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September 20, 2010

VIA EMAIL TO: director@FASB.org

Technical Director
File Reference No. 1840-100
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies*

To Whom It May Concern:

Our firm, Financial Reporting Advisors, LLC, provides accounting and SEC reporting advisory services, litigation support services, and dispute resolution services. We specialize in applying generally accepted accounting principles to complex business transactions. We appreciate the opportunity to provide comments on the FASB's Proposed Accounting Standards Update, Contingencies (Topic 450): *Disclosures of Certain Loss Contingencies* (the Proposed Standard).

Summary

We highly commend the FASB for listening to its constituencies and responding to the concerns and questions arising from the Board's 2008 proposal on disclosures of loss contingencies. We acknowledge the challenge the FASB faces in balancing the needs expressed by users for more timely and robust information on significant loss contingencies against the concerns expressed by preparers and their legal advisers regarding the disclosure of prejudicial information. Although we have a keen interest in the concerns raised by the various constituencies, because we are not principally users or preparers of financial statements, we believe our comments are most appropriately focused on issues that may affect the operationality of the Proposed Standard.

Our comments respond to Question 1, "Are the proposed disclosures operational?" Our primary focus is on two areas:

1. Application of the proposed disclosure requirements to environmental-related loss contingencies

2. Implementation of the proposed requirement to disclose certain remote loss contingencies

We also have a number of supplemental observations regarding questions of consistency and clarity in the Proposed Standard. Our supplemental observations are presented in Appendix A.

Comments

1. *Application of the proposed disclosure requirements to environmental-related loss contingencies*

The current disclosure guidance for environmental-related loss contingences (Topic 410) identifies several disclosures that are encouraged but not required.[1] The Proposed Standard does not amend that guidance.[2] However, it appears to us that several of the environmental-related loss contingencies disclosures currently identified as encouraged would not be optional if the Proposed Standard is finalized as drafted.

The source for the current guidance on disclosures of environmental-related loss contingencies was AICPA Statement of Position No. 96-1, *Environmental Remediation Liabilities* (SOP 96-1). That guidance was issued, in part, to clarify how the disclosure standard for the broad category of loss contingencies, FASB Statement No. 5, *Accounting for Contingencies* (now Topic 450), would apply to this specific category of loss contingencies. It is our understanding that SOP 96-1 also was intended to encourage the disclosure of additional information that could be useful in understanding the financial statements of an entity that is at risk of loss from significant environmental-related contingencies. Thus the current guidance makes a distinction between required and encouraged disclosures so as to conform with, but not expand, the disclosure requirements for other loss contingencies. As was noted when SOP 96-1 was issued:

> "A number of commentators [on the Exposure Draft] said the disclosures that are encouraged, but not required, by the SOP should be mandatory. Those commentators believe that the encouraged disclosures provide valuable, or even essential, information to users of the financial statements. AcSEC believes the encouraged disclosures will enhance the usefulness of financial statements as tools for decision making. AcSEC recognizes, however, that the FASB is undertaking a project on disclosure effectiveness and decided that it would be inappropriate to impose new disclosure requirements concerning environmental remediation liabilities at this time. Accordingly, the SOP imposes no disclosure requirements that go beyond the requirements of existing authoritative literature."[3]

We believe that several of the "encouraged" disclosures for environmental-related loss contingencies are inconsistent with the requirements of the Proposed Standard. To illustrate, if the Proposed Standard requires disclosure of the reason that the possible loss or range of loss cannot be estimated, why is that same information identified as an encouraged disclosure for an environmental-related loss contingency?[4] As detailed in Appendix B, we believe there are a

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[1] See ASC 410-30-50-8 to 410-30-50-12, and the related illustrations in ASC 410-30-55-14 to 55-17.

[2] See paragraph 27, Amendments to ASC Subtopic 410-30, in the Proposed Standard. The only amendment identified is a revision of a reference to a codification topic.

[3] See SOP 96-1, Appendix D, paragraphs D-27 and D-28.

[4] See sub-paragraph 450-20-50-1F(e)(3) in the Proposed Standard and ASC 410-30-50-10(c) discussing environmental-related loss contingencies.

number of inconsistencies between the specific guidance on environmental-related loss contingency disclosures and the requirements in the Proposed Standard.

