

Alcon Laboratories, Inc.  
6201 South Freeway  
Fort Worth, Texas  
76134-2099  
TEL 817-293-0450

September 20, 2010

Technical Director – File Reference No. 1840-100  
Financial Accounting Standards Board (“FASB”)  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

Via email: [director@fasb.org](mailto:director@fasb.org) File Reference No. 1840-100

Dear Technical Director:

Alcon Laboratories, Inc. (“Alcon”) appreciates the opportunity to share its comments on the Financial Accounting Standards Board (“FASB”) proposal to expand disclosures required by FASB Accounting Standards Codification Topic 450 (ASC 450) for disclosure of certain loss contingencies.

Alcon opposes the adoption of this exposure draft. We believe that the current requirements under ASC 450 for disclosures of contingencies are not broken and do not need repair or supplementation. If the current guidance on contingencies is properly applied, the current required disclosures provide investors and other users of financial reporting with adequate information to assess loss contingencies. The very uncertain nature of loss contingencies is such that investors, other users, and reporting entities will never have all of the information they desire to assess the likelihood, timing, and amount of future cash flows associated with loss contingencies. We believe the additional proposed disclosures regarding loss contingencies are not necessary and will create undesirable results for the reporting entity, investors, and other financial statement users. The proposed amendments will certainly lead to higher costs to prepare and audit financial statements, without any corresponding increase in information useful to investors and other users.

Litigation contingency is, by nature, unpredictable and subject to change. Some parties to litigation use it as a part of an overall strategy to gain a negotiating edge in the settlement of business related issues. As a result, the process of reasonably estimating and valuing the potential outcome of a litigation contingency is difficult at best. Furthermore, initial plaintiffs often request in their filings damages that far exceed a reasonable settlement amount even for meritorious claims. To require inclusion of amounts of initial damages claims in any disclosure will provide more incentive to inflate

these initial claims in order to pressure defendants to settle quickly to avoid disclosing those inflated "maximum exposures."

While the disclosure of possible settlements is by definition too speculative to provide meaningful information for legitimate financial statement users, it would undoubtedly be useful to attorneys representing parties adverse to the discloser.

We are pleased that the current proposal does not require disclosure of many factors likely to affect the outcome of a contingency which were required in the June 2008 proposal, along with the potential effect on the outcome. Obtaining such information would certainly have been difficult and costly, particularly with respect to litigation contingencies, which could be ongoing for many years.

However, the new exposure draft expands potentially the number of loss contingencies that must be disclosed and significantly increases the quantitative and qualitative description of those contingencies. The exposure draft requires disclosure of asserted remote contingencies if they are potentially disruptive to the normal functioning of the company. Furthermore, for litigation contingencies, the exposure draft requires the disclosure of the contentions of the parties, the anticipated timing of the contingency's resolution, information about potential recoveries from insurance and other sources to the extent provided to the plaintiffs or discoverable, publicly available qualitative information and other non-privileged information and sufficiently detailed information to enable users to obtain additional information from publicly available sources such as court records. Additionally, we believe the proposed additional disclosure of remote items could be misleading to users of financial statements and could cause users to place inordinate attention on remote items and less on the disclosures that are currently required.

In answering the specific questions of the exposure draft, Alcon will focus primarily on loss contingencies relating to litigation.

The following are our replies to the specific exposure draft questions:

**Question 1**

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

No.

Disclosure of Amounts Accrued. Present accounting standards permit but do not require the disclosure of the amounts accrued for contingencies unless the disclosures are necessary for the financial statements not to be misleading. The disclosure of the amount accrued, proposed in 450-20-50-1F.e.2, goes beyond what is currently required and most certainly will place defendants at a disadvantage in resolving litigation for several reasons.

Disclosure of Asserted Remote Contingencies. The expansion of disclosures, especially including asserted remote contingencies, increases significantly the work and the related cost. Combining soft contingency data with hard analytical data will raise questions that will require time, effort and expense to address. The exposure draft would force companies to incur greater expense engaging lawyers and accountants to make the contingency projections, and then to defend them when questions arise later. The exposure draft requires an estimate or range for each claim be updated for each reporting period. Because most companies employ outside counsel who are experts in the type of claim, this would increase legal fees related to these claims as this outside counsel must provide documentation for outside auditors even when no changes have occurred.

In addition, the disclosures of litigation with only remote chances of severe impact will likely encourage the proliferation of additional claims by plaintiffs' lawyers and result in further costs to the reporting entities to defend such claims. Legal costs will continue to become a larger portion of operating costs for reporting entities.

