NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

HEADQUARTERS
3601 VINCENNES ROAD
INDIANAPOLIS, INDIANA 46268
TELEPHONE: (317) 875-5250
FAX: (317) 879-8408
WWW.NAMIC.ORG

WASHINGTON OFFICE
122 "C" STREET, NW
SUITE 540
WASHINGTON, D.C. 20001
TELEPHONE: (202) 628-1558
FAX: (202) 628-1601

August 20, 2010

Mr. Russell G. Golden, Technical Director
Financial Accounting Standards Board
401 Merritt 7
P. O. Box 5116
Norwalk, CT 06856
Via E-Mail: director@fasb.org

Re: File Reference No. 1840-100: Disclosure of Certain Loss Contingencies (July 20, 2010) pursuant to Statement No. 5R.

Dear Mr. Golden:

The National Association of Mutual Insurance Companies, a trade association, represents a large number of mutual, property and casualty insurers in this country that write a major share of the property and casualty premium in the United States. Given their mutual form of organization, those members are not public in nature. However, we believe our interest in the Board's decisions in revision of this standard is wholly valid, since the statutory guidance that governs our members' regulatory reporting is parallel to and closely derivative of GAAP.

The National Association of Insurance Commissioners is the forum for maintenance of statutory accounting, we believe you are aware. Its committees review every FASB pronouncement for applicability and use in statutory accounting. We believe that process will occur in relation to this revision. Further, although our members are mutual, they compete in the same markets in the same business as do public insurers and may, assuming adoption by the NAIC of a facsimile of the instant standard, experience effects similar to those of public insurers, assuming the NAIC emulates the FASB.

Mutual Insurers and Effects of the Proposed Disclosures

Underwriting risk and settling claims of policyholders on those risks is unavoidably a business that involves litigation. It is accurate to say that every contract of insurance between policyholder and underwriter, especially in the property-casualty world, bears the potential for litigation. To be observed with that inherent potential for litigation is that an insurance entity bears a fiduciary responsibility to maintain the capital of the enterprise amid complex regulatory requirements and the demands of legal process. Promises to policyholders are of first priotity in the laws that govern behavior of insurers. Claims on the capital of the insurer may be well founded and wholly legitimate within the bounds of contracts with the insurer; other claims may be fraudulent, frivolous, or merely reflective of greed or legal strategy. In any event, frequent litigation is unavoidable and frequent for our membership in their conduct of the property-casualty business.

Incumbent on the Board, we believe, is full contemplation of the consequences and breadth of the proposed disclosures. For our members in their mutual form of organization, shareholders are not present. Instead, these member insurers must strive to maintain a going concern in circumstances of continuing push and pull in the legal arena for the relatively fixed capital of the insurance entity. Financial reporting is not to shareholders, and there is no practical recourse to capital markets ability to replenish capital.

Any change in the nature of the adversarial process of litigation, any change in combatant-litigants' figurative footing, reach, or knowledge of the adversary may tilt the process and result in net disadvantage to management in its stewardship of the mutual insurance entity's capital. More specifically, the instant proposal's several quantitative and qualitative disclosures have strong potential to cause such a tilt and to diminish management's capacity to reasonably protect the capital of the enterprise. The Board must ask itself, especially as its decisions may derivatively affect mutual insurers, whether the effects of the proposal erode a mutual insurer's capacity to capably perform its fiduciary responsibility on behalf of shareholders in an arena of continuing litigative conflict. Again, shareholders are not a factor in our members' operation, and access to capital markets is very limited.

Considering Quantitative and Qualitative Disclosures' Utility

The speculative dimension is inevitably injected into disclosure of remote contingencies. How much effort is expected of a reasonable person in sorting among remotely possible scenarios that may affect an insurance enterprise? Information presented in financial statements, we believe, is intended to be used for analysis, for comparison with other information, and ultimately, for use in decision-making. That decision-making may or may not occur in an investment context. In the mutual insurer context, financial-statement information may be used for comparison with investor entities, but its primary purpose is for regulation and for judgments to be made by policyholders.

With respect to contingent liabilities originating in litigation or potential litigation, we believe the Board should forego adding any speculative dimension that may not be understood by users and that may occasionally result in severe misinterpretation. There may be no credible language that can add sufficient qualification to disclosure of the sometimes remarkable claims of adverse parties, e. g.: "The Company has been sued for $360 million in Alabama by five policyholder complainants in relation to homeowners' coverage for termite invasion. We regard the expected claim as without merit." Regardless of what the newspaper headline may blare, we question whether this species of disclosure of patently preposterous and inflated claims—or any like it—should be conveyed to users of financial statements? Are such claims settled at amounts prayed for by plaintiffs? Despite minimal viability of such claims in the litigative process, we fear that reporting entities may judge that disclosure is the best policy. Is credence to be given any such claim at its outset? Again, will users of financial statements understand?

The same reservations as to disclosure of contingencies that are considered remote may also apply to defense of policyholders defended in litigation by the insurer. Claims liabilities, in our understanding of the proposed standard, are, appropriately, not within the scope of the proposed standard. However, litigation on behalf of policyholders would appear to be within scope, and our reservations expressed above are intended also for such litigation.

The tabular reconciliation of accruals for contingencies gives some recognition of the inflated claim problem (fair value *versus* probable loss amount), yet we believe this is an information device that will cater to adverse parties and their efforts to isolate accruals for particular legal actions. The aggregation that the July 20, 2010, update discusses may allow very large entities to veil individual components of contingencies. Its rolling nature, however, invites adverse parties to assess increments in successive accruals for the purpose of divining amounts attached to their own causes, and to act—correctly or incorrectly—on the basis of such perception.

Such invitation to adverse parties to assess the reporting entity's individual accruals becomes aggravated with smaller size of the reporting entity. The information conveyed in the tabular reconciliation, moreover, may negatively affect both sides in litigation. We understand the Board's observation that quantitative information that is publicly available can or ought to be part of disclosure of contingencies. We can only assert in strongest terms that an insurance entity should not be required to give away, in any semblance, its reckoning of its ultimate liability in any current or prospective legal action.

<u>Observing a Golden Mean</u>
We summarize our concerns here as 1) avoiding disclosure of information that has a large speculative dimension and may be misunderstood by users of financial statements and 2) avoiding provision to adverse parties of information that may afford them advantage in their pursuit of damages or settlement against the reporting entity. With respect to 1), improbably high prayers for damage amounts are, if not the norm, remarkably common in legal actions. With respect to 2), information about accruals for contingencies made within the company is akin to attorney work product and must be sacrosanct; the reconciliation specified in the July 20, update invites adverse parties to try to divine amounts accrued.

Finally, financial statements best serve users *when they are not misleading* and when they do not in themselves disadvantage the reporting entity. We urge the Board to observe these principles.

Very truly yours,

Wm D. Boyd

William D. Boyd
Financial Regulation Manager