



American Institute of CPAs
1211 Avenue of the Americas
New York, NY 10036-8775

August 23, 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

Dear Mr. Golden:

The Financial Reporting Executive Committee of the American Institute of Certified Public Accountants (FinREC) is pleased to offer comments on the FASB's July 20, 2010, Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies* (the Exposure Draft). We support the Board's continuous effort to enhance disclosures related to loss contingencies to provide investors and other users of financial statements with greater information for assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies. We support the disclosure principles stated in the proposal and believe that they provide a good foundation for contingency disclosures.

We believe that eliminating the requirements proposed in the 2008 exposure draft *Disclosure of Certain Loss Contingencies-an amendment of FASB Statements No. 5 and 141(R)* (the 2008 Exposure draft) to provide disclosures that were predictive in nature improves the guidance. We also support disclosure of factual, objective, and verifiable information. While we generally support the proposed required tabular reconciliation disclosures for public companies, we agree that nonpublic entities should be exempted from such requirement.

However, we, along with members of the AICPA's Auditing Standards Board (ASB), continue to have major concerns and believe changes must be made to further improve and operationalize the conclusions reached. The following are our concerns:

Auditors' Ability to Corroborate

As stated in our comment letter on the 2008 Exposure draft, the American Bar Association's (ABA) "Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information" (December 1975) ("ABA/AICPA treaty") explains the concerns of lawyers and the nature of the limitations an auditor is likely to encounter, and provides

guidance to lawyers on responding to auditors' letters of audit inquiry. The ABA/AICPA treaty doesn't address a number of the proposed additional disclosure items, and we expect that responses from lawyers will be incomplete with respect to these additional disclosure requirements, which makes it potentially difficult, if not impossible, to obtain external corroborating information that would be necessary to render an unqualified audit opinion.

As indicated in our 2008 comment letter, sufficient timing for the revision of the "treaty" between the legal and auditing professions is needed before the exposure draft is finalized. FinREC believes it is unlikely that a revised treaty could be negotiated prior to the proposed adoption date, in addition to the practical issues of communicating the changes to ABA members and educating them on the application.

Auditors may find the language about disclosure of certain information "to the extent that it is discoverable by either the plaintiff or a regulatory agency" particularly troubling since determination of whether something is discoverable is a legal determination. We believe it may be unlikely that a lawyer would respond to an auditor about information that is not currently in the public domain that could potentially be discoverable. Further, trying to obtain sufficient evidence from someone other than the entity's lawyer is a difficult, if not impossible, task.

Additionally, the proposed requirement to disclose the reason that an estimate cannot be made is not contemplated in the ABA/AICPA treaty, which may make it difficult for auditors to corroborate the reason.

In summary, we believe the Exposure Draft should not be finalized until an agreement is completed with the ABA that would allow entities to comply with the proposed requirements.

Other Comments

- The proposal uses the term *publicly available information* but that term is not defined either in the proposed ASU or otherwise in U.S. GAAP. This may be particularly difficult to apply to situations where companies operate in multiple jurisdictions with very different legal structures. We believe the term *an entity may be aware* as used in ASC 450-20-55-14 is more operational than what is proposed.
- Though we are confident in our analysis of expected difficulties in obtaining corroborating audit evidence from attorneys, we recommend that FASB engage companies and their attorneys to field test the operability of providing both the factual information required by the Exposure Draft as well as the information that involves management or lawyer judgment, and the related evidence needed to be provided to auditors.
- If the requirement to disclose certain remote contingencies remains, additional application guidance is necessary. The determination of whether a contingency is

- frivolous or meets the threshold for disclosure is highly judgmental and will introduce significant complexity and risk into the process of preparing disclosures.
- Overall, we continue to believe that certain of the proposed disclosures could expose a company's legal strategy and provide plaintiffs with information that could compromise the company in litigation or negotiation settlements, especially in the situations where the lack of contingent claims would prevent sufficient aggregation.
 - We disagree with the proposed effective date and propose the new guidance should be effective for fiscal years ending after December 15, 2011, and interim and annual periods in subsequent fiscal years for public companies. For nonpublic entities, we recommend, the new guidance shall be effective for the first annual period beginning after December 15, 2011, and for interim periods of fiscal years after the first annual period. Entities are experiencing resources constraints and may not have sufficient resources and personnel to implement the standard and change the controls and processes within the proposed timeline.

* * * * *

We appreciate the opportunity to provide comments on the Exposure Draft. In addition, we are available to discuss our comments with Board members or staff at their convenience.

Sincerely,



Jay D. Hanson, Chair
Financial Reporting Executive Committee