Current accounting rules and methods are intended to provide users of financial information with a clear picture of an entity's current position and results of operations. To the extent that the entity will incur a liability and that liability can be reasonably estimated, it should be recorded. However, to try to quantify issues that are not likely to occur or cannot be reasonably quantified will not provide the quality of information that users of financial statements need. Furthermore, providing this type of information could possibly obscure the useful information that is presently provided.

If, however, the disclosure proposed is required, it will create expectations on the part of the financial statement user that the new disclosures are of the same reliability as other disclosures. If these attempts at quantification do not prove to be accurate, the users will use the disclosures as a basis to seek restitution for any losses they incur as a result of relying on the information. In essence, the plaintiffs' lawyers will have a roadmap that will enable them to "recruit" new plaintiffs to represent for new claims. Although the reporting entity will disclose the information as an estimate that is subject to change, plaintiffs' lawyers will use the disclosures to "mine" financial statements for new claims. The reporting entities will incur new costs to defend these claims.

Tabular Reconciliation. The proposed standard also would require that the footnotes to the financial statements include a tabular reconciliation of the total amount recognized for contingencies at the beginning and end of the reporting period. A tabular reconciliation of recognized loss contingencies, even on an aggregated basis, creates an impression of certainty with regard to the ultimate disposition of claims. However, due to the frequently changing nature of litigation, information provided in a tabular reconciliation about loss contingencies may not be useful to investors for future estimation of cash flows.

We believe that a tabular reconciliation will be damaging to the reporting entity's negotiating strategy and should not be provided in any disclosures. Furthermore, based

on the aggregation guidance in paragraph 450-20-55-1A, multiple columns would be required for different classes or types of contingency. The tabular reconciliation will give the illusion of providing more accurate and detailed information when in fact, the information is based on assumptions and estimates, and as discussed above, could be used adversely against the company in a legal proceeding.

Disclosing in a table the accrual for loss that an entity believes will occur should not be required. If an entity reveals its position for settling a matter, opposing counsel has an established floor for making a settlement offer. Furthermore, providing such disclosures may only assist the opposing party on the claim to achieve their desired result, when a lesser settlement may have been achieved otherwise.

We also feel that with the possibility of considerable fluctuations (e.g. reversals) from one quarterly reporting period to another, the proposed disclosure requirements should not be applicable to quarterly reports.

\*\*\*

Withdrawing this exposure draft would be the most beneficial action the Board could take to reduce the operational burden and related costs to issuers and their investors. When issuers apply the current standards in the manner in which they were intended, there is no need to create new disclosure guidance because sufficient disclosure is presented without obscuring the relevant information or requiring information that would be damaging to the issuer and its investors.

## **Question 2**

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

Almost anything may be accomplished with enough money. The question should be more focused on, "Are the proposed disclosures auditable at a reasonable cost?"

The additional disclosures, particularly for asserted remote contingencies, would be more difficult and costly to audit because more estimates and assumptions are required under the exposure draft. The process of auditing the additional disclosure items would begin as in current practice: 1) the external auditors would obtain an audit confirmation letter from a third-party law firm and the auditors would rely on the professional opinion of the outside legal counsel and 2) the auditors would obtain estimates from management and check for reasonableness. However, third-party law firms and outside legal counsel are hesitant to include estimates or ranges of outcomes for some of the reasons discussed in the paragraphs above.

Many cases exist in which the ranges of losses cannot be estimated with reasonable precision. Without the support of opinions of outside counsel specifically addressing the issues to be disclosed, the auditors would not be able to audit these disclosures without

engaging other counsel to assess. If the third-party legal firm cannot provide the estimates, the additional disclosure items may not be auditable at a reasonable cost.

### **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.*

No. If the proposed disclosures are promulgated, we believe the standard should allow an entity to exempt itself from disclosing information that is "prejudicial" to itself and this exemption should not be limited. Allowing an entity the ability to assess the possible effects a litigation disclosure could have on settlement negotiations or the litigation itself is essential. While the stated goal of the proposed rule is to increase the level of useful information provided to investors, an entity should be permitted to withhold information that is of little or no value to the investor, but that could have a negative impact to the entity and, in the end, to the investor as well.

International Accounting Standard No. 37 recognizes that disclosures of contingencies could have a detrimental effect and permits the issuer to omit details other than a general nature of the dispute in such circumstances. We believe that option should be available if the FASB insists on amending the current disclosure requirements.

Aggregation may not always be possible. For instance, assume that a company that normally has only insignificant and remote litigation finds itself in a significant lawsuit that it would be willing to settle for a fraction of the total claim, but a significant amount, to minimize its defense costs.

