

September 20, 2012

Ms. Susan M. Cospier  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

**File Reference No. EITF-12D**

Dear Ms. Cospier:

Connor Group is pleased to provide our comments on the Proposed Accounting Standards Update (ASU), Liabilities (Topic 405), Obligations Resulting from Joint and Several Liability Arrangements. Connor Group was founded in 2005 and is a technical accounting advisory firm built of Big 4 alumni and industry executives. We currently have over 200 clients in North America, Europe, Asia, Australia, and South America. We specialize in helping our clients solve complex technical accounting issues under both US GAAP and IFRS. Our clients represent industries, among others, such as technology, software, Internet, cloud services, life sciences, and manufacturing.

We support the efforts of the Financial Accounting Standards Board to provide accounting guidance to eliminate the existing diversity in practice in Topic 405. The Appendix to this letter provides our responses to the Questions for Respondents included in the proposed update.

We would be pleased to discuss our comments with the Board or the FASB staff at your convenience. Please direct any questions to Aleks Zabreyko, Partner, Head of Technical Reviews ([aleks.zabreyko@connorgp.com](mailto:aleks.zabreyko@connorgp.com); 408.409.3422).

Very truly yours,

*Connor Group*

**Responses to the Questions for Respondents in the Proposed Accounting Standards Update, Obligations Resulting from Joint and Several Liability Arrangements**

**Question 1:** Do you agree with the types of obligations resulting from joint and several liability arrangements that are included in the scope of this proposed Update (that is, the total amount under the arrangement is fixed at the reporting date and not otherwise covered by existing U.S. GAAP)? Are there other forms of joint and several liability arrangements that should be included in the scope of this proposed Update? If certain arrangements should be excluded or included, please explain why.

**Response 1.** We agree with the scope of the proposed ASU to Topic 405 as considered within the defined accounting framework for joint and several liabilities (i.e. if such liabilities are accounted for as loss contingencies under Topic 450-20, unless they are considered to be guarantees in scope of Topic 460). Please refer also to our Responses to Questions 3 and 5 for additional consideration regarding the application of Topic 450-20 to joint and several liability obligations. A differently defined scope (e.g., including liabilities that are not fixed at the reporting date) may be appropriate if an accounting framework different from Topic 450-20 is used.

**Question 2:** Do you agree that the scope of this proposed Update should include all entities that have joint and several liability arrangements within the scope of the proposed Update, including entities that are under common control, related parties, and unrelated parties? If not, please explain why.

**Response 2.** We agree with the proposal to include in the scope of the ASU all entities that have joint and several liability arrangements, including entities that are under common control, related parties, and unrelated parties.

**Question 3:** Are you aware of joint and several liability arrangements among unrelated parties? If yes, please describe such arrangements and describe why those arrangements should be included or excluded from the scope of this proposed Update.

**Response 3.** We are aware of one example of an arrangement in which joint and several liability provisions would exist among unrelated parties. In this instance, two public companies contemplated entering into a “consortium” with a customer, under which one participant would supply components, and the other engineering services, to deliver a final single project to the customer. The consortium participants would have joint and several liability to the customer. The consortium was being structured as a three-way contract among the participants and the customer, and no new legal entity was formed. An accounting issue arose as to whether, with the proposed transaction structure, the supplier of components could recognize revenue prior to the completion of the engineering services, if the customer had taken title to and paid for the components, but the component supplier could potentially be held responsible for the engineering services supplier’s failure to complete its obligations. While this is the only practical example we have encountered across our client base, we anticipate there could be additional similar transactions where companies conduct joint activity without forming a legal entity and share joint and several liability to counterparties. In general, revenue recognition principles in Topic 605 differ significantly from loss contingency principles in Topic 450-20, and thus, significant accounting differences could result depending on whether this arrangement would be in scope of Topic 605 or Topic 450-20.

Further, joint activities via unincorporated ventures may be deemed to be in scope of Topic 323-30 by analogy (and the recently issued IFRS 11), and it is not clear whether joint and several liability obligations, should they exist in such joint activities, would be in scope of Topic 323-30 as part of the joint activity, other literature (including analogizing to IFRS 11), or the proposed ASU in Topic 405. Thus, the issue of joint and several liability could potentially have broader implications.