We encourage the Board to reconsider whether the current guidance on environmental-related loss contingencies is consistent with the requirements in the Proposed Standard. If the Board believes that changes are needed, we strongly encourage the Board retain and update the illustrated disclosures in Topic 410. We note that in the 2008 exposure draft on disclosures of loss contingencies, the Board proposed eliminating the illustrated disclosures. However, in our experience, practitioners find sample disclosures very helpful.

If the Board believes no changes to the current disclosure guidance for environmental-related loss contingencies are needed, we encourage the FASB to explicitly note that conclusion in the final standard's basis for conclusions. That clarity would eliminate potential confusion about whether the disclosure guidance and related sample disclosures for environmental-related loss contingencies in Topic 410 are consistent with the revised requirements in Topic 450.

2. Implementation of the proposed requirement to disclose certain remote loss contingencies

We understand that the objective of the proposed requirement to disclose certain remote loss contingencies is to provide users of financial statements with more timely information about potentially significant loss contingencies. We also understand that the threshold for disclosure is a loss contingency that has a remote likelihood of an unfavorable outcome but creates vulnerability to a potential severe impact. However, we do not understand how to implement this disclosure threshold in practice so as to be consistent with the objective. We have two questions:

a. Having concluded that the likelihood of an unfavorable outcome for a specific loss contingency is remote, what outcome is assumed to determine the potential for severe impact? Does management assume a worst case outcome? If not, given that there is a range of possible unfavorable outcomes even for a remote loss contingency, what outcome is assumed?

b. Given that both probable and reasonably possible loss contingencies are assessed for significance and recognition based on their likely outcome, does this disclosure threshold apply to the outcomes that are considered remote for these contingencies?

To explain our confusion on the first question, assume a company is named as a defendant in a product liability lawsuit. Management and its legal counsel believe the lawsuit is frivolous: the alleged facts are erroneous and unsupportable and even if the alleged facts were correct, there is no legal basis for a claim against the company. Accordingly, management and its legal counsel conclude an unfavorable outcome is remote. By definition, the best estimate of the amount of loss is zero; also by definition, it is not reasonably possible that the amount of the loss could be material. Currently, no disclosure is required. However, under the Proposed Standard, management would be required to assess the company's vulnerability to severe impact as a result of this lawsuit.

For purposes of assessing whether this specific loss contingency makes the entity vulnerable to a severe impact, what outcome does management assume? Even for a remote loss contingency, there is no single unfavorable outcome: while there may be only a 5% chance of an unfavorable outcome, there are numerous possible outcomes, each of which has a remote chance of occurring. If management uses either its best estimate of the expected outcome or its best estimate of other reasonably possible outcomes, no remote loss contingency would ever meet the disclosure threshold.

Clearly this is not what the FASB intends. Accordingly, to determine if the loss contingency could have a severe impact, should management assume the worst case scenario? Or should management attempt to predict the consequence of an unfavorable outcome? If so, which of the myriad of potential unfavorable outcomes should management assume for purposes of assessing vulnerability to severe impact?

In the product liability case example, an unfavorable outcome could mean a small settlement, a major settlement, adjudication with compensatory damages, adjudication with compensatory and punitive damages, or numerous other possibilities such as the expansion of the individual claim into a class action claim. By definition, each of these outcomes is deemed remote. Which unfavorable outcome should management assume for purposes of determining whether the company is vulnerable to a severe impact? The possibilities that occur to us include the following:

- Should management assess the likelihood of each of these remote scenarios and use the most likely outcome to determine severe impact? If so, we observe that expecting preparers to ascertain the most likely outcome within a population of remote outcomes implies a level of precision and degree of analysis and foresight that seems unrealistic and unnecessarily burdensome for general purpose financial statements.

- Should management assume the best case outcome as long as that outcome is plausible? For example, in the product liability case, management would assume a small settlement on the plausible basis that if the proceedings begin to turn against the company, the company would attempt to quickly settle and thus bring the case to a close. If so, we observe that using the best case scenario would rarely, if ever, result in the disclosure of any remote contingency.

