October 10, 2005

Technical Director
Financial Accounting Standards Board
401 Merritt 7
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Norwalk, CT 06856-5116

By email to: director@fasb.org

Re: File Reference Nos. 1225-001, 1210-001 and 1220-001

Director:

First Horizon National Corporation appreciates the opportunity to comment on the Exposure Drafts for the Proposed Statements of Financial Accounting Standards, Accounting for Transfers of Financial Assets, an amendment of FASB Statement No. 140 (the "Transfers Amendment"), Accounting for Certain Hybrid Financial Instruments, an amendment of FASB Statements No. 133 and 140 (the "Hybrids Amendment") and Accounting for Servicing of Financial Assets, an amendment of FASB Statement No. 140 (the "Servicing Rights Amendment") (collectively referred to as the "Exposure Drafts"), which amend Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities - A Replacement of FASB Statement 125 ("SFAS No. 140") and Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities ("SFAS No. 133"). We strongly support many of the revisions proposed in the Exposure Drafts, including the initial recognition of servicing rights and beneficial interests at fair value and the fair value election for subsequent measurement of servicing rights and certain hybrid financial instruments. We also appreciate the FASB's willingness to completely revisit its initial preliminary conclusions expressed in the June 2003 Exposure Draft, Qualifying Special-Purpose Entities and Isolation of Transferred Assets. We believe that the Exposure Drafts present significantly improved guidance, especially in regards to the criteria for achieving "sale" accounting. However, we believe that certain provisions of the Exposure Drafts should be revisited by the FASB during its consideration of respondents' comments. We have particularly significant concerns regarding the proposed requirements for loan participations to qualify as transfers. Specifically we are concerned that the FASB is attempting to apply a securitization approach in accounting for loan participations despite the fact that the two types of transfers have vastly different economic purposes and legal structures. Our concerns are summarized in the following categories.

- Clarification of Paragraph 40(b) and 40(c) Tests
- Requirements for True Sale Opinion
- Determination of Servicing Rights Classes
- Preference for Fair Value Measurement of Servicing Rights
Clarification of Paragraph 40(b) and 40(c) Tests

Paragraph 40 of SFAS No. 140 presents the limitations for passive derivative financial instruments held by a Qualifying Special Purpose Entity ("QSPE"). Historically, we have been informed that the derivatives held by the QSPE must be associated with the specific related beneficial interests (tranches) when applying the notional value limitation of paragraph 40(b) and risk correlation test of paragraph 40(c). Specifically, the phrase "those beneficial interests" within paragraphs 40(b) and 40(c) has been construed to equate with the beneficial interests directly benefiting from the derivative. In contrast, paragraph 40(a) references all beneficial interests issued to parties other than the transferor, affiliates of the transferor or agents of the transferor. We believe that these restrictive interpretations of paragraphs 40(b) and 40(c) ignore the economics of certain securitization structures.

For example, in certain securitizations a QSPE will enter into derivatives that benefit only a small percentage of the tranches issued to third parties. By compelling a comparison of the derivative's notional amount to the certificate balance of only the specific tranches benefited, the QSPE cannot adequately hedge the interests of those specific tranches. Due to the uncertainty inherent in predicting mortgage prepayments, it is (at least) possible that the certificate balance may decline faster than the corresponding amortization of the derivative. Since only unexpected prepayments and market making activities were addressed in Proposed Staff Position FAS 140-c, Clarification of the Application of Paragraphs 40(b) and 40(c) of FASB Statement No. 140, the existence of possible prepayments would (as indicated to us) continue to preclude the existence of an associated derivative for which it is possible that the notional value will exceed the related certificate balance at some point during its life. Therefore, the stated amortization of the derivative must be scheduled at significantly less than the anticipated amortization of the certificate balance at all future dates in order to meet the test of paragraphs 40(b) as currently applied. We do not believe that this current interpretation of paragraphs 40(b) and 40(c) aligns with the economics of many securitization transactions. Further, we believe it is not reflective of the FASB's intent when these limitations were included within SFAS No. 140. Paragraph 187 suggests that the FASB intended to prevent QSPE's from entering into a large derivative instrument while holding only a small amount of other financial assets, thereby allowing a transferor to avoid the accounting requirements of SFAS No. 133. Since many securitizations (that have no intent to avoid SFAS No. 133) are negatively impacted by the current restrictive interpretations of paragraphs 40(b) and 40(c), we believe these should be revisited within the scope of the Transfers Amendment.

As proposed, the Transfers Amendment would modify paragraphs 40(b) and 40(c) by inserting the word "issued" after "beneficial interests" in both locations. By indicating that all beneficial interests issued by the QSPE are to be considered in applying the tests of paragraph 40, the FASB is clearly increasing the amount of derivatives that a QSPE can hold. Such a decision would seem to make the prior restrictive interpretations of paragraphs
40(b) and 40(c) no longer necessary. We urge the FASB to consider a clarification of its intent regarding application of the tests expressed in paragraphs 40(b) and 40(c). More specifically, we request that the FASB provide that the total amount of beneficial interests issued by a QSPE are to be used when performing the notional value and correlation tests. Such guidance would be consistent with the concept of QSPE's as passive entities because the QSPE is not engaging in any form of speculative activities with the derivative instruments, but rather is merely trying to adequately hedge the expected decline in value of certain tranches.

