

FASB Reproposes Amendments to Loss Contingency Disclosures

The Financial Accounting Standards Board (“**FASB**”) has published a proposal to amend its disclosure requirements for loss contingencies. The amended disclosure requirements, if ultimately adopted by the FASB, would replace the current disclosure requirements contained in FASB Codification Topic 450-20 Contingencies—Loss Contingencies (historically known as FASB Statement No. 5, *Accounting for Contingencies* (“**FAS 5**”)) and certain other subtopics. The proposal would not change the recognition guidance for loss contingencies.

While the need for amended loss contingency disclosure requirements is in itself debatable, the FASB’s recent proposal appears to be less likely to require disclosure of prejudicial information than the proposal the FASB published in the summer of 2008. The FASB’s 2008 proposal was met by significant opposition because it would have added new disclosures that many commenters felt were too predictive or speculative in nature and could ultimately be harmful to a company in litigation. For example, the 2008 proposal would have required companies to provide an estimate of the company’s maximum exposure to loss and to include a description of the factors most likely to affect the ultimate outcome of the contingency, their potential effect on the outcome of the contingency and the entity’s qualitative assessment of the most likely outcome of the contingency. The FASB’s new proposal excludes these controversial requirements and attempts to focus new disclosure requirements on public or non-privileged information rather than management’s predictions. The new proposal does, however, carry forward the historical requirement to provide an estimate of loss or range of loss if it can be estimated.

The attached chart compares current FASB disclosure requirements for loss contingencies with the new requirements proposed by the FASB in the new exposure draft. As illustrated by the chart, the proposed disclosure requirements would:

- retain the current initial disclosure threshold question of whether the loss contingency is at least “reasonably possible”;
- add a requirement to also disclose remote contingencies if the remote contingency could have a “severe impact” (defined as a higher threshold than material but not necessarily catastrophic);
- expand required qualitative disclosures to include:
 - at the early stages of the asserted litigation, the contentions of the parties (for example, the basis of the claim, amount of damages claimed by the plaintiff and the basis for the entity’s defense or a statement that the entity has not yet formulated a defense);
 - as the asserted litigation progresses, more extensive disclosure (for example, if known, the anticipated timing of, or the next steps in, the resolution of individually material asserted litigation contingencies); and
 - for individually material contingencies, sufficiently detailed information to enable financial statement users to obtain additional information from publicly available sources such as court records (for example, name of court or agency, date instituted, principal parties to the proceedings, factual basis underlying the proceeding, current status of the contingency);
- expand quantitative disclosures to include:
 - publicly available quantitative information (for example, the amount claimed by the plaintiff or amount of damages indicated by testimony of expert witnesses);

- other non-privileged information to enable financial statement users to understand the magnitude of loss; and
- information about possible recoveries from insurance and other sources, but only if and to the extent provided to plaintiffs or otherwise discoverable by the plaintiff or a regulatory agency;
- require a new tabular reconciliation of changes in the amount of loss contingency accruals in annual and interim financial statements; and
- allow for disclosure of loss contingencies on an aggregated basis as long the basis for aggregation is disclosed along with information that would enable financial statement users to understand the nature, potential magnitude and potential timing (if known) of the loss.

The new proposal also contains new guidance about disclosing probable unasserted claims with a reasonable possibility of an unfavorable outcome when the company is aware of the existence of studies in reputable scientific journals (or other credible sources that other entities in the same industry generally review) that indicate potential significant hazards related to the entity's products or operations.

If adopted by the FASB, the new disclosure requirements would be effective for public companies for fiscal years ending after December 15, 2010 and interim and annual periods in subsequent fiscal years—2010 Form 10-K filings for calendar year issuers. Non-public companies would have an additional year to comply.

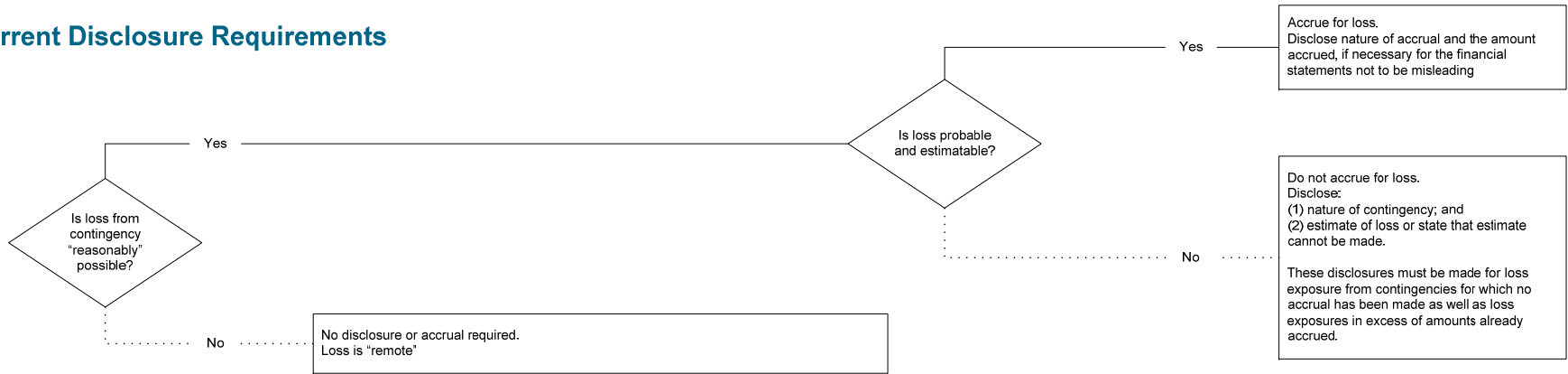
The FASB has requested comments on the proposal by August 20, 2010. Several commenters have requested an extension of this deadline. The FASB has agreed to consider these extension requests at its August 18, 2010 meeting.

- ▶ [See the FASB's proposed amendments to its Loss Contingency Disclosure Requirements.](#)

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact

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Current Disclosure Requirements



Proposed Disclosure Requirements

