



**Henry Hood**  
*Senior Vice President –  
Land and Legal and  
General Counsel*

September 20, 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

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

Dear Mr. Golden:

Chesapeake Energy Corporation appreciates the opportunity to respond to the Exposure Draft ("ED") on Contingencies (Topic 450) issued by the Financial Accounting Standards Board ("FASB") on July 20, 2010. We are the second-largest producer of natural gas and the most active driller of new wells in the U.S. Headquartered in Oklahoma City, our operations are focused on discovering and developing unconventional natural gas and oil fields onshore in the U.S. Chesapeake owns leading leasehold positions in the Barnett, Fayetteville, Haynesville, Marcellus and Bossier natural gas shale plays and in the Eagle Ford, Granite Wash and various other unconventional oil plays. We have also vertically integrated our operations and own substantial midstream, compression, drilling and oilfield service assets.

We do not believe that the ED as drafted will achieve the primary objective of enabling financial statement users to better understand the nature, potential magnitude and potential timing of loss contingencies. In fact, we believe that some of the proposed standards would unfairly disadvantage defendants in legal matters and have the potential to mislead financial statement users as to the merit (or lack of merit) of an asserted legal claim. The disclosures proposed may lead, perversely, to increased litigation and adversely affect shareholder value.

We believe that the existing disclosure requirements provide adequate information regarding potential loss contingencies to investors and other users of financial statements without exposing companies and their shareholders to the risks presented by the proposed disclosure requirements. FASB can achieve its objective more directly and effectively, we believe, by providing companies guidance on complying with the current disclosure requirements of ASC 450-20. If FASB proceeds with the issuance of a final standard, however, we respectfully request that our responses below to specific questions contained in the ED be taken into consideration. Our comments address whether the disclosure requirements in the proposed

**Chesapeake Energy Corporation**

P.O. Box 18496 • Oklahoma City, OK 73154-0496 • 6100 N. Western Avenue • Oklahoma City, OK 73118  
Corporate Headquarters 405.935.8000

Mr. Russell Golden  
September 20, 2010  
Page 2

update would create operational issues, result in disclosure of prejudicial information and ultimately enhance the information provided to financial statement users related to loss contingencies, in particular litigation contingencies.

*Question 1: Are the proposed disclosures operational? If not, please explain why.*

Certain aspects of the ED requiring disclosure of loss contingency accrual amounts are not operational. Accruals for loss contingencies and related disclosures are based on the amalgamation of company and claim-specific facts and circumstances, as well as numerous other factors, including trends in the industry, legislation and the political climate. There is a high degree of subjectivity in making these determinations. Therefore, we believe that, without additional, specific guidance from FASB, companies would inevitably quantify and aggregate items differently and would evaluate relevant information for disclosure differently, making it difficult for financial statement users to interpret the aggregated data or the disclosures on a consistent basis among reporting entities.

The nature of litigation and other loss contingencies is dynamic, making the burden of additional disclosure challenging. For example, disclosure of the potential timing of a loss or resolution in most situations is difficult. The projected timing of resolution is fluid in nature due to the myriad factors involved in how a contingency is resolved. Timing of resolution is typically unknown until very late in the resolution process and the facts affecting timing are so case dependent that a forecast is virtually meaningless. We also believe the proposed requirement to disclose information about "remote" loss contingencies would be particularly difficult to implement due to the subjective determination of a "severe impact" from an asserted claim that is assessed as being remote. A company's management can only be expected to exercise its good faith judgment with respect whether incremental disclosures are necessary or appropriate and contemporaneously document such judgment.

With respect to the aggregation of claims, it may not be possible to aggregate the qualitative and quantitative aspects of contingency types in a meaningful way because in general not all situations have consistent attributes to be tallied, added and disclosed. Each individual loss contingency situation typically has its own facts that may or may not be publicly known and may or may not give rise to a specific damage claim. Each such claim may give rise to a unique basis of defense and may or may not have a range of loss that can be estimated. In addition, as further discussed under Question 3 below, additional disclosures present the risk of prejudicing a company's position in litigation or other settlement negotiations, even if aggregated.

