



September 20, 2010

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

Re: File Reference No. 1840-100: Proposed Accounting Standards Update, “Disclosure of Certain Loss Contingencies”

The Accounting and Auditing Procedures Committee (the “Committee”) of the Pennsylvania Institute of CPAs (“PICPA”) appreciates the opportunity to comment on the FASB’s Proposed Accounting Standards Update to Topic 450, *Disclosure of Certain Loss Contingencies*. We appreciate the Board’s efforts to address certain of the concerns raised by constituents in response to the original Exposure Draft (“ED”) on this project and believe the current proposal is an improvement over the original ED. However, the Committee continues to have major concerns and believes changes must be made before a final standard is issued. The Committee consulted with PICPA’s legal counsel in connection with this response.

General Comments The Committee is opposed to any accounting standard that would jeopardize a company’s ability to defend itself in court and is concerned that certain aspects of the proposed standard could result in inadvertent waivers of the attorney client privilege, be prejudicial to a company, encourage class action lawsuits, potentially erode shareholder value, and present numerous financial reporting and auditing challenges. We believe it is important the Board resolve the prejudicial concerns before the issuance of a final standard. The following further discusses our concerns:

1. Attorney Client Privilege –Disclosing legal strategy to opposing counsel (i.e. information as to the defense of a claim and/or the analysis as to the likely outcome as to liability and damages) could result in the inadvertent waiver of attorney client privilege and could be prejudicial to the company’s legal defense. Specifically, the Committee disagrees with the requirement to disclose the estimated liability accrued for a particular unsettled loss contingency [450-20-50-1F a.] and information regarding the change in the likelihood or magnitude of the loss of a specific loss contingency [450-20-50-1F b.].
2. Reporting the claim amount – The Committee believes that reporting “the amount of damages claimed by plaintiff” [450-20-50-1F] would not provide meaningful information to shareholders as in many cases the Plaintiff “overreaches,” claiming an amount far beyond the



expected amount. Furthermore, disclosing this amount may provide unwarranted credibility to the claimant's position.

3. Loss contingencies with more than adequate insurance or indemnification – We disagree with the requirement to disregard insurance recoveries or indemnification arrangements in assessing materiality for the disclosure threshold as indicated in proposed ASU 450-20-50-1E. The Committee believes that this revision would greatly expand the disclosure requirements for loss contingencies that ultimately are not material to a company. For example, consider a trucking company being required to disclose truck/auto accidents. There could be a clear liability situation but the trucking company's insurance exceeds the potential estimated award by a significant amount. If the expected settlement amount is material, the company would be required to provide the significant amount of information required by 450-20-50-1F. Other frequent cases that will result in a significant reporting burden include workers compensation claims and medical malpractice claims. The Committee believes that while the additional reporting burden would be significant for the company and for external auditors and attorneys, the additional disclosures would not provide significant value-added information for shareholders. We recommend that the Board consider a separate scaled down set of disclose requirements for potentially material liabilities where indemnification or insurance coverage is probable.
4. Disclosing information regarding unasserted claims or remote contingencies - The Committee believes that disclosing remote contingencies in a manner that is not prejudicial to the company would be difficult and that such disclosures could result in lawsuits being filed that otherwise would not have been filed as the claimants were either unaware of the claim or satisfied with the outcome until the issue was elevated to the financial statements. In fact this type of disclosure could result in additional class action lawsuits. Therefore, the Committee is concerned that the requirement to disclose information regarding unasserted claims and remote contingencies [proposed ASC 450-30-50-1D] would create a significant disincentive for companies to report "incidences" to their legal counsel or claims carrier. Additionally, obtaining sufficient information to audit management's assertion regarding unasserted claims or remote contingencies will be difficult especially if those claims are not reported to legal counsel. The Committee therefore, disagrees with the requirements to provide specific quantitative information as specified in proposed ASU 450-20-50-1F. f.1.-f.3.

