Letter of Comment No: 102

File Reference: 1215-001

Date Received: 9 14 05



September 12, 2005

Mr. Lawrence W. Smith
Director—Technical Application and Implementation Issues
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Subject: File Reference 1215-001 — Comment Letter on the Proposed

Interpretation, Accounting for Uncertain Tax Positions—an amendment of

FASB Statement No. 109

Dear Mr. Smith:

Wachovia Corporation is pleased to have the opportunity to comment to the Financial Accounting Standards Board on the proposed FASB Interpretation, Accounting for Uncertain Tax Positions—an amendment of FASB Statement No. 109 (the proposed Interpretation). While we commend the FASB for addressing an area of perceived diversity in practice, we strongly disagree with many of the provisions of the proposed Interpretation and in fact we find that our views more closely parallel those of the two dissenters on the Board who indicated that they do not believe this proposed Interpretation would result in representationally faithful accounting for deferred taxes.

Before we address the specific issues on which the Board requested feedback, we would like to emphasize that an effective date of December 31, 2005, is unrealistic. As we indicate later in this letter in our response to Issue 11, the research and analysis that would be required for management to be able to reach a conclusion as to whether a tax position meets the applicable recognition threshold, the availability and time constraints of attorneys and other experts with whom management may wish to consult, and the analytical analyses required to validate a best estimate for those tax positions that meet the applicable recognition threshold are time-consuming tasks especially when the process needs to be repeated for each of many tax positions in a variety of tax jurisdictions. While we acknowledge that companies currently perform extensive analyses of tax benefits in accordance with SFAS No. 5, we believe that adoption of the proposed Interpretation, as currently drafted, will require a considerable level of additional work within a short period of time.

With strongly disagree with the provisions of the proposed Interpretation in terms of the dual threshold approach, the *probable* recognition threshold, the effective date and the transition provisions. With that said, the following are our comments on certain of the specific issues on which the Board requested feedback.

Issue 1: Scope

The proposed Interpretation would broadly apply to all tax positions accounted for in accordance with Statement 109, including tax positions that pertain to assets and liabilities acquired in business combinations. It would apply to tax positions taken in tax returns previously filed as well as positions anticipated to be taken in future tax returns. Do you agree with the scope of the proposed Interpretation? If not, why not?

<u>Response</u>: Wachovia agrees with the scope of the proposed Interpretation, as we believe it is important that a single accounting principle apply to all tax positions.

Initial Recognition

Issue 2: The Board concluded that the recognition threshold should presume a taxing authority will, during an audit, evaluate a tax position taken or expected to be taken when assessing recognition of an uncertain tax position. Do you agree? If not, why not?

<u>Response</u>: Wachovia agrees with the provisions of the proposed Interpretation on this issue. We do not believe that the accounting for a transaction should be based on the risk of detection.

Issue 3: The Board decided on a dual threshold approach that would require one threshold for recognition and another threshold for derecognition. The Board concluded that a tax position must meet a probable threshold for a benefit to be recognized in the financial statements. Do you agree with the dual threshold approach? Do you agree with the selection of probable as the recognition threshold? If not, what alternative approach or threshold should the Board consider?

Response: Wachovia strongly disagrees with both the dual threshold approach and with the Board's conclusion that a tax position must meet a probable threshold for any benefit to be recognized. We believe that, in accordance with SFAS No. 5, any amount recognized needs to meet a probable threshold; however, requiring that a tax position meet a probable threshold on its overall merits before any benefit can be recognized will result in a systematic and potentially very significant overstatement of tax liabilities. Instead, we recommend that the Board require a single more likely than not threshold for both recognition and derecognition of tax benefits. For tax positions that meet this threshold, a tax benefit would then be recognized for the amount that is deemed to be probable of being realized, i.e., the "best estimate" from within a range.

Mr. Lawrence W. Smith September 12, 2005 Page 4

The gap between the thresholds for recognition and derecognition will result in a lack of consistency and comparability among companies on the same tax position. For example, one company may assess a tax position at a *probable* level, and accordingly, record a tax benefit and continue recording such benefits year after year. Another company may enter into the same transaction a year or two later, assess the tax position at a *more likely than not* level, and accordingly, be unable to record any benefit. A standard that so obviously accommodates, and actually requires, a lack of consistency and comparability cannot possibly improve the transparency of financial reporting.