- Should management assume the worst case outcome as long as that outcome is plausible? For example, in the product liability case, management would assume the worst case outcome but would reduce the amount of damages from the amount claimed on the basis that the amount claimed is wildly excessive and plainly frivolous. If so, we observe that while this would seem to meet the disclosure objective of more timely disclosure of loss contingencies, it would also potentially result in other anomalies as discussed below.

While it seems to us that the worst case outcome may be the only realistic way to implement the Proposed Standard's disclosure threshold for remote loss contingencies, this approach raises another question. Specifically, should worst case outcomes consider possible consequential risks for purposes of the disclosure threshold? For example, in the product liability case, is the worst case outcome the loss of the individual claim (e.g. plaintiff is awarded compensatory and punitive damages in a jury trial) or does it include the remote possibility that the loss of this case or adverse publicity surrounding allegations by the plaintiff could lead to a product recall of the company's most profitable product or a government investigation of compliance with regulatory requirements or a class action lawsuit by other purchasers of the product?

This leads us to our second question of whether probable or reasonably possible loss contingencies must also be assessed based on the remote possibility of a severe impact. If they are not, a company would be required to disclose a contingency that is 5% likely of having an unfavorable outcome based on the potentially severe impact of a remote loss, but would not be required to disclose a contingency that is 90% likely of having an unfavorable outcome based on the immaterial effect of a reasonably possible outcome, even though there is a remote possibility that the outcome could severely impact the company.

To illustrate, assume a company is facing two patent infringement lawsuits. Management and its legal counsel believe one lawsuit is frivolous: the alleged facts are completely incorrect and unsupported and even if the alleged facts were correct, there is no legal basis for the claim. Accordingly, management and its legal counsel conclude an unfavorable outcome is remote. In the second lawsuit, management and its legal counsel believe that the alleged facts and legal basis are weak and that the company would prevail in court. But after considering the cost of waging an extensive legal battle and other qualitative factors (such as the publicity and resulting copy-cat claims that would come with a protracted legal battle), management decides it will offer to settle the claim. Thus for the second claim, while an unfavorable outcome (in the form of a settlement) is probable, given the weaknesses in the claim, the upper end of the range of reasonably possible settlement amounts is not material. In both cases, the underlying patent is critical to the company's operations and there is a remote possibility that a loss would have a significant financially disruptive effect on the company. It would appear that under the Proposed Standard, the lawsuit for which the likelihood of any loss is "remote" would be disclosed but the lawsuit for which a small loss is "probable" would not be disclosed, even though both lawsuits present a remote likelihood of a severe impact. That outcome strikes us as inconsistent with the objective of providing users with more timely information about loss contingencies. Alternatively, if the Board intended to require management to assess whether the worst case (i.e. remote) outcome for a reasonably possible or probable loss contingency could have a severe impact, we do not believe this intent is clear.

We also struggle with whether information about remote loss contingencies is consistent with the Proposed Standard's disclosure objective and principles. The basis for conclusions indicates that the requirement to disclose certain remote loss contingencies is intended to "improve the timeliness of disclosures." The requirement to disclosure certain remote contingencies implies that the Board believes the existing requirement to disclose contingencies that are at least reasonably possible of giving rise to a material loss is not sufficiently timely. In our experience, it is unusual for anything other than a purely frivolous matter to be classified as remote, either by management or by their legal advisors.[5] If disclosure is not being made timely under the current requirements, the reason is more likely due to management's conclusion that the unfavorable outcome will not be material than due to the conclusion that an unfavorable outcome is remote. While some might see merit in requiring disclosure of any contingency whose worst case (i.e. remote) outcome could have a severe impact on the company, we question whether this requirement is consistent with the FASB's disclosure objectives and principles. We presume that the disclosure objective of providing users with an understanding of the nature, potential magnitude and potential timing (if known) of loss contingencies does not apply to immaterial items. We note further the Proposed Standard's disclosure principle that the information should be "understandable and not too detailed." We therefore question whether a requirement to disclose information about an outcome that is not even reasonably possible of occurring complies with the Proposed Standard's disclosure objectives and principles, even if that outcome could be a severe impact.