As further discussed in response to Question 4 below, it is problematic whether companies can develop the controls and procedures necessary to compile information required to produce and audit such disclosures in time for an effective date of December 15, 2010. Whatever the implementation date, we expect compliance costs will not be insubstantial as companies devote internal and external resources to the process and undergo more extensive interactions with their auditors seeking to assess the new disclosures.

*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:*

Mr. Russell Golden  
September 20, 2010  
Page 3

- 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.*

We believe that an explicit exemption for the disclosure of prejudicial information would be fair and appropriate. Though the proposal has been revised to eliminate disclosure of settlement offers and some predictive elements, there remain predictive disclosures that do not rely exclusively on public information. If disclosure of accrual amounts and the tabular reconciliation remain in the ED, it will likely be prejudicial and detrimental to companies and their shareholders.

A company's accruals on specific cases, types or classes of contingencies are not public information. Disclosure of accrual amounts, together with sufficient information to enable the auditors to evaluate the legal analysis underlying such disclosure, will likely need to be made to a company's auditor as part of the audit process. This disclosure may conflict with the governing treaty between the American Institute of Certified Public Accountants ("AICPA") and the American Bar Association ("ABA") dictating the information that legal counsel can provide to auditors. This may also increase the likelihood that a court will find that a company, in so disclosing such information, has waived its attorney-client and work-product privileges. Waiver of such privileges opens the door to discovery of the accrued amounts by plaintiffs and juries. Disclosure to a plaintiff of an accrued amount for a potential loss could give a plaintiff a road map for settlement negotiations by revealing a company's thoughts on the potential outcome of litigation and could establish a settlement floor. Disclosure to juries, who may be unfamiliar with the nuances of technical accounting requirements, could lead to an erroneous conclusion that the accrued amount is an admission of "guilt", and this may unduly prejudice their evaluation of the merits of the case. Moreover, such disclosures could potentially invite additional litigation by others.

With respect to the tabular reconciliation, the disclosure of changes in recorded amounts, along with disclosure of the reasons for such changes, could be prejudicial to companies. Although the ED provides that the tabular reconciliation may be made "by class", the permissible aggregation standards appear to be narrow and, therefore, the permitted aggregation may not be sufficient to protect against disclosure of prejudicial information. In setting forth the factors to be considered by a company in determining the appropriate level of aggregation, the ED does not allow a company to consider that disclosure of information may be prejudicial. Further, where a company is involved in a single, large legal dispute, aggregation may not be possible, and even if there are several cases that can be aggregated, if one is more significant than the others, any changes in accrual amounts would be highly visible. Thus, to the extent an adjustment in a quarterly accrual amount can be traced to a particular matter, plaintiffs will be able to obtain quarterly information on management's evolving view of the litigation, thereby increasing their leverage in settlement negotiations.

Lastly, disclosures of possible recoveries from insurance or indemnification agreements and the status of such claims could be prejudicial to defendants even though a plaintiff or those who are

Mr. Russell Golden  
September 20, 2010  
Page 4

not parties to litigation with a company could discover the information. This is likely to have the effect of encouraging litigation and increase amounts sought in litigation, for example, by encouraging would-be plaintiffs to file frivolous suits in hopes that a company will be more willing to settle covered claims.

*Question 4: Is the proposed effective date operational? If not, please explain why.*

The proposed effective date of the ED is not operational. The time frame proposed does not allow adequate time for management, working in conjunction with legal counsel and external auditors, to undertake the necessary steps to develop new operational procedures and internal control processes to comply with the new requirements. For example, implementing appropriate controls and procedures to collect, review and disclose the data, including reviewing the entire litigation portfolio to determine appropriate levels of aggregation (particularly in light of the tabular information required to be provided) will take time. These issues will involve discussions among the company's in-house legal staff, each of the respective outside counsel representing a company in each of its litigation matters, in-house accounting and finance personnel, relevant business management and the outside auditor. In addition to the internal operational issues, there are uncertainties that must be resolved regarding how the disclosure requirements will be audited and how the audit processes and procedures will align with the AICPA/ABA treaty governing such disclosures. Given the sensitive issues raised by the new disclosures, we believe that any implementation of the new standard should allow companies to do this in a thoughtful way. Accordingly, we recommend that if a new standard is adopted, the effective date be changed so that it would provide companies a full year to prepare for the new requirements.

