted, companies will be required to thoroughly analyze the requirements, ascertain what additional information must be gathered and train internal and external process partners on the new standards. Additionally, companies must have an opportunity to determine, with the assistance of legal counsel directly involved in each claim, what forms of aggregation are appropriate. Companies will also need to assess their internal control framework and ensure the

existence of adequate internal controls to gather, assess and review the additional information to be included in the expanded disclosure.

Concerns raised by the expedited timeline for implementation of the Exposure Draft are exacerbated by the unprecedented number of expensive and time consuming disclosure related obligations that public companies currently face, including new financial reform legislation and other regulatory initiatives. Particularly in the current turbulent economic climate, companies have limited resources to devote to complying with additional disclosure obligations. Considering that the benefit of the implementation of the Exposure Draft to investors is tenuous at best, and in consideration of the potential costs and risks to the preparers of the disclosure requirements set forth in the Exposure Draft, we believe FASB should refrain from implementing the Exposure Draft as currently proposed.

In conclusion, we believe the potential costs of expanded disclosure to companies and the risks that such disclosure will confuse rather than enlighten investors greatly outweigh any perceived benefits. We have serious concerns about the Exposure Draft and its potential impact. We urge FASB to reconsider the Exposure Draft and at minimum the timeline for implementation.

Sincerely,

Daniel F. Hopp  
Senior Vice President, Corporate Affairs  
and General Counsel