



3120 Breckinridge Blvd.
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September 14, 2010

By email to director@fasb.org

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

File Reference No. 1840-100

Dear Mr. Golden:

Primerica, Inc. appreciates the opportunity to comment on the Proposed Accounting Standards Update to Topic 450, *Disclosure of Certain Loss Contingencies* (the "proposed Update"). The stated objective of the proposed Update is to require disclosure of qualitative and quantitative information about loss contingencies to enable financial statement users to understand the nature of the loss contingencies, their potential magnitude, and their potential timing (if known).

Primerica appreciates the Board's additional considerations following the concerns raised from the June 2008 exposure draft on loss contingency disclosures. Although the current proposed Update is an improvement on the 2008 version, the current proposal still places publicly-traded entities in an extremely unfavorable position with regard to litigation contingencies because, if adopted, it would require such entities to disclose privileged litigation assessments and the amount of reserves established by an entity on specific litigation matters. By providing litigation opponents (and potential opponents) with such information, the proposal fundamentally would undermine attorney-client privilege, materially increasing the probability of loss contingencies becoming actual losses, and materially increasing the amount of those losses. These detrimental impacts ultimately would be borne by the most significant users of the entity's financial statements, namely shareholders. The additional information included in the proposed disclosures also ultimately would dilute the relevance of the contingency disclosures given the magnitude of analysis dedicated to remote or immaterial matters which may never come to fruition, and which by their very nature cannot be translated into a meaningful predictor of possible outcomes.

We urge the Board to consider alternatives that continue to preserve attorney-client privilege. Financial statement users should continue to have access to appropriate and relevant information without harming shareholders' interests by increasing the likelihood of remote liabilities becoming actualized nor by diluting disclosures with discussions of unpredictable remote or immaterial matters. We are providing more specific responses and recommendations throughout the responses noted below.

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



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We do not believe the proposed disclosures are operational. Please see our related responses to questions 2 and 3 below for expanded explanations.

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

The proposed disclosures are not auditable, as they rely entirely on privileged, judgmental assessments of the strengths and weaknesses of an entity's position in litigation. The American Bar Association's "Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information" (December 1975) was created to establish a framework that permits auditors to receive necessary information without undermining the attorney-client privilege. The AICPA's Statement on Auditing Standards No. 12 "Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments" (January 1976) ("SAS 12") corroborates this long-established (and effective) standard regarding auditor reliance on representations from management and counsel, including independent third party counsel as necessary, to ensure that there are no inappropriately excluded disclosures regarding loss contingencies. These policies together are referred to herein as "the Treaty."

Paragraph 5(d) of SAS 12 requires that an auditor, among other things, "obtain assurance from management, ordinarily in writing, that [management has] disclosed all unasserted claims that the lawyer has advised them are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards No. 5 (now ASC 450)." Paragraph 13 elaborates that:

"The auditor obtains sufficient evidential matter to satisfy himself concerning reporting for those unasserted claims and assessments required to be disclosed in financial statements from the foregoing procedures and the lawyer's specific acknowledgement of his responsibility to his client in respect of disclosure obligations... This approach with respect to unasserted claims and assessments is necessitated by the public interest in protecting the confidentiality of lawyer-client communications."

Paragraph 450-20-50-1C of the proposed Update requires disclosure of unasserted claims or assessments if it is probable that a claim will be asserted and there is a reasonable possibility that the outcome will be unfavorable – without regard to whether the loss is expected to be material. Paragraph 450-20-50-1D of the proposed Update requires disclosure of remote loss contingencies in certain cases, such as if the impact to the entity is potentially severe. Paragraphs 450-20-50-1F(a) and (b) of the proposed Update require disclosure of an estimated liability as well as the amount of damages claimed by the plaintiff.

The major components of these proposed disclosures, including the likelihood of an unfavorable outcome and the likely amount of such an outcome, are derived entirely from legal analyses of the claims asserted and the entity's defenses. The analyses require legal judgments about the nature and quality of evidence, the applicable law, and even intangible factors such as the anticipated approach of opposing counsel, the venue of the litigation, and other similar judgments. The number of variables is high, and management judgments are made based on privileged legal advice given by the entity's counsel. The specific legal advice and judgments generally are not available to the entity's auditors



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because making it available would waive attorney-client privilege and create an enormous disadvantage to the entity in managing the litigation. Therefore, the proposed disclosures would not be auditable.

Question 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 disclosure 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.

We believe that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is imperative if the proposed Update is adopted in its current form. As drafted, the proposed Update would require a company to disclose information that likely would be prejudicial to the reporting entity and that would materially impact litigation outcomes for publicly-traded companies. This detrimental impact to shareholders and other users would significantly exceed any benefit from the proposed disclosures. For this reason, we strongly encourage the Board to revise the proposed Update to include an explicit exemption from disclosing prejudicial information.

Specifically, Paragraph 450-20-50-1F(e) would require the disclosure of any amount that has been accrued with respect to a contingency that is at least reasonably possible, without regard to the disclosure's impact on a reader's understanding of the company's financial statements. This new requirement will negatively impact an entity's ability to defend itself in litigation. With such disclosures, an opposing party immediately gains insight into the entity's internal assessments and the amount of the potential payment anticipated by the entity and its counsel. Providing this information to the entity's litigation adversary has two important impacts that hamper the entity's ability to successfully conclude the litigation: (1) opposing counsel could argue in litigation that the reserve and accompanying disclosures are an admission of guilt; and (2) the disclosure would provide an opposing party with the amount accrued by the entity for the matter, making it difficult or impossible for settlement discussions to be concluded for an amount less than that reserved. In both regards, the proposed disclosures increase the likelihood of an actual loss, and increase the likely amount of that loss, all to the detriment of the entity's shareholders.