Further, setting the recognition threshold at such a high level before any tax benefit can be recognized, as the Board is proposing, will also result in inconsistent treatment among companies regarding identical tax positions because the various tax advisors with whom the companies' managements consult may, and often do, have differing views on identical issues. One tax advisor (or independent auditor) may assess a transaction at the *probable* level while another may assess the same transaction at a *more likely than not* level. In the first case, the company would recognize some or all of the tax benefit and in the second case, none. This is a counterintuitive outcome and one that can easily be remedied by setting both the recognition and derecognition thresholds at *more likely than not*.

We also recommend that, in drafting the final Interpretation, the Board consider and address the interrelationship between management's judgment regarding the recognition of a tax benefit and the views of tax advisors and independent auditors. The proposed Interpretation expressly states in paragraph B21 that it is not the intention of the Board to require that tax opinions be obtained to demonstrate that the appropriate recognition threshold has been achieved. We believe that the test should primarily focus on whether management is able to conclude that a tax position is reasonable and

supportable. The evaluation of tax positions is a highly judgmental process in which experts may reasonably disagree as to the probable outcome, and there is often no universally "correct," or certain, result. As long as management's judgment is reasonable, it should be respected.

In paragraph 9b of the proposed Interpretation, the Board refers to an "unqualified should" tax opinion. We understand that an "unqualified should" tax opinion would be substantially the same as a "will prevail" opinion, and we suggest that this ambiguity be clarified.

Finally, rather than merely considering the merits of the tax position in evaluating whether the appropriate recognition threshold has been met and determining the appropriate amount of tax benefit to be recognized, we strongly recommend that the Board permit companies to also consider the administrative practices of the applicable taxing authority in applying and enforcing the tax law. For example, if a taxing authority has settlement guidelines under which the taxing authority will accept a fixed percentage of a deduction, those guidelines should be sufficient to recognize a tax benefit at least equal to that fixed percentage.

Issue 4: Subsequent Recognition

The Board concluded that a tax position that did not previously meet the probable recognition threshold should be recognized in any later period in which the enterprise subsequently concludes that the probable recognition threshold has been met. Do you agree? If not, why not?

Response: Notwithstanding our objection to the *probable* threshold as articulated above, we agree that a tax position that did not previously meet the applicable recognition threshold should be recognized in any subsequent period when such threshold is achieved. Any other approach would result in a non-comparability.

Issue 5: Derecognition

The Board concluded that a previously recognized tax position that no longer meets the probable recognition threshold should be derecognized by recording an income tax liability or reducing a deferred tax asset in the period in which the enterprise concludes that it is more likely than not that the position will not be sustained on audit. A valuation allowance as described in Statement 109 or a valuation account as described in FASB Concepts Statement No. 6 should not be used as a substitute for derecognition of the benefit of a tax position. Do you agree with the Board's conclusions on derecognition of previously recognized tax positions? If not, why not?

Response: Again, Wachovia does not agree with the dual threshold approach in the proposed Interpretation. We believe that *more likely than not* is the appropriate threshold for both recognition and derecognition of tax benefits. We do agree, however, with the Board's conclusion that valuation allowances or valuation accounts should not be used to derecognize tax benefits.

Issue 6: Measurement

The Board concluded that once the probable recognition threshold is met, the best estimate of an amount that would be sustained on audit should be recognized. The Board concluded that any subsequent changes in that recognized amount should be made using a best estimate methodology and recognized in the period of change. Do you agree with the Board's conclusions on measurement? If not, why not?

<u>Response</u>: As stated earlier, we strongly disagree with the dual threshold approach in the proposed Interpretation. With that said, we do agree that subsequent changes in the recognized amount should be made using a best estimate methodology, and recognized in the period of change.

Issue 8: Changes in Judgment

The Board concluded that, consistent with the guidance in paragraph 194 of Statement 109, a change in the recognition, derecognition, or measurement of a tax position should be recognized entirely in the interim period in which the change in judgment occurs. Do you agree with the Board's conclusions about a change in judgment? If not, why not?

<u>Response</u>: Wachovia agrees with the Board's conclusion in the proposed Interpretation.

Issue 9: Interest and Penalties

The Board concluded that if the relevant tax law requires payment of interest on underpayment of income taxes, accrual of interest should be based on the difference between the tax benefit recognized in the financial statements and the tax position in the period the interest is deemed to have been incurred. Similarly, if a statutory penalty would apply to a particular tax position, a liability for that penalty should be recognized in the period the penalty is deemed to have been incurred. Because classification of interest and penalties in the income statement was not considered when Statement 109 was issued, the Board concluded it would not consider that issue in this proposed Interpretation. Do you agree with the Board's conclusions about recognition, measurement, and classification of interest and penalties. If not, why not?

