

FASB Modifies Proposed Multiemployer Plan Participation Disclosures

June 13, 2011

At its meeting on May 31, the Financial Accounting Standards Board (FASB) tentatively agreed that it will *not* require employers to disclose an estimate of withdrawal liability for each material multiemployer defined benefit plan in which they participate, as it had previously proposed. According to the FASB, certain types of enhanced disclosures will still be required. However, these requirements will not be applicable until a final decision is made by the board.

Background

As a general matter, financial statement disclosures regarding an employer's participation in a multiemployer defined benefit plan are limited to contributions required to be made to each plan for the year. However, in the event that a withdrawal becomes either "probable" or "reasonably possible," then the employer must report its withdrawal liability.

In September 2010, FASB issued the Exposure Draft of Proposed Accounting Standards Update, *Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80): Disclosure About an Employer's Participation in a Multiemployer Plan* (Exposure Draft), which would have required employers contributing to multiemployer defined benefit plans to disclose additional information about their participation in such plans, including the employer's potential withdrawal liability, in the notes to their financial statements reported on Form 10-K. The reporting change would have required employers to report potential withdrawal liability even if an employer considered the likelihood of incurring that liability to be "remote."

According to FASB, its intent was to use the withdrawal liability estimates as a proxy for an employer's proportional share of a plan's underfunding. After receiving more than 300 comments on its Exposure Draft, FASB announced on November 10, 2010 that the new disclosures would not be required for the 2010 calendar year-end reporting period, and that it expected to issue a final standard early in the second quarter of 2011. FASB summarized the comments that it received regarding the disclosure of withdrawal liability estimates as follows: "Respondents were largely opposed to requiring disclosure of withdrawal liability because of concerns about its appropriateness as a proxy, the cost to compute this amount, the timeliness of the information, and the potential confusion it could cause users."

Decisions from the May 31 FASB Meeting

After considering several alternatives to using withdrawal liability estimates as a proxy for an employer's share of a plan's underfunding, FASB members tentatively decided at their May 31 meeting that rather than using such estimates, employers should disclose the following regarding each plan on their annual report reported on Form 10-K:

- Plan identifying information—this would help users access plan information themselves
- Pension Protection Act zone status—endangered (yellow), seriously endangered (orange), critical (red), or none of the three (green)—and whether a funding improvement plan or rehabilitation plan has been implemented or is pending
- Contributions for the current period for each income statement presented (for public companies, three years of contributions)
- Whether the plan has imposed a surcharge (for plans in critical status)
- The expiration date of the collective bargaining arrangement for each individual material plan in which the employer participates (only for the end of the most recent year)
- Whether the employer's contributions represent more than 5% of total contributions to the plan

In its meeting handout,¹ FASB included an illustration of how these disclosures might be displayed.

At its meeting, FASB also tentatively decided that an employer would *not* be required to provide the following disclosures proposed in the Exposure Draft:

- The number of multiemployer plans in which the employer participates
- The total assets and the accumulated benefit obligation of the multiemployer plans in which the employer participates
- The employer's contributions to a plan as a percentage of total plan contributions
- The percentage of an employer's employees that are covered by multiemployer plans

All of FASB's decisions reported from this meeting are tentative and may be changed at future board meetings. FASB decisions become final only after a formal written ballot to issue an Accounting Standards Update.

In addition, in April 2010, the International Accounting Standards Board (IASB) issued a proposal that would require increased disclosures regarding an employer's multiemployer plan participation. In addition to FASB's new standards, employers with international operations may be subject to these requirements, which are more extensive than the changes that FASB is proposing. There has also been an ongoing effort by the IASB and FASB to reach a shared goal of globally converged accounting standards. As a result, it could become the case that the more extensive IASB requirements would become applicable.

1. Available online at http://www.fasb.org/cs/ContentServer?site=FASB&c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176158577598.

We will continue to monitor potential disclosure obligations as IASB and FASB finalize their requirements.

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Chicago

Philip A. Miscimarra 312.324.1165 pmiscimarra@morganlewis.com

New York

Craig A. Bitman 212.309.7190 cbitman@morganlewis.com

Philadelphia

Brian J. Dougherty 215.963.4812 bdougherty@morganlewis.com

Steven D. Spencer 215.963.5714 sspencer@morganlewis.com

Pittsburgh

John G. Ferreira 412.560.3350 jferreira@morganlewis.com

R. Randall Tracht 412.560.3352 rtracht@morganlewis.com

Washington, D.C.

Daniel P. Bordoni 202.739.5249 dbordoni@morganlewis.com

Gregory C. Braden 202.739.5217 gbraden@morganlewis.com

Harry W. Burton 202.739.5105 hburton@morganlewis.com

David P. Cohn 202.739.5586 dcohn@morganlewis.com

Althea R. Day 202.739.5366 aday@morganlewis.com

Charles P. Groppe 202.739.5681 cgroppe@morganlewis.com

Donald L. Havermann 202.739.5072 dhavermann@morganlewis.com

Stuart P. Kasiske 202.739.6368 skasiske@morganlewis.com

Stanley F. Lechner 202.739.5079 slechner@morganlewis.com

Gregory L. Needles 202.739.5448 gneedles@morganlewis.com

John F. Ring 202.739.5096 jring@morganlewis.com

Gregory R. Talbot 202.739.5961 gtalbot@morganlewis.com

Thomas K. Wotring 202.739.5290 twotring@morganlewis.com

About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states.
Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2011 Morgan, Lewis & Bockius LLP. All Rights Reserved.

