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September 20, 2010

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

Re: File Reference No. 1840-100 – Proposed Accounting Standards Update on Disclosure of Certain Loss Contingencies

Dear Mr. Golden:

We appreciate the opportunity to comment on the proposed Accounting Standards Update on "Disclosure of Certain Loss Contingencies" (the revised Exposure Draft), which replaces the FASB's proposed Statement of Financial Accounting Standards dated June 8, 2008 of the same title (the original Exposure Draft). Our comments on the revised Exposure Draft address the proposed effective date, audit issues related to the proposed disclosure requirements, the scope of the revised Exposure Draft, certain clarifications to the proposed requirements, and other observations.

During redeliberations, the Board agreed on four principles that would form the basis of its revised proposal for disclosure requirements about loss contingencies. Those principles were: (1) that disclosures about litigation contingencies should focus on the contentions of the parties, rather than predictions about the outcome; (2) that disclosures are expected to be less robust early in a case's life cycle and more robust as it progresses towards a conclusion or as the likelihood or potential magnitude of possible loss increases; (3) that disclosures should provide a succinct baseline summary of information that is publicly available about a case and indicate where financial statement users can find more detailed information, and (4) that disclosures about a loss contingency should merely report events and generally should not affect the outcome of the contingency itself to the detriment of the reporting entity. We support these principles; however, we believe that many aspects of the revised Exposure Draft are inconsistent with these principles. Accordingly, we believe that substantive revisions to the current proposal are necessary before the Board could move forward with issuing a final standard. In addition, we believe that the proposed effective date is not operational.

Proposed Effective Date

If the Exposure Draft is finalized in its present form, preparers of financial statements would need to accumulate additional information about contingencies to comply with the proposed disclosure requirements. We believe that it would be difficult for public companies with calendar year ends to develop the processes and controls to accumulate that information and coordinate that process with external lawyers in order to implement the new disclosure requirements in their 2010 financial statements. In addition, disclosure of such information was not contemplated when the current standards and interpretations followed by auditors to obtain audit evidence about certain contingencies, and the related "Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information" of the American Bar Association (ABA Statement of Policy), were developed. We believe that the auditing standard setters (PCAOB and AICPA Auditing Standards Board (ASB)) will need to consider whether additional interpretive guidance is necessary as a result of the final disclosure requirements. Those organizations may also need to collaborate with the ABA to provide further guidance to auditors and lawyers before the revisions to the disclosure requirements of ASC Subtopic 450-20 can be implemented.

Accordingly, we believe that the proposed effective date of fiscal years ending after December 15, 2010 for public entities is not operational. It does not allow preparers sufficient time to develop the additional information required to comply with the new disclosure requirements, nor does it allow time for the PCAOB, ASB, and ABA to consider whether to provide interpretive guidance with respect to the relevant auditing standards and ABA Statement of Policy.

We recommend that the Board communicate its intentions about the proposed effective date as early as possible during redeliberations so that preparers can appropriately plan for their year-end reporting requirements. We also recommend that the Board consider the effect of the recently announced changes in the Board structure on the timing of this project as it moves towards issuing a final standard.

Audit Issues

The proposed ASU requires that preparers disclose, "information about possible recoveries from insurance and other sources only if, and to the extent that … it is discoverable by either the plaintiff or a regulatory agency." We believe that the determination of whether such information is discoverable will be difficult to apply in practice, and that a preparer's assertion in this regard will present challenges to the auditor. The rules governing what is discoverable vary by jurisdiction and would require legal expertise to assess. Auditors may

need to rely on management's representations and information provided by lawyers (to the extent that it is provided) for audit evidence about whether information is discoverable. Currently the ABA Statement of Policy does not contemplate communicating to auditors whether certain information is discoverable. Such a requirement may require action by the PCAOB and ASB to provide auditors guidance on how to obtain sufficient audit evidence over an assertion about whether information is discoverable.

In addition, the proposal would require an entity to disclose the reason an estimate cannot be made if the entity is unable to estimate the possible loss or range of loss. The ABA Statement of Policy does not contemplate providing the reason an estimate cannot be made to auditors. Accordingly, the PCAOB and ASB may need to provide auditors with guidance on how to obtain sufficient audit evidence for those disclosures.