[5] We note that the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information indicates that it would be unusual for an attorney to conclude that an unfavorable outcome for a litigation contingency is remote. Specifically, it states: "In view of the inherent uncertainties, the lawyer should normally refrain from expressing judgments as to outcome except in those relatively few clear cases where it appears to the lawyer that an unfavorable outcome is either 'probable' or 'remote'" (page 8) and "for purposes of the lawyer's response to the request to advise auditors about litigation… it is… to be anticipated that in most situations, an unfavorable outcome will be neither 'probable' nor 'remote.'" (pages 16-17)

In our view, "relevance" is a necessary filter in developing a disclosure framework for general purpose financial statements. Without that filter, financial statements would present an overwhelming amount of data. There is no question that significant loss contingencies represent potentially important risks and are relevant to users. It could also be true that users are not being adequately informed about the risk of significant loss contingencies on a timely basis. But given that companies are vulnerable to a nearly infinite array of risks arising from past events, the logical filter for disclosing loss contingencies is that the risk is *reasonably possible* of having a significant effect. "Reasonably possible" was the standard used in developing the disclosure requirements for risks and uncertainties (despite concerns that even "reasonably possible" was too low a threshold)[6]; it is the standard the IASB is using to develop disclosure requirements; it is also consistent with the requirements to discuss known trends, events or uncertainties under the SEC's rules on Management's Discussion and Analysis.[7]

If the Board's research and deliberations on the disclosure framework project reach the conclusion that information about remote risks and events is appropriate either in general or in specific circumstances, we suggest it would then be appropriate to comprehensively address all disclosures to implement that conclusion. However, for purposes of the current project on disclosures of loss contingencies, we believe the disclosure threshold for remote contingent losses is not operational and will result in disclosures that are not consistent with the disclosure objectives.

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We appreciate the opportunity to comment on the Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies*. If there are any questions, please contact Amy A. Ripepi at 312-345-9103.

Sincerely,

Very truly yours,

Financial Reporting Advisors, LLC

Financial Reporting Advisors, LLC

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[6] See paragraph B-40 in SOP 94-6 which states (in part): "The most significant and pervasive concerns [regarding the exposure draft] can be summarized in three areas: … (c) "Reasonably possible" is too low a threshold and is an insufficiently objective criterion for disclosure of a broad range of possible future events." In paragraph B-41, AcSEC explains that it retained this threshold despite that concern.

[7] Item 303 of Regulation S-K requires a registrant to discuss "any known trends or any known demands, commitments, events or uncertainties that will result in or that *are reasonably likely to result* in the registrant's liquidity increasing or decreasing in any material way." (Item 303(a)(1)) Item 303 also requires registrants to discuss any "known trends or uncertainties that have had or that the registrant *reasonably expects* will have a material favorable or unfavorable impact." (Item 303 (a)(3)(ii)) (emphasis added)

Appendix A

File Reference No. 1840-100
September 20, 2010

Supplemental Observations

We identified a number of areas of potential confusion or inconsistency that may affect the operationality of the Proposed Standard. As requested, we have explained our reasoning and offered alternatives.

1. **Disclosure objective** (450-20-50-1A)

   One objective is to provide information about "potential timing (if known)." There is an inherent inconsistency between the phrase "potential timing" and the phrase "if known" which could lead to confusion in practice. The phrase "potential timing" implies a degree of uncertainty. However, the word "known" suggests little to no uncertainty. If the intent is to disclose timing only when there is little to no uncertainty, the phrase "timing (if known)" would more clearly convey that intent. If the intent is to disclose timing when there is reliable information that defines the timeframe within narrow limits, the phrase "potential timing (if reliably determinable)" might better convey that concept.