Response: As noted throughout this letter, Wachovia strongly disagrees with the recognition threshold in the proposed Interpretation. We believe that, at a more likely than not recognition threshold, the accrual of interest and penalties should be based on the difference between the tax benefit recognized in the income statement and the tax position in the period the interest is deemed to have been incurred. In contrast, at a recognition threshold of probable, under the dual threshold approach, companies would

Mr. Lawrence W. Smith September 12, 2005 Page 8

be required to record liabilities that management believes will never actually be incurred. This represents another instance where the dual threshold approach will result in an overstatement of liabilities, which would not occur if the more likely than not recognition threshold were adopted instead.

Issue 10: Disclosures

The Board concluded that loss contingencies relating to previously recognized tax positions should be disclosed in accordance with the provisions of paragraphs 9-11 of Statement 5. The Board also concluded that liabilities recognized in the financial statements pursuant to this proposed Interpretation for tax positions that do not meet the probable recognition threshold are similar to contingent gains. Therefore, those liabilities should be disclosed in accordance with the provisions of paragraph 17 of Statement 5. Do you agree with the disclosure requirements? If not, why not?

Response: Wachovia agrees with the conclusion in paragraph B40 of the proposed Interpretation.

Issue 11: Effective Date and Transition

The Board concluded that this proposed Interpretation should be effective as of the end of the first fiscal year ending after December 15, 2005. Only tax positions that meet the probable recognition threshold at that date may be recognized. The cumulative effect of initially applying this proposed Interpretation would be recognized as a change in accounting principle as of the end of the period in which this proposed Interpretation is adopted. Restatement of previously issued interim or annual financial statements and pro forma disclosures for prior periods is not permitted. Earlier application is encouraged. Do you agree with the Board's conclusions on effective date? If not, how much time would you anticipate will be necessary to apply the provisions of this proposed

Mr. Lawrence W. Smith September 12, 2005 Page 9

Interpretation? Do you agree with the Board's conclusions on transition? If not, why not?

Response: Wachovia strongly disagrees with both the proposed adoption date and with the proposed method of adoption. Given the time necessary for the FASB to complete its due process and issue a final Interpretation, and the time required for companies to perform the analysis required for a myriad of very complex tax positions, we recommend that the FASB set an effective date of no earlier than fiscal years ending after December 15, 2006.

The research and analysis that would be required for management to be able to reach a conclusion as to whether a tax position meets the applicable recognition threshold, the availability and time constraints of attorneys and other experts with whom management may wish to consult and the analytical analyses required to ascertain a best estimate for those tax positions that meet the applicable recognition threshold are daunting and time-consuming tasks especially when the process needs to be repeated for each of many tax positions in a variety of tax jurisdictions in a short period of time. For most companies, it is difficult to envision that such a process could be completed by the proposed effective date even if management were to reallocate all their resources to this task.

Further, we strongly disagree with the requirement in the proposed Interpretation that only tax positions that met the *probable* threshold at the effective date can be recognized or continue to be recognized upon initial adoption of the final Interpretation. One of the Board's objectives in issuing this proposed Interpretation is to eliminate diversity in practice. One of the ramifications of this implementation provision in the proposed Interpretation is that a company that was already complying with the provisions of the proposed Interpretation (the dual threshold) would be required upon adoption to derecognize the tax benefits for an tax positions that had fallen below *probable*, but not

Mr. Lawrence W. Smith September 12, 2005

Page 10

below more likely than not. Further, the threshold in the proposed Interpretation for

existing tax positions is more likely than not, therefore, that same threshold should apply

to existing tax benefits at the adoption date. Clearly, these very important issues resolve

themselves if the Board discards the dual threshold approach and adopts a single

threshold of more likely than not.

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Finally, we would like to re-emphasize to the Board that an accounting standard

that can result in a systematic overstatement of tax liabilities (and understatement of

earnings) followed some number of accounting periods later by a reversal of such tax

liabilities to earnings is a model that will not foster investor confidence in financial

reporting and will result in "lumpiness" in earnings that will be very difficult for an

investor to understand.

We would be pleased to address any questions you may have regarding the

comments in this letter or to discuss our position in more detail, at your convenience. I

can be reached at 704-383-6101 or by email at david.julian@wachovia.com.

Sincerely,

cc:

David M. Julian

Executive Vice President and Controller

Robert P. Kelly, Senior Executive Vice President and Chief Financial Officer