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certified public accountants

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January 13, 2006

Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

Attn: Technical Director—File Reference 1235-001

By email: director@fasb.org Technical Director—File Reference 1235-001

Re: FASB Invitation to Comment: Selected Issues Relating to Assets and Liabilities with Uncertainties (File Reference 1235-001)

To Whom It May Concern:

The New York State Society of Certified Public Accountants, the oldest state accounting association, represents approximately 30,000 CPAs that will implement the provisions of guidance issued with regard to defining and measuring assets and liabilities. NYSSCPA thanks FASB for the invitation to comment.

The NYSSCPA Financial Accounting Standards Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with the committee, please contact Margaret Wood, chair of the Financial Accounting Standards Committee, at (212) 542-9528, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

Stephen F. Langowski

President

Attachment

NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

RESPONSE TO FASB INVITATION TO COMMENT

Selected Issues Relating to Assets and Liabilities with Uncertainties

January 13, 2006

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NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

FINANCIAL ACCOUNTING STANDARDS COMMITTEE

RESPONSE TO FASB INVITATION TO COMMENT

Financial Accounting Standards, *Selected Issues Relating to Assets and Liabilities with Uncertainties*

File Reference 1235-001

General Comment

We appreciate the opportunity to comment on the Financial Accounting Standards Board ("FASB") Invitation to Comment ("ITC"), *Selected Issues Relating to Assets and Liabilities with Uncertainties*. We commend the Board for its attempt to clarify and to eliminate inconsistencies in existing guidance regarding the role of probability and uncertainty when defining and measuring assets and liabilities. However, we are concerned that the suggested approach will unduly complicate long-standing concepts for the identification of unrecorded assets and liabilities without adding meaningful guidance for preparers and users of financial statements.

While we are generally supportive of the need for clarification, we believe that the underlying concepts of this new approach, however well intentioned, could lead to unintended and undesirable results. From the information contained in the ITC, it appears that the IASB approach assumes that all rights and obligations of an entity should be identified, although some may not be measured. The measurement decision rests on an entity's conclusion at the measurement date as to the unconditional nature of an asset or liability, even in situations where a future event will confirm whether the entity has the asset or the liability. We note that one FASB member has stated publicly that the underlying concept of the ITC is to identify and measure assets and liabilities based on facts known at the measurement date and <u>not</u> on the expected eventual outcome. We are concerned that this approach will ultimately lead to the recognition of assets that may never be realized or liabilities that may never be settled. The proposed guidance could lead to the recognition of assets and the settlement of liabilities which are so uncertain that any purported measurement would facilitate the manipulation of financial information resulting in financial statements that would be misleading to the investing public.

Specific Comments

Question 1

The language in the ITC related to the notion of contingent assets is not explicit enough to communicate effectively the nuances embodied in this approach. We understand that if an asset arises from an unconditional right to future economic benefits controlled by an entity, a contingent asset would appear to be an oxymoron, i.e., the right would only be possible, thereby rendering it conditional and not an asset. However, we do not believe that the term is as troublesome and as confusing as the IASB contends. Current accounting literature supports this assertion. FASB Concepts Statement ("CON") No. 6, *Elements of Financial Statements*, paragraph 25 clearly defines assets as "probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events." It further states in paragraph 26 that assets have three essential characteristics: "(a) it embodies a probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash flow, (b) a particular entity can obtain and control others' access to it and (c) the transaction or other event giving rise to the entity's right or control has already occurred." It is clear from this definition that if there is a contingency associated with the asset, it may not be recognized. While the aforementioned definition does contain the concept of probability, it is neither confusing nor unclear.

Questions 2, 3 and 4

The explanations and examples in BC11 to BC18 do not provide sufficient clarity to avoid misapplication of the concepts of unconditional and conditional rights. While the examples focus on the existence of unconditional rights which give rise to assets, there is no reference to whether or not, or how such rights should be measured. Without clear explanations as to how the suggested guidance should be applied, it is likely that financial statement preparers will record assets that really should not be measured due to the low probability of them ever being realized. For example, is the conclusion that is to be reached in Example 1 that the entity's financial statements should include as an asset the entity's right to have its claim heard by the courts? Based upon the ITC's identification of such right as an unconditional right, it would seem so. However, measurement of such a right is not addressed, nor is the likelihood of the asset having value in the first place. We believe that this guidance, as written, will only serve to confuse preparers and users of financial statements.

The discussion of conditional rights that support the existence of unconditional rights is not helpful. For example, the last sentence in paragraph BC11 ("However, although a conditional right or obligation in a contract does not itself satisfy the definition of an asset or liability, it points to the existence of an accompanying unconditional right or obligation that may satisfy the definition of an asset or liability") does not appear to provide any guidance that will be appropriately applied by preparers of financial statements.

Additionally, the discussion of unconditional and conditional rights in paragraphs BC12 and BC13 does not adequately address the issues traditionally inherent in insurance contracts. As a general rule, insurance companies provide insurance to large pools of entities with the projection that an insurable event leading to a claim is unlikely to happen to any given insured, but will probably happen to a small number of individual entities in the general insured population. Insurance companies rarely insure events considered either likely or inevitable. Pricing of premiums is based on the notion that collections from the general insured population will exceed the amount of claims submitted by individual entities. Not only does the example of insurance contracts relate to the concept of probability with respect to existence of assets and liabilities, but it also demonstrates the need to address probability with respect to measurement issues (see our comments on Questions 8 and 9).

Questions 5, 6 and 7

Similar to our position on contingent assets, the guidance on unconditional and conditional obligations needs to be sufficiently explicit to avoid the non-recognition of present obligations. We again note that existing guidance is not as troublesome and confusing as the IASB contends. The three essential characteristics listed in paragraph 36 of CON 6 ("(a) it embodies a present duty or responsibility to one or more other entities that entails settlement by probable future transfer or use of assets at a specified or determinable date, on occurrence of a specified event, or on demand, (b) the duty or responsibility obligate a particular entity, leaving it little or no discretion to avoid the future sacrifice, and (c) the transaction or other event obligating the entity has already happened.") provide clear guidance on the identification of contingent liabilities. Unlike contingent assets, the approach suggested by the IASB could lead to the non-recognition of liabilities that could distort an entity's financial statements. Preparers of financial statements could easily misinterpret the suggested guidance (i.e., measuring all unconditional obligations, regardless of the probability of ultimate settlement) resulting in financial statements that do not reflect the true obligations of the entity. Additionally, the ITC could open the door for financial statement manipulation through the recognition of, e.g., "cookie jar reserves", depending on the needs or commitments of the entity at the measurement date.

Questions 8 and 9

We wish to note that the probability issues previously associated with recognition decisions should be addressed in measurement decisions. It is disingenuous to believe that probability considerations should not be taken into account even in situations where cash flow estimation techniques or other fair value approaches are used to measure non-financial liabilities. The IASB's attempt to disregard the concept of probability will not result in financial statements that are any more reliable than current literature produces. While we agree that mark-to-market valuation techniques will produce assets and liabilities that are more reflective of an entity's rights and obligations, we believe that without appropriate consideration of the probability of such techniques, financial statement users have no truer picture of an entity's worth than before.