

August 8, 2008

Russell G. Golden
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

By e-mail: director@fasb.org

**Re: Proposed Statement of Financial Accounting Standards –
*Disclosure of Certain Loss Contingencies – an amendment of
FASB Statements No. 5 and 141(R)*
(File Reference No. 1600-100)**

Dear Mr. Golden:

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned exposure draft. The NYSSCPA thanks the FASB for the opportunity to comment.

The NYSSCPA's Financial Accounting Standards Committee deliberated the exposure draft and drafted the attached comments. If you would like additional discussion with us, please contact Edward P. Ichart, Chair of the Financial Accounting Standards Committee, at (516) 488-1200, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



Sharon Sabba Fierstein
President

Attachment



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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON PROPOSED STATEMENT OF FINANCIAL ACCOUNTING
STANDARDS — *DISCLOSURE OF CERTAIN LOSS CONTINGENCIES – AN
AMENDMENT OF FASB STATEMENTS NO. 5 AND 141(R)***

File Reference No. 1600-100

August 8, 2008

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New York State Society of Certified Public Accountants

Financial Accounting Standards Committee

Comments on Proposed Statement of Financial Accounting Standards – *Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R)*

General Comments

The Financial Accounting Standards Committee of the New York State Society of Certified Public Accountants has reviewed the Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R)* (“Exposure Draft”) and has prepared the following comments.

We acknowledge and appreciate the Board’s attempts to improve disclosures of certain loss contingencies. However, we believe the Board must be mindful that the ultimate outcome of any loss contingency is highly subjective where different professionals may come to different conclusions. We note that the assessment of the appropriateness of loss contingencies has been the basis for many litigation proceedings in recent history.

We hope and anticipate that the American Bar Association will provide its comments on this Exposure Draft. If so, such comments should receive special consideration by the Board. Should the American Bar Association object to the inclusion in financial statements of certain information, legal confirmations and other correspondence from entities’ legal counsel, we believe that there is a possibility that legal counsel will not provide the information required by this Exposure Draft. This could lead to scope limitations resulting in the failure to provide the additional information that the Board and users of financial statements hope to obtain.

Specific Comments

We have the following responses to the questions asked in the Exposure Draft:

Question 1. Will the proposed Statement meet the project’s objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

Response - The proposed Statement meets the project’s objective of providing enhanced disclosures about loss contingencies in a manner such that the benefits of those

disclosures justify the incremental costs. The proposed quantitative and qualitative disclosures provide relevant useful information to users of financial statements in assessing the likelihood, timing and amount of future cash flows associated with loss contingencies that are or would be recognized.

We would expect legal fees, audit fees and management time to prepare the required disclosures to increase and vary based upon the extent of litigation in which an entity is involved.

Question 2. Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?

Response - We agree with the Board's decision to include obligations that may result from an entity's withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations. Due to the nature of pension plans, these liabilities can be significant. Subjecting these loss contingencies to the proposed disclosure requirements would provide users with useful information with respect to an entity's exposure to such liabilities. Considering the FASB's increased pension disclosure requirements for single employer plans derived from SFAS 132 (R) and SFAS 158, this requirement would improve the reporting of unfunded multiemployer plan liabilities.

Question 3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?

Response - An entity should not be required to disclose loss contingencies if the likelihood of occurrence is remote. The likelihood of loss, as defined in FASB Statement No. 5, *Accounting for Contingencies*, should govern the disclosure requirement. If the chances of a future event or events confirm that a loss is remote, no disclosure should be required, even if the resolution of the contingency is expected to occur within one year and the loss contingency could have a severe impact upon the operations of the entity.

Question 4. Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of the financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range

of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.

Question 4.a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?

Response - Such disclosure would provide an improvement in reporting because it will provide financial statement users with information as to the maximum potential dollar loss arising from the loss contingency.

Question 4.b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?

Response - This disclosure should not be required. More often than not, legal actions are based upon exaggerated quantitative claims. However, we believe requiring this disclosure would impose upon management, particularly in complex legal actions, the very difficult task of providing an estimated loss that may not be reasonably determinable. Therefore, requiring this additional disclosure will not always result in more useful information.

Question 4.c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

Response - Not applicable.

Question 5. If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

Response - The reliability of management's estimate as to a potential claim would appear to be correlated to, among other things, the complexity of the contingency and the stage of discovery in which an entity finds itself. The greater the complexity of the contingency and the earlier in the discovery stage, the more difficult it becomes to determine a reliable "best estimate" maximum exposure to loss. Additionally, disclosure of the underlying assumptions would provide useful information to allow financial statement users to understand management's basis for its "best estimate."

Question 6. Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because these offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?

Response - Disclosure should not be required. Though the disclosure of settlement offers might on occasion provide financial statement users with some useful information, settlement offers are often so fluid and transitory that it is more likely that the information provided would be more distortive than useful.

Question 7. Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in amounts recognized in the financial statements? Why or why not?

Response - The tabular reconciliation will provide useful information to financial statement users as it relates to assessing future cash flows. The reconciliation will allow financial statement users to obtain a better understanding of the liabilities recorded in the balance sheet and changes therein, and the corresponding impact upon the statement of cash flows.

Question 8. This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

Response - Due to the nature of the information being disclosed, it is likely that the disclosure requirements proposed by this Exposure Draft might adversely affect an entity in a pending claim or assessment. We agree with this exemption with respect to prejudicial information. However, we believe that the determination as to what constitutes prejudicial information should be left to counsel and not management.

Question 9. If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

Response - We agree with the two-step approach as it provides flexibility with respect to disclosing prejudicial information.

Question 10. The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be *extremely rare*. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be *rare* (instead of *extremely rare*). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

Response - We agree with the Board. "Extremely rare" seems to imply an event that hardly ever occurs. The term "rare" implies that there will be situations in which disclosing information, regardless of aggregation, may be prejudicial and the exemption in paragraph 11 would apply.

Question 11. Do you agree with the description of *prejudicial information* as information whose “disclosure...could affect, to the entity’s detriment, the outcome of the contingency itself”? [sic] If not, how would you describe or define *prejudicial information* and why?

Response - We agree with the description of prejudicial information.

Question 12. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

Response - We believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods and the tabular reconciliation should be required only annually. The progression of loss contingencies should be disclosed for each reporting period. Such information is useful and relevant to users of financial statements.

Question 13. Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?

Response - No other information should be required.

Question 14. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

Response - We do not believe it is operational for fiscal years ending after December 15, 2008 to implement the proposed Statement because by the time it were to be issued there would not be sufficient time for filers and relevant service providers to assimilate the requirements. Instead, we recommend implementation in fiscal years ending December 15, 2009. We also believe it would be beneficial to afford the legal community the opportunity to become attuned to the requirements of this Exposure Draft.