2. **Disclosure principle** (450-20-50-1B(b))

   The aggregation principle states that disclosures should be "understandable but not too detailed." It also permits aggregation only to the extent that the contingencies are similar. Is the aggregation principle of "not too detailed" operational in light of the implementation guidance discussing the aggregation principle of similarity? The implementation guidance suggests that aggregation is permitted only where there is a significant degree of similarity across a wide number of factors. For example, the implementation guidance indicates that in addition to the differences in the type of and nature of claims, differences in the timing of expected future cash outflows, differences in legal jurisdictions, differences between routine warranties and those that are being litigated, and differences in the characteristics of the plaintiff (individual vs. class action) would make aggregation inappropriate. When faced with a requirement to assess similarity at this level of detail, what benchmark could a user, preparer or auditor use to assess whether a disclosure is "too detailed" in light of the inevitable dissimilarities in claim characteristics? We see two possible solutions. One would be to delete the principle of "not too detailed" from the Proposed Standard. If in the disclosure framework project the FASB identifies qualitative or quantitative parameters that can be used to assess this characteristic of disclosure, an amendment to Topic 450 may be appropriate. An alternative would be to draft implementation guidance that permits aggregation with a broad, rather than narrow, view of similarity. (See 8. below)

3. **Factors to assess severe impact** (450-20-50-1D)

   a. For remote loss contingencies, the proposal indicates that the cost of defending against the claim "*should* be" considered in assessing the potential severity of the impact on the company. In contrast, the amount of damages claimed "*could* be" one of the factors to consider in assessing the potential severity of the impact on the company. That suggests that consideration of the amount of the damages claimed is optional in assessing the potential impact. Given that the definition of severe impact focuses on "*financial* disruption," why would consideration of the amount of damages claimed be optional? Damage claims may not be determinative, but it seems inappropriate to ignore them. If the FASB's intent is to indicate that the amount of damages claimed is not presumptive of the degree of severity, it would be sufficient to say "A plaintiff's amount of damages claimed, by itself, does not necessarily determine whether disclosure about a remote contingency is necessary." This sentence communicates that damages claimed are not presumptive without suggesting that consideration of the amount of damages claimed is optional.

b. Should sub-paragraph 450-20-50-1D(b) be rephrased to refer to the "*potential* cost to the entity"?

4. **<u>Disclosure in the early stages of a contingency</u>** (450-20-50-1F(b))

The disclosure requirements in this paragraph apply only to litigation contingencies. This scope limitation gives rise to two questions:

a. What constitutes a "litigation contingency"? For example, is a government investigation or a regulatory notice of non-compliance a "litigation contingency"?

b. Is the requirement to disclose anticipated timing or next steps (if known) limited to litigation contingencies?

It is unclear why these specific disclosures are applicable only to litigation contingencies. We suggest that the requirement in this paragraph apply to all loss contingencies that meet the disclosure threshold.

5. **<u>Contingencies that arise and are resolved in the same period</u>** (450-20-50-1F(g))

For purposes of the tabular reconciliation of loss accruals, this paragraph states that contingencies whose underlying cause and settlement arise in the "same period" should be excluded. We have four observations regarding the operationality of this exclusion requirement and its consistency with other literature.

a. For a public company that reports quarterly, how does this exclusion requirement apply when a loss contingency arises and is settled in two different quarters within the same year? To illustrate:

> In the first quarter of 2011, a calendar year end company accrues for a loss contingency whose underlying cause relates to an event occurring in that quarter. The contingency is settled in the third quarter of 2011. In accordance with sub-paragraph 450-20-50-1F(g), the financial statement effects of the loss contingency will not appear in the reconciliation for the year ended December 31, 2011 because the loss contingency arose and was settled in the same (annual) period. In the first quarter and the six months ended June 30, 2011, the loss contingency will be presented as generating a provision. How should it be presented in the third quarter of 2011? Should the settlement be presented in the 3 month period ended September 30, 2011 because it was settled in that period but be excluded in the 9 months ended September 30, 2011 because it arose and was settled in that (9 month) period? Or should it be excluded from both the 3 and 9 month period on the basis that it arose and was settled in the annual period?

b. How does this exclusion requirement apply to provisions and settlements for product warranty loss contingencies? Many product warranty contingencies either have a short duration by contract (e.g. 90 or 180 days) or are settled shortly after the product is sold, sometimes within the same quarter.

c. In explaining the FASB's rationale for this exclusion, the Basis for Conclusions (BC 30) states, in part: "The Board reasoned that the short period of time involved in those circumstances [where the underlying cause and settlement occur in the same period] raises questions about whether the items meet the definition of a contingency." That statement appears inconsistent with the other literature. Specifically, paragraph 460-10-25-5 states that "because of the uncertainty surrounding claims that may be made under warranties, warranty obligations fall within the definition of a contingency." As noted above, product warranties frequently arise and are settled within the same period.