**Question 4:** Under this proposed Update, if the primary role of a reporting entity in the joint and several liability arrangement is that of a guarantor, then it should account for the obligation under Topic 460. This proposed Update includes some guidance on when the primary role is that of a guarantor. Is that guidance sufficient to distinguish between joint and several liability arrangements that should be accounted for under Topic 460 and those that should be accounted for under Subtopic 450-20? If not, please explain what additional guidance the Task Force should consider including to assist preparers in distinguishing between the two.

**Response 4.** We believe the proposed guidance is sufficient.

**Question 5:** Do you agree that obligations resulting from joint and several liability arrangements that are included in the scope of this proposed Update should be measured as a loss contingency in accordance with Subtopic 450-20? If not, please explain why.

**Response 5.** We conceptually support the notion of recording the liability when, from the common sense perspective, it is probable to be paid. However, in accounting world, “probable” as used in Topic 450-20 has often been interpreted to mean the likelihood of payment significantly higher than 50%. For example, some professional publications refer to a likelihood of 70% as being “probable”. In many litigations, entities conclude that a loss is not probable until it has materialized via settlement or is about to materialize. In this regard, there could be circumstances where there is a fixed obligation in scope of the proposed ASU (i.e., a 100% certain obligation to pay), two parties with joint and several liability, and a 50% likelihood that each of the two parties will have to pay the entire amount. However, in this case neither party has a “probable” obligation, and thus, neither party would record a liability under ASC 450-20. We believe such an outcome would be counter-intuitive to the fact that one of the two parties will certainly incur the liability. In this regard, we note that the measurement guidance proposed in ASC 405-40-30-2 is only partially alleviating this concern, as by its nature measurement of the liability would only be applicable if the liability exists in the first place, i.e. is deemed probable.

As an alternative to recording the liability amount under Topic 450-20, entities could be required to record their best estimate (or alternatively, fair value) of the eventual amount expected to be paid. We believe the proposed measurement guidance in ASC 405-40-30-2 could be better aligned with the concept of recognition based on the best estimate (or fair value).

In this regard, we also observe that where joint and several liability obligations exist among entities under common control or related entities, it would be practical to require that the aggregate liability recorded by all such entities equal the total fixed amount of the liability incurred. Absent such requirement, the proposed framework could result in the related entities recording aggregate liabilities either less or greater than the total fixed liability. In this regard, we believe there could be meaningful differences in the accounting framework applicable to entities that are under common control or otherwise related.

Lastly, the above considerations also bring the question of accounting for joint and several liability obligations that are contingent and thus are in scope of ASC 450-20 both under the existing literature and following the adoption of the proposed ASU. Judgments regarding whether a liability is probable could differ when looked at from the perspective of a single entity v. from the perspective of all entities subject to the obligation. For example, if there is a 90% likelihood of one of the two entities making a payment (and thus, the payment is probable), but the likelihood of payment by each individual entity is 45%, does that mean that neither of the two entities should reflect the liability in its books. Again, for entities under common control or related entities, such an outcome would be particularly counter-intuitive.

**Question 6:** Do you agree with the disclosure requirements for obligations resulting from joint and several liability arrangements that would be included in the scope of this proposed Update? If not, please explain why.

**Response 6.** We support the FASB proposal on this matter. We additionally believe it would be helpful to disclose the anticipated timing of when the liability could be settled.

**Question 7:** Do you agree that the guidance in this proposed Update should be applied retrospectively to all prior periods presented for obligations resulting from joint and several liability arrangements that exist at the beginning of an entity's fiscal year of adoption? If not, please explain why. Also, do you think the transition guidance should be the same for obligations in which the primary role of the reporting entity is that of a guarantor and that are to be accounted for under Topic 460? If not, please explain why. Do you agree that an entity may elect to use hindsight for the comparative period(s) if it changed its accounting as a result of adopting this proposed Update? If not, please explain why.

**Response 7.** We support the FASB proposal on each of the matters discussed above. In particular, we believe it may be practically difficult to avoid the use of hindsight in various circumstances when adopting the requirements of this ASU on a retrospective basis.

**Question 8:** The proposed amendments would apply to public and nonpublic entities. Should any of the proposed amendments be different for nonpublic entities? If yes, please identify those proposed amendments and describe how and why you think they should be different.

**Response 8.** We believe the guidance in the proposed Update should apply to both public and nonpublic entities.

**Question 9:** Do you agree that an entity should be permitted to early adopt the proposed amendments? If not, please explain why.

**Response 9.** We agree.