The proposed ASU also requires that preparers disclose "*other nonprivileged [quantitative] information* that would be relevant to financial statement users to enable them to understand the potential magnitude of the possible loss" (emphasis added). It may be difficult for auditors to test the completeness assertion related to this proposed disclosure requirement. Information may exist about a case that the auditor is unaware of, and attorneys may be reluctant to provide certain information to auditors based on concerns about possibly waiving privilege protections. Examples of proposed requirements that may present a similar conflict include the "assess[ment of] specific facts and circumstances to determine whether disclosure of a remote contingency is necessary" and disclosure of "the anticipated timing or next steps in resolution of individually material asserted litigation contingencies."

With respect to a broader issue, we believe that the audit process and disclosures about loss contingencies could be enhanced if disclosure of protected information to auditors in the context of a financial statement audit did not result in a waiver of attorney-client privilege. We encourage the FASB to work together with other organizations (such as the ABA, the PCAOB, and the Center for Audit Quality) to pursue such a change, which may require legislative action.

Scope Issues

The scope in the original FASB Exposure Draft excluded several types of loss contingencies, specifically:

- Loss contingencies that are recognized as asset impairments (such as an allowance for doubtful accounts receivable);
- Guarantees within the scope of Interpretation 45 (now ASC Topic 460);

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- Liabilities for unpaid claim costs under insurance or reinsurance contracts within the scope of Statements 60, 97, 113, 120, and 163 (now ASC Topic 944);
- Liabilities for insurance-related assessments within the scope of SOP 97-3 (now ASC Subtopic 405-30); and
- Liabilities for employment-related costs, including pensions and other postemployment benefits (which are now addressed in ASC Topics 710, 712, and 715), except for obligations that may result upon withdrawal from a multi-employer plan.

Some of these items appear to be within the scope of the revised Exposure Draft, although we are not aware of any decisions by the Board in its public deliberations to change the scope. For example, there is no scope exclusion in the revised Exposure Draft for insurance-related assessments under ASC Subtopic 405-30 (SOP 97-3). ASC paragraph 405-30-50-1 states that the guidance on disclosure of loss contingencies applies to insurance-related assessments covered by ASC Subtopic 405-30. In addition, guarantees (except for product warranties) were excluded from the original scope. The proposed revisions to ASC Subtopic 460-10 imply that the proposed disclosures in the revised Exposure Draft would apply to guarantees. If the Board intends for those non-litigation loss contingencies to be within the scope of the new disclosure requirements, the Board should clarify that and provide examples of how the new disclosure requirements would apply to those situations.

ASC Topic 450 states that accounting and reporting by insurance entities is within the scope of ASC Topic 944 and not within the scope of ASC Topic 450. However, it is unclear whether some types of litigation related to coverage under an insurance policy would be within the scope of ASC Topic 944 or would be within the scope of ASC Topic 450 (for example, policy class action lawsuits or litigation by third parties such as regulators on the behalf of policy holders). We recognize that this ambiguity exists currently in ASC Topics 450 and 944. However, the proposed disclosure requirements in the revised Exposure Draft further emphasize the need for clarification. We recommend that the Board clarify what types of insurance claims litigation are within the scope of ASC Topic 450 as opposed to ASC Topic 944.

Finally, the Board is addressing disclosures related to a multi-employer plan in a separate project. Disclosures about participation in a multi-employer plan should be excluded from the scope of the loss contingency project because those disclosures will be covered in the separate project.

Clarifications

There are several aspects of the revised Exposure Draft where the Board's intent is unclear. We recommend that the Board provide additional clarification in those areas, which are discussed below.

Remote loss contingencies with a potentially severe impact
The proposed requirement to disclose asserted but remote contingencies whose nature, potential magnitude, or potential timing (if known) makes an entity vulnerable to a potentially severe impact is likely to be difficult to apply in practice, and we question whether the Board will be able to formulate a requirement to disclose a limited class of remote loss contingencies that will be operational.

