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September 18, 2008

Mr. Robert H. Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116

RE: Disclosure of Certain Loss Contingencies: An Amendment of FASB Statements 5 and 141(R); File Reference 1600-100

Dear Mr. Herz:

On August 5, 2008, the American Bar Association (ABA) provided you with a letter and written comments regarding the Financial Accounting Standards Board (FASB) exposure draft titled "Disclosure of Certain Loss Contingencies: An Amendment of FASB Statements 5 and 141(R)" (Exposure Draft). (A copy of our August 5 letter and comments are available at http://www.abanet.org/poladv/priorities/privilegewaiver/2008aug5_privwaiv_fasb_1.pdf) In our August 5 comments, we expressed a number of serious concerns regarding the Exposure Draft's approach to disclosure of non-financial liabilities, and as a result, we urged the Board not to adopt the proposed amendment to FASB Statement 5. We also observed in footnote 1 of our comments that while we were focusing primarily on SFAS 5, many of our concerns regarding that proposal also apply to the loss contingency provisions of SFAS 141(R) dealing with "Business Combinations" because the issues and policy considerations underlying both the Exposure Draft's proposal and the requirements of SFAS 141(R) are so closely connected and intertwined.

SFAS 141(R), which is scheduled to go into effect for fiscal years beginning after December 15, 2008, will require recognition and disclosure of loss contingencies assumed or acquired in connection with a business combination which are more likely than not to be incurred, including the amounts recognized at the acquisition date or an explanation of why no amount was recognized, the nature of recognized and unrecognized contingencies, and an estimate of the range of outcomes for the contingencies or, if a range cannot be estimated, the reasons it cannot be estimated. It also will require subsequent disclosure of any changes in the recognized amounts of liabilities arising from these loss contingencies and any changes in the range of outcomes and the reasons for those changes.

As you know, the proposed amendments to FASB Statements 5 and 141(R) have generated extremely broad and intense interest throughout the legal, corporate, and accounting communities. In addition to the ABA, many other separate organizations and companies have also filed formal comments, and a substantial number of these entities, like the ABA, have asked to participate in the planned FASB roundtable discussion regarding the proposals. If adopted, the proposed amendments will have very profound and far-reaching effects on the business community, as well as the legal and accounting professions.

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Because SFAS 141(R) as scheduled to go into effect raises many of the same issues regarding loss contingencies that are raised by the proposed revision of the disclosure requirements of SFAS 5, SFAS 141(R), or at least its loss contingency provisions, should not be implemented while those serious issues are being evaluated. Moreover, the proposed revision of SFAS 5 would also apply to SFAS 141(R) and it would not be desirable to have one set of changed accounting requirements go into effect only to have them changed again soon thereafter, with the prospect of even further changes if International Financial Reporting Standards become applicable.

For all these reasons, the ABA respectfully requests that you delay the December 15, 2008 implementation date of SFAS 141(R), or at least its loss contingency provisions, until there has been a full discussion and consideration of the issues raised by the Exposure Draft's proposed revision of SFAS 5 and SFAS 141(R) between and among FASB and all the major stakeholders and until FASB has had the opportunity to determine the final version of SFAS 5.

Thank you for considering the ABA's views on this critical subject. If you have any questions or need additional information, please contact Bill Ide, Chair of the ABA Task Force on Attorney-Client Privilege, at 404-527-4650.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Thomas Wells, Jr.", written in a cursive style.

H. Thomas Wells, Jr.

cc: R. William Ide III, Past President, American Bar Association and current Chair,
ABA Task Force on Attorney-Client Privilege
Thomas M. Susman, Director, ABA Governmental Affairs Office
R. Larson Frisby, Senior Legislative Counsel, ABA Governmental Affairs Office