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Mr. Russell G. Golden
Technical Director
File Reference No. 1840-100
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116
Via email: director@fasb.org

# Re: Exposure Draft – Proposed Accounting Standards Update - Disclosure of Certain Loss Contingencies

Dear Mr. Golden:

Navistar International Corporation wishes to offer its comments on the Financial Accounting Standards Board's (the "Board") proposed update to Topic 450 "Disclosure of Certain Loss Contingencies".

Navistar International Corporation (NYSE: NAV), is the nation's largest combined commercial truck, school bus and mid-range diesel engine producer. Navistar appreciates the Board's objective to expand and enhance disclosures to help users of financial statements make their own assessments about the possible outcomes of a loss contingency; however, for the reasons outlined below, we believe certain of the Exposure Draft's provisions would create disclosure requirements that could harm a company by negatively affecting the company's ability to litigate claims and potentially could be misleading. Our comments are intended to highlight for the Board certain concerns we have regarding the elimination of a prejudicial exemption with a focus on the questions the Board has invited for comment in this round.

**Question 3:** 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?

## **Tabular Reconciliation Requirements**

While we understand the concerns regarding potential difficulties in interpreting and applying any prejudicial exemption and generally believe that exemptions should be avoided where possible in standard setting, the proposed amendments do not eliminate the prejudicial nature of certain disclosures. Specifically, we do not believe the aggregation principle equally meets both of the Board's objectives as specified in paragraph BC10.

The Board indicates that the objectives of aggregation are to "avoid overwhelming users with too much information" and to "address concerns about prejudicial disclosure of individual contingencies". In the example of an entity with only one legal contingency outstanding for which a loss accrual has been made, there may be no need to address the first objective while the second objective would likely not be met. Along the same lines, if the entity concludes that its financial statements are not misleading absent a disclosure of the amount accrued, Paragraph 450-20-50-1Fg may, nevertheless, require disclosure of the amount in the form of a tabular reconciliation exposing potentially prejudicial information. Finally, if aggregation is the method used to eliminate prejudicial disclosure, the level of aggregation to accomplish this objective may be at such a high level so as to reduce the usefulness of the disclosure. We believe the Board should further consider its use of a dual-purpose aggregation principle.

We note that tabular reconciliations are currently required for certain other accruals (e.g. warranty accruals). Such accruals may be more operational in nature, and a tabular reconciliation may be effective in identifying ongoing operational trends with no prejudicial consequence. Other situations with tabular reconciliation requirements may not be subject to the same prejudicial factors associated with litigation.

In the absence of a prejudicial exemption, we believe a company should be permitted to exercise judgment in determining whether the disclosure of an amount accrued and tabular reconciliation would be useful and necessary in enabling financial statement users to understand the nature, potential magnitude, and potential timing of a litigation-related contingency.

### <u>Possible Insurance Recoveries</u>

Regarding the disclosure of possible recoveries from insurance and other sources as specified in Paragraph 450-20-50-1Fe.5., we do not believe that a possible recovery should be a required disclosure simply because it is "discoverable" considering the conditions upon which such information may be discoverable (e.g. subject to a court's protective order) and the timing at which such information is typically provided through the discovery process. In the absence of a prejudicial exemption, such disclosure requirement may impact a company's overall exposure and litigation strategy.

## **Testimony of Expert Witnesses**

We request that the Board clarify the proposed requirement to disclose the amount of damages indicated by the testimony of expert witnesses in Paragraphs 450-20-50-1Fe.1. and f.1. The focus of a plaintiff's and defendant's expert witnesses generally differ and the testimony, if disclosed in the financial statements, could result in an unbalanced view depending on the nature and timing of each party's testimony. Due to the complexities and dynamics surrounding the use of expert witnesses in litigation proceedings, disclosure of such testimony could be misleading to a financial statement user without extensive elaboration on the company's litigation tactics and speculation as to the opposition's tactics.

We believe a company should be permitted to exercise judgment in determining whether the disclosure of the amount of damages indicated by the testimony of expert witnesses would be useful and necessary in enabling financial statement users to understand the nature, potential magnitude, and potential timing of a litigation-related contingency.

#### Summary

In summary, we do not believe that the requirements of the exposure draft sufficiently reduce the risk of prejudicial disclosure; and thus an explicit exemption would be necessary in its present form. Further, we believe that a company should have the ability to exercise judgment where a disclosure otherwise could be misleading.

We appreciate this opportunity to comment. If requested, we would be pleased to discuss our comments with you at any time.

Sincerely,

VP & Corporate Controller

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