d. The exclusion is inconsistent with other literature. Specifically, the tabular reconciliation requirement for product warranties in Topic 460 (guarantees) does not permit the exclusion of provisions and settlements that occur in the same reporting period. When a public company prepares its tabular reconciliation of product warranty accruals, which literature should it apply? When a privately held company prepares its tabular reconciliation of product warranty accruals under Topic 460, may it exclude warranties that arise and are settled in the same reporting period (annual) by analogy to Topic 450?

We see two alternative solutions. One is to delete the exclusion such that all provisions and settlements in the period would be reported in the reconciliation. That approach would be consistent with the discussion in the Basis for Conclusions in FASB Interpretation No. 45 on Guarantees (now Topic 460). The other is to permit but not require a company to exclude contingencies (including product warranty contingencies in Topic 460) that arise and are settled in the same annual period, with disclosure of the company's presentation policy. This approach would be consistent with the Basis for Conclusions in the Proposed Standard.

6. **Tabular reconciliation** (450-20-50-1F(g))

In the tabular reconciliation of loss contingencies that are recorded either at present value or at fair value, should the effect of changes arising from the passage of time be reported as increases or decreases in estimates or as a discrete line item? We would suggest that the effects of changes arising from the passage of time be reported as a discrete line item.

7. **Reasonable possibility of a change in estimate** (450-20-50-2)

The existing paragraph 450-20-50-2 states that Example 3 illustrates the disclosure of a situation in which it is at least reasonably possible that a change in estimate could occur in the near term. The Proposed Standard would amend this paragraph to delete this sentence and the related reference to the implementation guidance. Why? Although Example 3 has been revised, it appears to illustrate the requirement. In fact, Topic 275 refers to Example 3 as illustrating the requirement. Given the format of the codification, we believe it is important that the paragraphs discussing recognition, measurement and disclosure reference related implementation guidance.

8. **Implementation guidance – aggregation (**450-20-55-1A)

The guidance states that it "may not be appropriate" to aggregate contingencies in certain fact patterns. In practice, such language creates a rebuttable presumption. For example, in saying that "it may not be appropriate to group together ... loss contingencies that have significantly different timings of expected future cash outflows (that is, near term versus longer term)," the literature could be read as creating a presumption against aggregating thousands of claims that are substantially the same in every respect except filing date (some filed 5 years ago and within months of being paid and others filed last month and needing 4-5 years to go through the settlement process). If the FASB's intent is to permit aggregation, the implementation guidance should be presented as a list of factors to consider in assessing similarity rather than a list of circumstances in which aggregation is presumed to be inappropriate.

9. **Implementation guidance – disclosure requirements** (450-20-55-10)

This paragraph identifies three factors to consider in determining if disclosure is required. Those factors are: the period in which the underlying event occurred, the probability of an unfavorable outcome and the ability to reasonably estimate the loss. Given the disclosure threshold requirement in paragraph 450-20-50-1D, should the potential for "severe impact" be included as a factor that is considered in determining whether disclosure is required for an asserted loss contingency?

10. **Sample disclosure** (450-20-55-38 through 55-43)

a. It would be helpful to explain that the illustration incorporates the requirements of paragraphs 275-10-50-6 and 50-9 (risks and uncertainties and reasonable possibility that the estimate will change in the near term) or to state that the disclosure requirements of that literature must also be met. For example, the last sentence in paragraph 450-20-55-38 could state: "The illustration below demonstrates the application of the disclosure guidance in Section 450-20-50 and Section 275-10-50 in the initial reporting period and as further developments arise."

b. In paragraph 450-20-55-43, the last sentence before the table states that Entity A's insurance carrier has agreed to apply the amount paid against the $500,000 deductible. Is this a required disclosure? If the claim were covered by insurance, that fact would be relevant to understanding the effect of the loss contingency on the company's cash flow and thus consistent with the disclosure objective. However, we do not understand how the application of the company's payment against a deductible relates to the disclosure objective. We suggest this sentence either be deleted or marked as optional.