If the Board continues to pursue disclosure of some remote loss contingencies, we support retaining the language stating that "a plaintiff's amount of damages claimed, by itself, does not necessarily determine whether disclosure about a remote contingency is necessary." However, the proposed guidance is not clear on how factors other than the stated amount of the claim would be considered in assessing whether the potential impact could be severe.

We believe that there may be two probability assessments involved in determining whether to disclose a remote contingency: (1) assessing that the likelihood of a loss is remote and (2) assessing the likelihood that, in the remote event of a loss, the loss would be great enough to cause a severe impact. For example, assume an entity is being sued for an amount which would cause a severe impact for the entity. The entity believes that the likelihood of an unfavorable outcome is remote due to a lack of merit to the claim and believes that it will not need to devote a significant amount of resources to its defense. In the remote likelihood of an unfavorable outcome, the entity has determined that the most likely loss amount would be substantially less than severe; however, there is a remote chance that, in the event of a negative outcome, the amount of loss could have a severe impact on the entity based on the amount of the claim. In this example, it is not clear whether the entity would be required to disclose this contingency because it could conceivably have a severe impact or whether the entity would not be required to disclose the claim because, even in the remote likelihood of an unfavorable outcome, the likelihood that the amount of the loss would be severe is also considered remote. We question the usefulness of disclosures about a contingency whose likelihood of loss is remote and whose likelihood of a severe impact, in the event of a loss, is also remote, and we recommend that the Board specifically exclude those contingencies from the requirement to be disclosed.

In addition, the definition of *severe impact* may be too broad. The purpose of the current definition in US GAAP is for disclosure of vulnerability due to certain concentrations. We believe that the definition suits the purpose of disclosure of concentrations because concentrations have a direct impact on the entity's business. However, this definition may not be suitable for determining whether an asserted loss contingency whose likelihood of loss is remote should be disclosed. Given the same set of facts and circumstances, preparers may fairly come to different conclusions regarding whether a contingency may have a severe impact without further clarification.

Finally, the language in proposed ASC paragraph 450-20-50-1D that "disclosure of asserted but remote loss contingencies may be necessary, due to their nature, potential magnitude, *or potential timing (if known)* to inform users about the entity's vulnerability to a potential severe impact" (emphasis added) seems to imply that each of these factors is to be considered individually. It is unclear to us how the potential timing of a contingency could, by itself, make an entity vulnerable to a potential severe impact. We believe these factors should be considered in conjunction with each other and recommend that the Board clarify this point.

"More extensive" disclosures as additional information becomes available
The revised Exposure Draft would require preparers to provide "more extensive" disclosures as additional information about a potential unfavorable outcome becomes available. We understand that the Board is proposing this requirement to address many constituents' comments on the original Exposure Draft that the information available in a contingency's early stages may be limited (as indicated by the principle in proposed ASC subparagraph 450-20-50-1B(a)). However, stating that disclosures need to be "more extensive" as additional information becomes available creates an additional requirement for disclosures about contingencies in later stages rather than alleviating the requirement for disclosures about contingencies in early stages. We recommend that the Board conform the language of proposed ASC subparagraph 450-20-50-1F(b) to the language stated in the principle in proposed ASC subparagraph 450-20-50-1B(a).

"Publicly available" information and sources
The revised Exposure Draft uses the term *publicly available* with respect to obtaining additional information from "publicly available sources" and disclosing "publicly available quantitative information." Currently, there is no definition of publicly available within US GAAP. We believe that the Board intends for this requirement to apply to the public record based on official documents related to a case and not broadly to information that may be publicly available in news publications and other media reports. However, as drafted, some may interpret the term publicly available to apply to those sources. The Board should clarify what type of publicly available information it intended for companies to disclose. If the Board

intends a broad definition of publicly available (which we do not support), such a requirement would raise significant and potentially costly issues for preparers in identifying which information should be included, for auditors in testing the disclosure for completeness, and for both preparers and auditors in assessing the reliability of information from external sources.

Due to differences in public policy by jurisdiction, the requirement to disclose publicly available information may create differences in information that may be required to be disclosed. For example, a preparer may be required to disclose more information about a contingency that occurs in the U.S. than about a contingency that occurs in a country where publicly available information is more limited. The Board should consider whether these differences in the required level of disclosure that could arise in different jurisdictions are consistent with the Board's intent.

