BARNEY FRANK, MA, CHAIRMAN

U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

SPENCER BACHUS, AL, RANKING MEMBER

October 2, 2008

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Cox:

As you know, the Financial Accounting Standards Board (FASB) has proposed amendments to its rules governing the treatment of certain contingent liabilities ("Disclosure of Certain Loss Contingencies—an amendment of FASB Statements No. 5 and 141(R)"). The proposal would require companies to disclose "specific quantitative and qualitative information" regarding loss contingencies, including their best estimates of their maximum exposure to loss from pending litigation. Because I believe that the potential harm to the competitiveness of U.S. firms and to our economy as a whole far outweighs any benefits from these proposed changes, I am writing to urge the Commission to conduct a thorough review of the FASB proposal before it is allowed to go into effect.

As an initial matter, I am not aware of any evidence – and FASB has provided none – that investors are in any way ill-served by the current regime for disclosing loss contingencies related to outstanding legal matters. SEC Regulation S-K requires issuers to disclose material information to their shareholders. The regulation also directs issuers to disclose legal proceedings and the impact those pending or contemplated matters could have on the issuer's business going forward. Investors and the market weigh the impact of these disclosures and determine for themselves whether potential loss contingencies make their investments more or less attractive.

Under current FASB rules, a company is required to estimate the potential cost of a pending matter only when it appears "probable" that the case will result in a loss, and that loss is capable of being reasonably forecast. Forcing companies to make inherently speculative assessments of their ultimate legal exposure in situations where a probability of loss has *not* been established will yield very few, if any, benefits for investors. But for plaintiff's lawyers – who are the true (if unintended) beneficiaries of the FASB proposal – the disclosures will serve as an invaluable legal road map, helping to inform their litigation strategy and providing greater leverage in settlement negotiations.

As several recent nonpartisan studies have concluded, excessive litigation, particularly private securities class action litigation, has reduced the relative attractiveness of U.S. markets for foreign companies deciding whether to list their shares in the United States. According to the U.S. Chamber Institute for Legal Reform, between 1995 and 2005, securities class action litigation caused the destruction of nearly $25 billion of shareholder wealth. Securities class actions rarely go to trial and American businesses incur massive costs in defending such cases. At the same time, the amount returned to investors in such suits is often minimal, with trial lawyers often reaping the biggest benefits in the form of multi-million dollar paydays. Changes to accounting rules that have the effect of exacerbating these troubling aspects of our current commercial and litigation environment should be strongly resisted.

FASB's website indicates that the changes described above are in "redeliberations." While this is encouraging, I would encourage the Commission to delay all action on the proposal pending a thorough examination of the economic impact it could have on the competitiveness of U.S. issuers.
The Commission's upcoming public roundtable on securities litigation reform would seem to be an ideal forum in which to discuss the potential ramifications of this proposal for the health of the U.S. capital markets.

Thank you for considering my views.

Sincerely,

Spencer Bachus

Spencer Bachus
Ranking Member

cc: Robert Herz
Chairman
Financial Accounting Standards Board