Similarly, as discussed in paragraph 450-20-50-1F(b), prematurely disclosing the basis for defense in a particular case also could provide a plaintiff with otherwise undiscoverable insights into an entity's legal strategy. Notably, the proposal as currently drafted allows entities to state that they have not yet formulated a strategy, but if one has been formulated, it must be disclosed. The proposal thus punishes



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proactive assessment of litigation matters, and such proactive assessment is one of the most effective tools for managing litigation to a successful resolution and for controlling risk to the entity for the benefit of the shareholders.

The tabular reconciliation and the aggregation concepts introduced in Paragraph 450-20-50-1F(d) of the proposed Update also expose significant prejudicial insight for reporting entities 'aggregating' only one or a very small number of material litigation matters. We recommend that the Board consider applying the aggregation requirements only if there are more than five claims to be aggregated, while exempting any disclosures that otherwise might have been aggregated and may produce prejudicial information. We recommend this exemption specifically but not exclusively apply to Paragraph 450-20-50-1F(g) proposing detailed reconciliations of changes in loss contingency estimates.

The proposed insurance and indemnification disclosures, especially when the information has not been provided to an opposing party, also present potentially prejudicial information that could dramatically impact the ultimate resolution of a litigation matter. Moreover, by following disclosures about a particular litigation matter from quarter to quarter, an opposing party could easily identify developments in management's thinking related to the case, weakening the entity's negotiating posture with regard to settlement. Potential litigation adversaries also would be able to follow the same disclosures, identifying those claims perceived by management to be more likely to succeed, and then use that information as a "road map" to initiate copycat lawsuits against the entity, also to the detriment of shareholders.

Proposed Paragraph 450-20-50-1D, which requires the disclosure of certain remote contingencies, would have the effect of informing opposing parties in litigation not only that a potential outcome is perceived as material but also that it could be 'severe' (a term that is not defined in accounting literature). Such disclosure clearly would reveal attorney-client privileged internal assessments about the potential materiality and impact of the claim, arming the opposing party with information that otherwise clearly would have been privileged. Much like the reserve-related disclosures, the discussion of management's assessment of potentially 'severe' contingencies greatly impairs the entity's ability to negotiate a settlement, because the opposing party will perceive that the entity's management regards the case as a "severe" threat to the entity.

In light of the significant disclosure of highly prejudicial information contemplated by the current proposal, we encourage the Board either to maintain the current disclosure standard reflected in ASC 450-20-50-1 (stating that "disclosure of the nature of an accrual... and in some circumstances the amount accrued, may be necessary for the financial statements not to be misleading") or to consider alternative exemptions that would not undermine attorney-client privilege.

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

Given the nature and volume of the incremental proposed disclosures, including a tabular rollforward of 2010 activity that will include retroactive analysis that has not been prepared or audited, combined with



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the auditability concerns addressed in our response to question 2 above, we do not believe the proposed effective date is operational. We recommend that the Board either:

- 1) add an exemption from disclosing attorney-client protected information and provide at least a six month window between the final adoption of any new disclosure requirements and the effective date of those requirements, or
- 2) delay further efforts on the proposed Update until the Treaty referred to in our response to question 2 can be amended, any additional related impact on the disclosure standards can be sufficiently revised, and at least a six month window between the final adoption of any new disclosure requirements and the effective date of those requirements can allow financial statement preparers to appropriately incorporate any necessary changes into their financial reporting processes.

Question 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?

We acknowledge the proposed disclosures would provide more information to financial statement users. However we do not believe that the incremental information would enhance or improve the information provided to users. As noted above, the determinations of probability and impact are highly judgmental and are based on the assessment of the entity and its counsel of the facts, applicable law, potential legislative or regulatory developments, and even factors such as the venue of the litigation. These judgments vary significantly among entities because different lawyers and different entities apply judgments based on their unique personalities and experience sets. Such judgments inherently are imprecise and are subject to material changes based on circumstances that cannot be predicted. By requiring disclosure of such speculative information, the proposal would expose financial statement users to information that inherently is highly subjective and unpredictable, and therefore not meaningful or potentially even detrimental to the efforts of assessing an entity's financial condition.

We also believe the prejudicial elements of the incremental disclosures will harm many companies by making loss contingencies more likely to result in an actual loss, by increasing the amount of such losses, and by allowing potential adversaries to discover an entity's perceived vulnerabilities and to use those vulnerabilities as a road map to initiating more litigation. The detrimental impacts ultimately will be borne by the most significant users of the financial statements, the shareholders.

Additionally, with the increasing volume of disclosures required by Congress, the Securities and Exchange Commission and the stock exchanges, it is more important than ever to consider whether additional information would be useful, meaningful and relevant to users of financial statements. We recommend that the Board carefully consider the total impact of required public disclosures and focus on quality of disclosures over quantity.

We believe the current standards sufficiently enable financial statement users to make sound decisions without being misled by the nature or status of loss contingency disclosures. In deliberating changes to current standards, we urge the Board to consider alternatives that continue to preserve attorney-client



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privilege. Financial statement users should continue to have access to appropriate and relevant information without harming shareholders' interests by increasing the likelihood of remote liabilities becoming actualized nor by diluting disclosures with discussions of unpredictable remote or immaterial matters.

We thank the Board for its consideration and would welcome the opportunity to further discuss our comments with Board members and their staff. Please do not hesitate to contact me at (770) 564-6639.

Sincerely,

A handwritten signature in black ink that reads "Michael Nussbaum".

Michael Nussbaum
Vice President of Accounting Policy
Primerica, Inc

cc: Stacey Geer, SVP and Associate General Counsel