

September 17, 2010

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

Via email: [director@fasb.org](mailto:director@fasb.org)

File Reference: No. 1840-100 *Disclosure of Certain Loss Contingencies*

Dear Mr. Golden:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Exposure Draft: *Disclosure of Certain Loss Contingencies* (ED). ABA represents banks of all sizes and charters and is the voice for our nation's \$13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

### **Necessity for Such Subjective Information is Not Compelling.**

While the ED represents an improvement over the ED that was issued in 2008, ABA has serious concerns regarding several aspects of the proposal. Mainly, we question how much demand there truly is for this kind of information. Banks are often subject to class action lawsuits, partly because of the highly regulated environment in which they operate and partly because of the perception of "deep pockets". Disclosures about many of these lawsuits, which are often for frivolously large amounts, would provide information on events that are not likely to occur. The requirements will further burden reporting entities by requiring their attorneys to analyze remote contingencies in detail, as well as the range of losses for those that are reasonably possible. The result is a lot of work for information that, by its very nature, is subjective and not reliable for predicting future cash flows.

### **Prejudicial Exemption Should Be Maintained.**

The prior ED allowed an entity to forgo disclosing information that would be prejudicial to the entity's position. This exemption has been excluded in the current ED, and ABA urges the Board to include this exemption. Much of the required information in the ED may be considered prejudicial, but we are especially concerned with information requested in the tabular reconciliation. While we are not opposed to disaggregating information by class of contingency, many organizations may require such an exemption in order to prevent disclosing prejudicial information within the reconciliation. Practically

speaking, disaggregating information by class of contingency will often result in identifying a single case among others, weakening the filer's position and increasing the likelihood of an unfavorable outcome. An exemption will be required in these cases.

### **Scope of the Exposure Draft Should be Clarified.**

While the ED is meant to apply mainly to loss contingencies from lawsuits, Accounting Standards Codification Subtopic 450-20-05-3 includes various examples of loss contingencies, namely:

- Collectibility of receivables
- Obligations related to product warranties/defects
- Risk of loss from catastrophes assumed by P&C insurance entities including reinsurance
- Guarantees of indebtedness of others
- Obligations of commercial banks under standby letters of credit
- Agreement to repurchase receivables (or property) that have been sold.

ABA believes that, since they are normally subject to their own set of disclosures, these issues were not meant to be included in the scope of the ED. If they were meant to be included, then there should be further discussion within the ED in addressing these issues, and implementation guidance will be required to comply with the new requirements.

### **Consideration of Insurance Recoveries Should be Permitted.**

ABA acknowledges that insurance coverage is often uncertain and may be subject to litigation with the insurer. However, this is not normally the case. For practical matters, disclosing a lawsuit where the likelihood of loss is remote and fully covered by insurance serves only to confuse and alarm the reader of the disclosure. Smaller organizations will be especially subject to this, due to the likelihood that, because of their smaller size, a loss could be viewed under the ED as causing "severe impact." In the end, if the Board believes that the purpose of the financial statements is to enable a user to predict cash flows, then the net potential cash outflows should be used as the basis for analysis. With this in mind, disclosure of such remote contingencies should be evaluated net of the expected recovery.

### **Effective Date Must be Extended, with a Transition of Required Information.**

It is unlikely that the Board will issue a final standard prior to the end of the third quarter closing-of-the-books process for most U.S. companies. Based on the significant change in analysis of remote contingencies and the internal controls required to implement such a process, as well as the time required to resolve practice questions, we strongly advise the Board to set an effective date greater than one quarter after issuance. Such an extension is needed to provide sufficient time to ensure the new processes are functioning as intended by the Board.

ABA is also concerned about the activity reported in the tabular reconciliation. In essence, the proposal

requires an entire period to be reported, with qualitative descriptions of any significant activity. Since systems have not likely been in place to capture and document such activity prior to the effective date, we recommend that only period-end information be required at the effective date, with activity required the next reporting period after the effective date.

**Convergence with IFRS Should be a Priority.**

ABA supports efforts by the Board to converge GAAP with International Financial Reporting Standards (IFRS). At this point, the International Accounting Standards Board (IASB) is working on changes to their standard regarding contingencies (IAS 37). While we understand that the IASB project is broader than that presented in the ED, we recommend that decisions made by the FASB present the best platform to converge as soon as possible.

Thank you for your attention to these matters and for considering our views. Please feel free to contact me ([mgullette@aba.com](mailto:mgullette@aba.com); 202-663-4986) if you would like to discuss our views.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael L. Gullette".

Michael L. Gullette