Other Specific Comments

5. Proposed ASU 450-20-50-1C – “Disclosure is not required of a loss contingency involving an unasserted claim or assessment if there has been no manifestation by a potential claimant



of an awareness of a possible claim or assessment.” This language regarding unasserted claims, which is included in the extant standards, is unclear. We recommend changing “of” to “or”.

6. Proposed ASU 450-20-50-1F c. – The guidance proposes that the disclosures provide information that allows financial statement users to locate publically available information. The guidance does not specify which publically available sources are required to be disclosed. Would media reports need to be disclosed? We recommend that this be clarified. The rest of the paragraph provides detailed examples. These detailed examples appear to be unnecessary and do not add to the clarity of the standard. For example, disclosing “a description of the factual basis alleged to underlie the proceedings” is not information that is needed to locate publically available sources.
7. Proposed ASU 450-20-50-1F e. 5. – The proposed guidance requires disclosure of “information about possible recoveries from insurance and other sources only if, and to the extent that it has been provided to the plaintiff(s) in a litigation contingency, it is discoverable by either the plaintiff, or a regulatory agency, or it relates to a recognized receivable for such recoveries.” It is not clear how companies would be able to identify and track the regulatory agencies that have access to information about possible insurance recoveries. We recommend that regulatory agencies be restricted to circumstances in which a company has already provided information to a regulatory agency that is subject to the Freedom of Information Act. Furthermore, if the information about possible recoveries from insurance and or other sources has not been provided to the plaintiff, we do not agree with disclosing the information in the financial statements. The Committee does not believe that plaintiffs should learn new information on a case from a company’s financial statement disclosures.
8. Proposed ASU 450-20-50-1F e. 5. – The proposed guidance indicates that “if the insurance company has denied, contested, or reserved its rights related to the entity’s claim for recovery, an entity shall disclose that fact.” It is not clear how or if this requirement relates to the previous sentence in the paragraph, or is intended to be a separate requirement. We request that this be clarified. Furthermore, the Committee is concerned that providing this information amounts to disclosing legal strategy. We therefore disagree with any such requirement.
9. Proposed ASU 450-20-50-1F f. 3. – See previous comment regarding insurance recoveries.

Answer to Specific Questions



10. Question 1: Are the proposed disclosures operational? We believe that efforts to further U.S. GAAP/IFRS convergence by transitioning to standards closely aligned with IFRS is not possible with respect to legal contingencies without significant changes in the U.S. legal environment. We believe that certain of the proposed disclosures could potentially require a company to wave attorney client privilege and others could be prejudicial to the company. Requirements to disclose significant details about fully insured or indemnified losses are unnecessarily onerous and not necessarily useful to shareholders. Additional requirements to disclose remote contingencies could provide a disincentive to promptly report incidences to attorneys and to insurance carriers due to concerns over financial statement disclosure, and if disclosed in the financial statements could lead to additional cases and class action lawsuits.
11. Question 6: Do you agree that *nonpublic entities* should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? - The Committee agrees that privately-held entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update.
12. Questions 4 and 7: Implementation – Should the FASB proceed with the proposed ASU on the *Disclosure of Certain Loss Contingencies* without significant revisions, we believe that an extended implementation period is needed so that businesses, the legal community, and auditors can gear up for the implementation challenges. We believe that extensive attorney outreach and training will be needed and that there will be potential compliance issues as the quality of attorney’s responses to audit inquiries will vary. Companies will also need time to revise their systems to gather the additional information, draft the additional disclosures, which could be lengthy, and work with their legal counsel to ensure compliance without the release of inappropriate information. For some industries, such as health care, (hospitals, physician practices, and medical practice groups), trucking, and so forth, the additional disclosures could be lengthy. Therefore, the Committee believes that the proposed effective date for fiscal years ending after December 15, 2010 is impracticable.

We appreciate your consideration of our comments. We are available to discuss any of these comments with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Wortmann", is written over a light blue horizontal line.

Richard E. Wortmann, CPA
Chair, PICPA Accounting & Auditing Procedures Committee