

July 26, 2010

## **Dial-In Scheduled for 3:00 PM EDT on Thursday, July 29, 2010**

### **Multiemployer Plan Sponsor Group Forming for Comments on IASB & FASB Accounting Changes Affecting Employers Contributing to Multiemployer Funds**

The International Accounting Standards Board ("IASB") and the United States Financial Accounting Standards Board ("FASB") are both considering new rules which would require auditors to provide a great deal of additional information on the audited financial statements of employers that contribute to multiemployer plans. Many of our clients are concerned that, if finalized in their present form, the proposed rules would have significant adverse consequences to those contributing employers, the unions representing their employees, and the multiemployer plans that provide benefits to their employees.

In order to protect the interests of multiemployer plans and their sponsoring organizations, we are forming a group of employer associations, employers, unions, industry associations, and other interested stakeholders on whose behalf we will submit comments to the FASB, IASB, and other appropriate parties. We are working with other industry groups, including the National Coordinating Committee for Multiemployer Plans ("NCCMP"), to ensure that FASB and the IASB consider the full impact of these rules on employers, unions, and the plans. The legal fees for the group will be shared by all its members, and we anticipate those individual member fees to be very reasonable due to the growing membership of the group.

*The deadlines for submitting comments to influence the finalization of these new rules are quickly approaching.*

- On July 20, 2010, FASB published an Exposure Draft addressing employer reporting of potential loss contingencies regarding its withdrawal from multiemployer plans (the "Loss Contingency Exposure Draft"). *We have consulted extensively with FASB staff and verified their view that the new FASB Loss Contingency Exposure Draft significantly increases the required scope of reporting for potential employer obligations to multiemployer plans.* While changes solely focused on multiemployer plans will be proposed by FASB in the future (see below), the July 20, 2010 Loss Contingency Exposure Draft is cause for real concern to employers, unions, and multiemployer plans. **Comments to the Loss Contingency Exposure Draft are due by August 20, 2010.** The new proposal will require significantly more employers to report potential withdrawal liability without regard to the practical probability that it will be incurred and without regard to whether an exception to the assessment of withdrawal liability is available under ERISA.

- The IASB published its proposed changes (the "IASB Exposure Draft") on April 29, 2010. IASB's Exposure Draft changes are more extensive than the changes FASB plans on proposing. A chart prepared by FASB staff comparing the changes being considered by FASB and those already proposed by the IASB is attached. **Comments to the IASB Exposure Draft are due by September 6, 2010.** A copy of the IASB's Exposure Draft regarding multiemployer plans is also attached.

- On April 14, 2010, the FASB instructed its staff to prepare a document setting forth proposed changes specifically with respect to employers contributing to multiemployer plans (the additional "FASB Multiemployer Exposure Draft"). We understand from FASB staff that the additional multiemployer disclosure rules will likely be published in August. While the FASB Exposure Draft has not yet been published, a copy of the staff's presentation to the board indicates the changes it will include in the draft. The FASB has set a short 60 day period for comment once the draft is issued. Assuming that the FASB Multiemployer Exposure Draft is published in August, **comments will be due during October, 2010.**

We believe that the proposed changes will provide misleading information to the financial markets and lenders that could, in turn, significantly impair an employer's operations and continued contributions to multiemployer plans. The effects of the accounting change may be exacerbated by the current financial crisis.

There is a concern that employers may have difficulty in obtaining credit for operating costs and surety bonds which enable them to bid on jobs. Moreover, the equity that owners have in their companies often represents a lifetime of invested savings. The accounting changes may unnecessarily impair the sale of that asset on which owners rely for their retirement.

Unions, in turn, will meet increased pressure at the bargaining table to decrease contributions and cut benefits. While the possible effects are dependant on many variables, there is concern that the accounting changes may encourage employers to withdraw from multiemployer plans at the very time it would be most disadvantageous to all stakeholders to do so. In short, we believe that the contemplated accounting changes may seriously harm employers, unions, multiemployer plans, and employees.

The FASB Lost Contingency Exposure Draft effectively requires all employers to report potential withdrawal liability if it would have a severe impact on the company, even if the chance of triggering the liability is merely "remote" or "slight" (as opposed to the prior "reasonably possible" standard) and even if an exception would be available to the employer under ERISA. FASB staff has informed us that it expects the Multiemployer Exposure Draft to require all employers to disclose any potential liability without regard to the probability it would be incurred and without regard to the potential impact on the employer. FASB staff has also recommended that the disclosure include information regarding future funding expectations and funding scenarios under current consideration. The rules will be effective for this year with respect to public corporations and next year for private corporations.

Not only do the contemplated changes require the provision of additional quantitative information which is stale, expensive to present, and misleading, it also asks for speculative qualitative statements regarding expected future increases and the presentation of funding scenarios which are being merely "considered." Specifically, the FASB staff recommended the following changes be included in the FASB Multiemployer Exposure Draft and the board has approved their recommendations:

1. ***Expected future trends in contributions***, if known, including the extent to which a surplus or deficit in the plan may affect future contributions;
2. ***A narrative description, including the expected effect, of any funding improvement plan or rehabilitation plan.*** For plans in regulatory warning zones (for example, "critical" or "endangered" status as defined by the Pension Protection Act of 2006) the warning status ***and possible remedies being considered by the plan***, if known;
3. ***A narrative description of the entity's exposure to significant risks arising from its participation in the plan, for example the extent to which the entity can be liable to the plan for other participating employers' obligations under the terms and conditions of the plan***, the entity's inability to influence the plan's investment decisions and consequences the entity might face if it ceased contributing to the plan; and
4. Details of any agreed deficit or surplus allocation on wind-up and, if applicable and available, ***the amount that is required to be paid on withdrawal*** as of the most recent date available. For plans where the amount required to be paid on withdrawal is applicable, but not available, an entity shall provide information about the magnitude of those plans (such as the percentage of the multiemployer plan contributions to such plans, or percentage of participants covered by such plans).

The IASB Exposure Draft suggests even broader changes regarding both qualitative and quantitative information, regardless of whether that information is available to the employer. A chart prepared by FASB staff identifying the differences between its recommended changes and the changes proposed in the IASB Exposure Draft is attached. Due to the convergence of international accounting standards, both the FASB and IASB proposals need to be addressed.

While FASB staff has recognized some of the errors of the IASB Exposure Draft, their recommendations will still require information and disclosure that is inappropriate with respect to the funding rules under ERISA. We are in the process of preparing comments and working with the FASB staff, and welcome any comments or insights you may have.

Please contact Jim Cole at Groom Law Group (at [jcole@groom.com](mailto:jcole@groom.com) or (202) 861-0175) with any comments you may have or for information regarding the group.