11. **Prohibition against offsetting** (210-20-45-18)

This paragraph appears to be inconsistent with the Basis for Conclusions. BC 42 says that it would be unusual for the offsetting criteria to be met. However, the proposed paragraph prohibits offsetting, regardless of whether the criteria are met. Further, the proposed paragraph is inconsistent with paragraph 410-30-45-2 (environmental remediation obligations) which acknowledges that such situations would be rare but does not prohibit offsetting. We suggest paragraph 210-20-45-18 be revised to be consistent with paragraph 410-30-45-2.

12. **Risks and uncertainties** (Amendment to 275-10-60-5)

The proposed amendment to this paragraph states that Example 3 in Topic 450 illustrates disclosures for risks and uncertainties related to loss contingencies. This appears incomplete. Other examples of risks and uncertainties disclosures for loss contingencies are presented in Topic 410 (paragraphs 410-30-55-11, 55-16, and 55-17).

13. **Tabular reconciliation of product warranty loss accruals** (Amendment to 460-10-50-7)

    The proposed amendment to paragraph 460-10-50-7 on product warranties states "Section 450-20-50 provides disclosure requirements." However, the Proposed Standard does not supersede the disclosure requirements for product warranties contained in Topic 460 on guarantees. These disclosure requirements are not consistent. Specifically, Topic 460 requires disclosure of the aggregate change in estimate for pre-existing warranties (460-10-50-8(c)). However, Topic 450 requires disaggregation of the change in estimate, i.e., increases due to changes in estimate and decreases due to changes in estimate must each be presented separately (450-20-50-1F(g)). Which disclosure requirement applies to the reconciliation for product warranty accruals?

14. **Business combinations** (Amendment to 805-20-50-1(d)(1))

    The proposed amendment to this paragraph adds references to the disclosure requirements for loss contingencies. However, the existing paragraph also refers to gain contingencies but no reference was added to the disclosure requirements for gain contingencies. Specifically, subparagraph (1A) refers to the disclosure requirements in paragraph 450-20-50 for contingent liabilities, but subparagraph (1) does not refer to the disclosure requirements in paragraph 450-30-50 for gain contingencies.

15. **Environmental-related contingencies**

    Paragraph 410-30-50-6 explains that the disclosures in Subtopic 275-10 on risks and uncertainties apply to environmental remediation liabilities and references Example 1 in the related implementation guidance as providing an illustration of those disclosure requirements. Why aren't Example 3 (410-30-55-16) and Example 4 (410-30-55-17) also mentioned as providing an illustration of that guidance in the context of environmental remediation liabilities?

16. **Guarantees**

    Under Topic 460 on guarantees, disclosures are required for guarantees even if the possibility of a loss is remote (paragraphs 460-10-50-2). The proposed amendment to sub-paragraph 460-10-50-5(b) states that the disclosure requirements for guarantees do not eliminate the requirement to disclose a contingent loss subject to the disclosure threshold in Topic 450, including remote contingencies that could give rise to a severe impact. However, because the tabular reconciliation in Topic 450 does not apply to remote loss contingencies and because the disclosure requirements in Topic 460 are otherwise more extensive than the disclosure requirements for a remote loss contingency in Topic 450, what incremental disclosure would be required? There seems to be no requirement for a company to single out or otherwise identify a guarantee in which the likelihood of payment is remote but which could have a severe impact.

17. **Typographical errors/consistency of terminology**

    a. The Proposed Standard is inconsistent in its use of the word "class" vs. the phrase "class or type" when describing loss contingencies. For example, sub-paragraph 450-20-50-1F(g) refers to "reconciliations by class" whereas sub-paragraph 450-20-50-1B(b) and paragraph 450-20-55-1A refer to "class or type." If the words are intended to be interchangeable, there is no need for both. If the words are intended to illustrate different concepts, then both should be used consistently.

b. In paragraph 410-30-50-13, change the reference “450-20-50-6” (this paragraph has been eliminated) to “450-20-50-1C.”

c. In paragraph 450-20-55-22, delete the phrase “and disclosure” because Example 2 has been revised to eliminate the illustrated disclosures.