*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?*

We do not believe the proposed disclosures will meaningfully assist financial statement users in assessing a company's loss contingencies. While the proposed disclosures contained in the ED would provide the users of financial statements with *more* information, it would not provide them with *better* information. The disclosure required by the proposed requirements in the ED would provide only marginal benefits to users of financial statements which are outweighed by the potential risks presented by the proposed disclosure.

Disclosure of loss contingency accrual amounts is unlikely to assist investors in better understanding the effect a company's litigation may have on its financial condition. All amounts that already are accrued are included in a company's financial statements and are therefore reflected in the company's results of operations. In addition, ASC 450 currently requires disclosure of accrued amounts that are material where it "may be necessary for the financial statements not to be misleading". We believe implementation of the ED will produce an undesirable policy outcome—rather than providing additional, meaningful information to investors, it will provide prejudicial information to an adversary in a litigation matter who can use that information to its advantage at the expense of the company and its shareholders.

The ED is likely to give rise to disclosures of speculative or frivolous lawsuits and, as a result, the disclosure requirement will, in effect, provide meaningless disclosure to investors. The current ASC 450-20 approach allows companies to classify frivolous or speculative lawsuits as

**Chesapeake Energy Corporation**

P.O. Box 18496 • Oklahoma City, OK 73154-0496 • 6100 N. Western Avenue • Oklahoma City, OK 73118  
Corporate Headquarters 405.935.8000

Mr. Russell Golden  
September 20, 2010  
Page 5

“remote” until a court ruling determines otherwise; in contrast, the ED would give legitimacy and credibility to these types of lawsuits upon their filing. Increasing the number of litigation matters that are described in a company’s financial statements—particularly when the increased number is due to discussions of remote, possibly frivolous lawsuits—gives rise to less meaningful disclosure overall as it dilutes the effectiveness to investors of the disclosures concerning the more substantive litigation matters that are required under the current standard.

Pursuant to the proposed disclosures in the ED, the potential magnitude or true economic impact of claims may be misinterpreted by users due to the inability to net potential losses with insurance proceeds. In addition, the proposed disclosures concerning assessments of potential exposures could materially differ from the amounts accrued in the financial statements which could confuse or alarm financial statement users who rely on current U.S. GAAP accounting and reporting guidance.

\* \* \* \* \*

The ED risks producing significant prejudicial effects on companies, which will reduce shareholder value without providing any real measure of additional meaningful disclosures to investors. We appreciate that the intended goal of the ED was to give investors a greater understanding of future litigation risks by providing them with more preliminary and granular information. However, given the nature and dynamics of litigation, the information required to be disclosed by the ED would give plaintiffs a “litigation roadmap.” The information sought has the potential to jeopardize the ability of the company to preserve the privilege of confidential information to the detriment of shareholders. The only likely beneficiaries of the proposed disclosures are opportunistic lawyers seeking to file “copycat” cases or class actions for disclosure deficiencies while enjoying the benefit of hindsight.

To reiterate, we believe that the existing disclosure requirements regarding potential loss contingencies are meaningful and adequate to inform investors and other users of financial statements. If FASB is concerned about certain disclosure practices of U.S. companies, as we noted above, we would support FASB issuing guidance requiring companies to focus on, and comply with, the current disclosure requirements of ASC 450-20. We would also urge FASB to require that forward-looking disclosures be provided in the notes to financial statements only if the same disclosure is not otherwise contained in the Management’s Discussion and Analysis of Financial Condition and Results of Operations in the same document, thereby providing information to investors but with the protection afforded such statements by the Private Securities Litigation Reform Act of 1995.

Sincerely,

/s/ Henry J. Hood

Henry J. Hood  
Senior Vice President – Land and Legal and General Counsel