Disclosure of other nonprivileged quantitative information
The Board should clarify the requirement to disclose "other nonprivileged [quantitative] information that would be relevant to financial statement users to enable them to understand the potential magnitude of the possible loss." We believe the illustrative disclosure in the proposed implementation guidance (proposed ASC paragraph 450-20-55-39) stating that "entity A entered into a contract to provide 1,000 widgets for $1 million to Entity B by December 15, 20X1" is an example of a disclosure that would meet this proposed requirement. However, we question whether all constituents will make the link to this example.

Additionally, it is unclear how far the proposed requirement to disclose other nonprivileged quantitative information extends. For example, in a class action securities lawsuit, would an entity be required to disclose the number of parties in the class, the number of "tainted" shares, and the entity's stock prices on various relevant dates? The Board should make clear what is meant by this proposed requirement.

Disclosure of possible recoveries from insurance
Proposed ASC subparagraph 450-20-50-1F(e)(5) would require that entities disclose:

> 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.

We believe that the words "only if" in the proposed requirement could be read to preclude disclosure about possible recoveries if none of the criteria are met. Similar wording appears in

proposed ASC subparagraph 450-20-50-1F(f)(3). We assume that is not what the Board intended and recommend adding language to clarify that disclosure of information about possible recoveries from insurance and other sources is not precluded in circumstances in which disclosure of that information is not required.

Aggregation
The Board should clarify the appropriate level of aggregation in the tabular reconciliation. Would it be appropriate to aggregate all litigation contingencies together, or is it required to aggregate by type of case (e.g., product liability, class action securities litigation, etc.)? In addition, it is not clear whether the Board intends the tabular reconciliation to be at the same level of aggregation as the disclosures for qualitative and quantitative information. We recommend that preparers be allowed to aggregate disclosures at a higher level in the tabular reconciliation (e.g., all litigation, all environmental liabilities not involving litigation, all non-income tax contingencies, etc.) than for the disclosure of quantitative and qualitative information.

Illustrative disclosures
The Board should consider adding more examples of disclosures for different types of litigation, for example, class action lawsuits, product liability lawsuits, etc. As noted above, it would be useful to have these examples in order to understand the extent of the disclosures about "other nonprivileged [quantitative] information" the Board believes is required for those types of cases. In addition, the Board should consider adding examples of expected disclosures for non-litigation contingencies, such as environmental contingencies (for example, by revising the illustrations in ASC Section 410-30-55, formerly SOP 96-1), regulatory investigations, product warranties, and other contingencies that are in the scope of the new requirements. Illustrative disclosures for non-litigation contingencies would help preparers understand how the requirements would be applied to these types of contingencies.

Other Observations

Disclosure of possible recoveries from insurance
At the August 19, 2009 FASB meeting, the FASB staff proposed a disclosure principle stating that disclosure about a contingency should merely report events and generally should not affect the outcome of the contingency itself to the detriment of the entity. Board members generally agreed with that principle and decided that it did not need to be explicitly stated but that it is implied by the types of disclosure requirements in the revised proposal. However, the proposed requirement to disclose possible recoveries from insurance and other sources appears to be inconsistent with that underlying principle. Disclosing information about insurance coverage if that information is discoverable by, but has not yet been provided to, the

plaintiff could disrupt the normal process of litigating a dispute, thus potentially causing the disclosure of the contingency to affect the outcome of the contingency itself to the detriment of the reporting entity. Due to the audit considerations discussed above and the potential for disclosing information that could affect the outcome of the contingency, we recommend that the Board limit this disclosure requirement for litigation contingencies to information that has already been provided to the plaintiff.

Disclosure of amounts accrued
The proposed requirement in ASC subparagraph 450-20-50-1F(e)(2) to disclose the amount accrued (if any) may be prejudicial for preparers when it would be inappropriate to aggregate that amount with amounts related to other loss contingencies. This proposed requirement appears to be inconsistent with the principle discussed at the August 19, 2009 FASB meeting described above. The current guidance indicating that disclosure of the amount accrued may be necessary for the financial statements not to be misleading is an appropriate alternative to the Board's proposal. The combination of the existing requirement and the tabular reconciliation would provide users with sufficient information with respect to contingency accruals without a further requirement to disclose individual amounts accrued.