Appendix B

File Reference No. 1840-100
September 20, 2010

Application of the Proposed Standard to Environmental-Related Loss Contingencies

Presented below are some apparent inconsistencies between the requirements in the Proposed Standard (Topic 450) and the existing guidance on disclosures for environmental-related loss contingencies (Topic 410).

1. Paragraph 410-30-50-8 encourages disclosure of the event, situation or set of circumstances that generally triggers recognition of a loss contingency arising from an environmental remediation-related obligation. However, sub-paragraph 450-20-50-1F(a) would require disclosure of qualitative information that enables users to understand the loss contingency's nature and risks. Further, sub-paragraph 450-20-50-1F(b) would require disclosure if an entity knows the next steps in resolving an individually material asserted litigation contingency. Accordingly, if a company has not recognized a loss contingency for an environmental-related contingency because the loss is either (a) probable but not reasonably estimable or (b) reasonably possible but not probable, would information about the event or circumstance that would trigger recognition be encouraged (Topic 410) or required (Topic 450)?

2. Paragraph 410-30-50-10 lists a number of encouraged disclosures that would seem to be required to comply with the Proposed Standard:

   a. 410-30-50-10(a) encourages disclosure of the estimated timing of disbursements for recorded amounts. Would the disclosure objective in paragraph 450-20-50-1A require disclosure of the potential timing of disbursements (if known)?

   b. 410-30-50-10(b) encourages disclosure of the estimated time frame for realizing recognized recoveries if it is not expected in the near term. Would the disclosure objective in paragraph 450-20-50-1A require disclosure of the potential timing (if known) for the realization of a recognized recovery receivable?

   c. 410-30-50-10(c) encourages disclosure of the reason that an estimate of a probable or reasonably possible loss cannot be made. Would sub-paragraph 450-20-50-1F(e)(3) require disclosure of this information?

   d. 410-30-50-10(d) encourages disclosures about the various facts related to the environmental-related loss contingency at a specific site (e.g., status of regulatory proceedings, involvement of other potentially responsible parties, and estimated time frame for resolving the contingency). Would this type of information be required under the Proposed Standard for an environmental remediation contingency that was significant and at least reasonably possible? For example, sub-paragraph 450-20-50-1F(a) would require disclosure of qualitative information that enables users to understand the loss contingency's nature and risks, and sub-paragraph 450-20-50-1F(b) would require disclosure if an entity knows the anticipated timing of or next steps in resolving an individually material asserted litigation contingency.

3. Paragraph 410-30-50-11 encourages disclosure of the estimated timeframe for resolution of the uncertainty as to the amount of the loss. Would the disclosure objective in paragraph 450-20-50-1A and the requirement in sub-paragraph 450-20-50-1F(b) to disclose anticipated timing or next steps in resolving an individually material asserted litigation contingency indicate a requirement to disclose that the estimated timeframe for resolving the uncertainty as to the amount of the loss (if known)?

a. If such disclosure is not optional, should the last sentence in the example in paragraph 410-30-55-17 be required rather than optional?

4. Paragraph 410-30-50-12 encourages companies to disclose the amount recognized for environmental-related loss contingencies in each period, the amount of any recovery that is credited to the accrual in each period, and the income statement caption where costs and credits are included. For a public company, would this information be encouraged (Topic 410) or required (Topic 450) to comply with the tabular reconciliation and related disclosures in sub-paragraph 450-20-50-1F(g)?

5. Given the facts in Example 1 in paragraph 410-30-55-7, does the sample disclosure comply with the Proposed Standard? For example, the explanation for why the project could cost more than what's been accrued is presented as optional. Would that that information be deemed necessary to enable users to understand the loss contingency's nature and risks, as required by sub-paragraph 450-20-50-1F(a)?

6. Given the facts in Examples 3 and 4 in paragraphs 410-30-55-15 and 55-17, do the sample disclosures comply with the Proposed Standard? In particular, the robustness of Example 3 in paragraph 450-20-55-38 of the Proposed Standard suggests that much of what is designated as "encouraged" in the existing environmental remediation contingency examples would be required under the new disclosure requirements.