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SEC Continues Its Push for Enhanced Disclosure of Litigation Contingencies,
Including an Estimate of the Possible Loss or Range of Losses

We have previously noted the SEC's efforts to urge companies to enhance their disclosure of litigation contingencies and, in particular, to provide estimates of "reasonably possible" loss or range of losses in actions for which accruals have not been established and for exposure in excess of established accruals in other actions, or to explain why such estimates cannot be provided ([memo](#)).

The SEC appeared to focus its earlier comment letter efforts on financial services companies, many of which have relatively extensive litigation disclosure. Now, however, the SEC appears to have extended its focus to at least some companies outside of the financial services sector, including companies whose litigation exposures are not as extensive as those of many financial services companies.

Needless to say, each company's disclosure of loss contingencies must be prepared in light of its own litigation exposures, and it is difficult to generalize concerning the nature of disclosures that should be made. The Chief Accountant of the SEC's Division of Corporation Finance has publicly stated that disclosure of a "reasonably possible" range of losses may be done in the aggregate. Consistent with the Chief Accountant's position, some companies have disclosed an aggregate range of reasonably possible losses for cases for which they were able to provide such an estimate, while alerting investors that they were not able to provide a meaningful estimate of reasonably possible loss or range of loss for all of the litigation contingencies described in their quarterly (or annual) filing. These companies have not typically disclosed which of their litigation proceedings are included within the aggregate range. Providing aggregate disclosure without identifying the included versus the excluded cases helps minimize the prejudice to a company that would follow from adversaries being given potential insights regarding its views of the merits (or settlement value) of individual litigation matters. Where appropriate, companies may also explain in their disclosures that the estimated range of reasonably possible losses they have disclosed is based on currently available information and involves elements of judgment and significant uncertainties, and that actual losses may turn out to exceed even the high end of the range.

Relatedly, as noted in prior memos, the FASB in July 2010 issued an exposure draft regarding proposed new accounting standards for litigation contingency disclosure ([memo](#)). However, after the FASB received numerous comments critical of the proposed standards, it announced that it would postpone the adoption of new standards pending "redeliberations" on the topic ([memo](#)). Most recently, the FASB stated that its project on "Disclosure of Certain Loss Contingencies," has been reassessed as a "lower priority" and that further action is not expected before December 2011.

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