Where no other amount is more likely, the company would record a provision for that anticipated settlement amount as the lower end of the range of possible outcomes. Under the existing standards, the company would record the provision without disclosing the amount and indicate whether or not it believes an unfavorable outcome could have a material adverse effect on the company.

If the company is required to disclose this provision in the tabular reconciliation, the claimant immediately will recognize this amount as the floor amount in any negotiations for settlement. The possibilities for increased costs will grow.

In addition, applying this exemption should not be disclosed. We feel that requiring the disclosing company to make a statement that disclosures were omitted because they may have contained prejudicial information could defeat the purpose of the exemption. Such statements would be used by plaintiffs' lawyers to support a sort of "confession theory" in the making of their case. A disclosing entity would be given two options: 1) disclose prejudicial information, or 2) disclose that presumptively prejudicial information has been omitted. Neither option serves the interest of the entity or its investors. Disclosing the omission and the reasons behind it would provide ammunition for a plaintiff to assert that the entity must have something to hide and lead to additional or prolonged litigation.

#### **Question 4**

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

No. The implementation of this exposure draft in its proposed form will require extensive coordination for the preparation and audit of new disclosures on the part of the entity, its outside legal counsel and its external auditors. In order to provide sufficient lead time to develop reasonable disclosures, the implementation should be delayed until fiscal periods ending after December 15, 2011.

#### **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?*

No. Users of financial statements will have difficulty distinguishing whether contingencies are possible or remote. Providing information about remote contingencies will bring attention to issues that are considered to have a very small possibility of occurring.

Much of the new disclosures, such as reconciliations, will give the illusion of providing more accurate and detailed information when in fact, the information is based on assumptions and estimates. Although the issuers may remind readers that estimates are subject to change, readers may view the quantification of remote issues as having more certainty, particularly considering the number of years that disclosures have only related to more relevant contingencies.

Assuming that any anticipated benefits are not illusory, we believe that the incremental costs of providing the disclosures about loss contingencies will exceed such benefits. The expansion of disclosures prescribed in paragraph 8 of the ED to include asserted remote contingencies increases significantly the work and the related cost. Combining soft contingency data with more credible analytical data will raise questions that will require time, effort and expense to address and will reduce the overall benefits to the financial statement users.

The ED would force the reporting entity to incur greater expense engaging lawyers and accountants to make the contingency projections, and then to defend them when questions arise later. The incremental costs of determining the ultimate impact of a specific claim against a company appear to create a need to continually update the status of each claim. Because most companies employ outside counsel who are experts in the type of claim or in the location of the court action, this would increase legal fees related to these claims as this outside counsel must provide documentation for outside auditors even when no changes have occurred.

In addition, the disclosures of litigation with only remote chances of adverse consequences will encourage the proliferation of additional claims by plaintiffs' lawyers and result in further costs to the reporting entities to defend such claims. Legal costs will continue to become a larger portion of operating costs for reporting entities. Furthermore, given recent calls for simplification of financial statement disclosures, providing data on remote contingencies does not serve the purpose of providing useful information to investors.

Disclosing the accrual of loss that an entity believes will occur should not be required. If an entity reveals its position for settling a situation, opposing counsel has an established floor for making a settlement offer. Furthermore, there are often situations that, because of new laws, new types of claims and the status of the discovery, an entity may be unable to estimate a range of loss, although the entity expects the loss will be significantly less than the claim. Like the "maximum possible exposure" requirement, required disclosure of the range puts the disclosing party in a no-win situation; if the range is too broad, investors will complain that it is meaningless; if it is narrow but turns out wrong, investors will complain even more.

Certainly eliminating the reconciliation would eliminate some of the costs of the proposed Statement. However, withdrawing this project would be the most beneficial action the Board could take to reduce the costs to issuers and their investors. If issuers will apply the current standards in the manner in which they were intended, there is no need to create new disclosure guidance.

### **Question 6**

*Do you agree that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not, please explain*

*why. Are there any other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.*

No comment.

**Question 7**

*The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.*

No comment.

**Question 8**

*Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.*

Due to the time permitted by the FASB for comments, we were unable to complete our review of the XBRL elements.

.....

In summary, we believe the disclosure of loss contingencies should continue to be prescribed under ASC 450 in its present form. In addition, an entity should not be forced to disclose speculative or intentionally inflated claims or other information that could be detrimental to the entity's defensive position in a claim negotiation or a court case. Most of all, information provided to the users of financial statements must be relevant and reliable or the usefulness of that information will be impaired.

We appreciate the FASB's consideration of our comments.

Very truly yours,

/s/ Mark Roewe  
Mark A. Roewe  
Vice President, Global Controller