Providing a succinct baseline summary of publicly available information
Also at the August 19, 2009 FASB meeting, the Board agreed to a principle that the disclosures about loss contingencies should provide a succinct baseline summary of information that is publicly available about a case and should indicate where financial statement users can find more detailed information if they choose to perform additional research. The revised Exposure Draft includes the second part of this principle (in proposed ASC subparagraph 450-20-50-1F(c)) but not the first part. While there is a discussion about not overburdening financial statement users with excessive detail in proposed ASC paragraph 450-20-55-1B, this discussion is in the context of aggregating disclosures about multiple loss contingencies, rather than in the context of making disclosures about an individual loss contingency. We recommend that the Board include the first part of this principle in the qualitative disclosure requirements.

Tabular reconciliation
The requirement to disclose a tabular reconciliation for interim financial statements is inconsistent with the Board's previous decisions on other projects about similar information, such as the tabular reconciliation for income tax uncertainties (ASC paragraph 740-10-50-15A). Also, disclosing this level of detail in an interim period may enable an entity's adversary to identify movements related to a specific case, which would potentially be prejudicial to the reporting entity and therefore violate one of the Board's principles discussed

above. The interim period disclosures about contingencies as required by Regulation S-X are sufficient and therefore a tabular reconciliation for interim periods is not necessary.

The proposed requirement to disclose the tabular reconciliation in both interim and annual financial statements, combined with the requirement that loss contingencies whose underlying cause and ultimate settlement occur in the same period should be excluded from the tabular reconciliation, would lead to circumstances in which the annual and interim reconciliations do not agree to one another, for example, if there is a loss contingency whose underlying cause occurs in the first fiscal quarter and whose resolution occurs in the fourth fiscal quarter. This issue also could be resolved by eliminating the proposed requirement for a tabular reconciliation in interim periods.

Based on language in proposed ASC paragraph 450-20-55-1A, product warranties appear to be in the scope of this project and would be subject to the proposed tabular reconciliation requirement in the revised Exposure Draft, notwithstanding the fact that accruals for product warranties are already subject to a separate tabular reconciliation requirement in ASC paragraph 460-10-50-8. We assume that the Board did not intend to require two separate tabular reconciliations for product warranties and recommend that the Board explicitly exclude product warranties from the proposed tabular reconciliation in the revised Exposure Draft.

The proposed requirement to exclude loss contingencies whose underlying cause and ultimate settlement occur in the same period from the tabular reconciliation may be inappropriate for certain recurring loss contingencies (e.g., product warranties, if the Board decides to include them), because those contingencies are often incurred and settled within the same period, and information about the gross amounts of claims and settlements may be important to financial statement users. We suggest that the Board remove the requirement to exclude loss contingencies whose underlying cause and ultimate settlement occur in the same period from the tabular reconciliation.

Consistency of language
Proposed ASC subparagraph 450-20-50-1F(e) states that the entity should disclose “the following quantitative information” for contingencies that are at least reasonably possible. Proposed ASC subparagraph 450-20-50-1F(f) contains a similar requirement for remote contingencies; however, it does not state that the requirement relates to “quantitative” information. For consistency, we suggest conforming the language in proposed ASC subparagraph 450-20-50-1F(f) to proposed ASC subparagraph 450-20-50-1F(e).

Proposed ASC subparagraph 450-20-50-1F(c) states that an entity should disclose "the current status of the litigation contingency," whereas the current ABA Statement of Policy language states that lawyers may give the auditor "the stage of proceedings." For consistency, we suggest conforming the language of the ASU to the language of the ABA Statement of Policy.

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If you have any questions about our comments or wish to discuss any of the matters addressed in our comments, please contact Mark Bielstein at 212-909-5419 or David Elsbree at 212-909-5245.

Sincerely,

KPMG LLP

cc:
Martin F. Baumann – Public Company Accounting Oversight Board
James L. Kroeker – Securities and Exchange Commission