

FASB Votes to Remove the Loss Contingencies Disclosure Project from its Agenda

The Financial Accounting Standards Board (“FASB”) recently voted 5-2 to remove the project on disclosure of certain loss contingencies (the “Project”) from its technical agenda.¹ The Project would have expanded the population of loss contingencies that reporting companies would have been required to disclose and would have significantly enhanced the quantitative and qualitative disclosure requirements for those loss contingencies under FASB Accounting Standards Codification Topic 450—Contingencies (“ASC Topic 450”).²

The Project was initially added to the FASB’s agenda in 2007 in response to requests by users of financial statements for enhanced disclosures to assist them in assessing the likelihood, timing and amount of future cash flows of loss contingencies, especially those related to litigation. The FASB issued two exposure drafts, one in 2008 and one in 2010, that would have amended ASC Topic 450 to address these concerns.³ The first exposure draft generated over 240 comment letters, and the second generated over 350 comment letters, the vast majority of which were opposed to enhancing existing loss contingency disclosures. The main concerns expressed by commentators were that the disclosures could be prejudicial to reporting entities with respect to litigation and settlement discussions and that the disclosures could potentially waive attorney-client or work product protections.

Many respondents also expressed the view that existing loss contingency disclosure requirements under ASC Topic 450 were sufficient. They felt that the real issue was not a lack of rules but, rather, the lack of compliance with existing rules. In response to these comments, the FASB instructed its staff in late 2010 to coordinate with the staffs of other regulators, especially the Securities and Exchange Commission (“SEC”), to renew their focus on enforcing compliance with existing loss contingency disclosure rules in financial statement filings. The FASB agreed to delay further deliberations and decisions regarding amendments to existing disclosure requirements until its staff had sufficient time to review filings from the 2010 calendar year-end reporting cycle to determine whether the efforts by the SEC and other regulators ultimately resulted in improved disclosures.

¹ See *FASB Project Updates: Disclosure of Certain Loss Contingencies* (last updated July 12, 2012), available at http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=900000011071; see also *FASB Meeting Minutes of the July 9, 2012 Board Meeting: Disclosure of Certain Loss Contingencies* (July 12, 2012), available at <http://www.fasb.org/cs/BlobServer?blobkey=id&blobwhere=1175824166724&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs>.

² Prior to codification, ASC Topic 450 was known as FASB Statement No. 5, or FAS 5, *Accounting for Contingencies*.

³ See *Disclosure of Certain Loss Contingencies* (June 5, 2009), available at http://www.fasb.org/draft/ed_contingencies.pdf; see also *Disclosure of Certain Loss Contingencies* (July 20, 2010), available at <http://www.fasb.org/cs/BlobServer?blobkey=id&blobwhere=1175823559187&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs>. For further discussion, see our firm memorandum entitled, *FASB Proposes Expanded Disclosure of Litigation and Certain Other Loss Contingencies* (June 26, 2008), available at http://www.cahill.com/news/memoranda/000092/_res/id=sa_File1/CGR%20Memo%20-%20FASB%20Proposes%20Expanded%20Disclosure%20of%20Litigation%20and%20Certain%20Other%20Loss%20Contingencies.pdf; see also our firm memorandum entitled, *FASB July 20, 2010 Exposure Draft re: Disclosure of Certain Loss Contingencies* (August 2, 2010), available at http://www.cahill.com/news/memoranda/100230/_res/id=sa_File1/CGR%20Memo%20%20FASB%20July%2020%2010%20Exposure%20Draft%20re%20Disclosure%20of%20Certain%20Loss%20Contingencies.pdf.

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In deciding to remove the Project from its technical agenda, FASB members noted that compliance appeared to have improved as a result of the enhanced scrutiny of loss contingency disclosures undertaken by the SEC. A majority of the FASB therefore concluded that the current disclosure requirements of ASC Topic 450 are sufficient; they indicated that any concerns regarding the adequacy of such disclosures relate to issues of compliance and enforcement rather than standard-setting. Notably, Chairman Seidman also intimated that the FASB may decide to consider improvements related to disclosure of loss contingencies as part of its larger disclosure framework project, first announced in 2009, which is aimed at establishing an overarching framework intended to make financial statement disclosures more effective, coordinated and less redundant. In her remarks, Ms. Seidman noted that certain concepts discussed as part of the loss contingency disclosure project are also applicable to other areas of disclosure and could be addressed more broadly within the disclosure framework project. She encouraged constituents to comment on these matters when responding to the Invitation to Comment, an FASB staff discussion paper aimed at soliciting broad input on ways to improve disclosure effectiveness as part of the disclosure framework project.⁴ Comments to the Invitation to Comment are due by November 16, 2012.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Abigail Darwin at 212.701.3240 or adarwin@cahill.com.

⁴ The *Invitation to Comment* was issued on July 12, 2012 and is available at <http://www.fasb.org/cs/BlobServer?blobkey=id&blobwhere=1175824166287&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs>.