**Requirements for True Sale Opinion**

Included in proposed paragraph 27B(a) of the Transfers Amendment is a requirement that an attorney consider the requirements of paragraphs 9(d) and 9(e) within a true sale opinion. Paragraph 9(d) indicates that all agreements made in connection with a transfer, even those not entered into at the time of the transfer, must be considered in determining whether a transfer qualifies for sale treatment. Paragraph 9(e) provides that no arrangement is created between a beneficial interest holder and the transferor (or an affiliate) that would cause the transaction to fail the isolation test of paragraph 9(a) had the same transaction occurred between the QSPE and the transferor (or an affiliate). While we agree with the concepts of paragraphs 9(d) and 9(e), we are unclear regarding the impact of these requirements on attorneys preparing true sale opinions. Since attorneys can only be accountable for agreements of which they are informed, we believe that true sale opinions should state that they encompass all arrangements and agreements of which the attorney is aware at the time the opinion is rendered. This should place responsibility for full compliance with paragraphs 9(d) and 9(e) where it belongs, with the transferor.

**Determination of Servicing Rights Classes**

The Servicing Rights Amendment provides that the proposed fair value election of paragraph 13 should be made on a class-by-class basis with classes defined by the asset type being serviced. The indicated examples of major asset classes are mortgage loans, credit card receivables, and automobile loans. We believe that exclusively determining classes of servicing rights using the type of asset being serviced fails to recognize that many other factors affect the value of servicing rights. For example, both fixed rate mortgage loans and home equity lines of credit (HELOC's) are collateralized by a borrower's home. However, changes in the fair value of servicing rights for fixed rate mortgage loans differ dramatically from changes in the fair value of servicing rights for HELOC's. This is partially due to the use of fixed or variable rates, but HELOC's tend to be prepaid in a more rapid manner than mortgage loans, which also has a dramatic effect on the fair value of servicing rights. Considering that economic factors have a disparate impact on servicing rights included within the major asset classes as currently defined, we believe that the FASB should reconsider its methodology for determining classes of servicing rights. While the type of loan being serviced should be one of the characteristics considered in determining classes of servicing rights, we propose that the current examples be removed and replaced with a provision that companies should determine classes of servicing rights through consideration of all factors affecting their value which may include: the nature of the collateral, fixed or floating rates, commercial or consumer loans, participation or securitization and expected customer prepayment rates.
Preference for Fair Value Measurement of Servicing Rights

In its proposed revisions to paragraph 13 of SFAS No. 140, the Servicing Rights Amendment presents the FASB’s preference for the Fair Value Measurement Method in comparison to the Amortization Method. While we fully support the election to utilize fair value accounting for servicing rights, we believe that there may be certain instances in which the Amortization Method may be appropriate. We also are generally opposed to the FASB indicating preferential accounting treatments within its standards. Indicating a preference for certain alternatives does not provide for future changes in economic situations or new product types for which the “less desirable” alternative may actually result in more representative accounting measurements.

Servicing Rights Rollforward Disclosure

The Servicing Rights Amendment proposes extensive new disclosures for servicing rights in paragraphs 17(e) and 17(f). Item 3 for both paragraphs presents the requirement for a rollforward of changes in value for each class of servicing rights, whether accounted for using the Fair Value Measurement Method or the Amortization Method. As currently presented, the proposed items for the rollforward are not inclusive of all items necessary to account for changes in value. Specifically, certain items of ancillary servicing income (e.g., interest on escrow) are not included. We propose that the FASB refrain from dictating the specific line items to include in the rollforward and simply indicate that a rollforward, inclusive of all major components necessary to account for the changes in the value of each class of servicing rights, should be included in the footnotes.

Economic Basis for Loan Participations

In reviewing paragraph 8A’s proposed requirements for a participating interest, we believe that the FASB is attempting to apply securitization accounting theory to loan participations without regard to the significant economic differences between the two transaction types. Securitizations are normally effected as part of a liquidity strategy for organizations to generate a steady cash flow volume sufficient to continue funding future loans. Upon origination, the loans are intended to be held for only a short time by the lender/transferor before they are sold. Further, securitizations typically create multiple classes of beneficial interest holders simultaneous with the transaction, some of which may have higher levels of risk resulting from the transfer. Securitizations are also typically a single event where all beneficial interests are created in conjunction with the transfer.

In participations, the primarily economic purpose is the distribution of risk among participants. The lending relationship is controlled by the lender/transferor, which may enter into either joint or individual transfer agreements with each participant. Further, a transferor may initially retain a participating interest that is subsequently transferred to an existing or new participant. Additionally, individual participants may receive priority claim on cash flows from the loan while assuming an equivalent status in the event of the bankruptcy of the borrower. This priority status is communicated to other participants, who must approve the unequal distribution of cash flows and thereby acknowledging assumption of greater credit risk. With these facts serving as background information, we believe that significant changes should be made to the proposed requirements of paragraph 8A.
**Distribution of Cash Flows to Participating Interests**

Paragraph 8A(b) of the Transfers Amendment indicates that all cash flows from the participated asset must be divided among the participants in proportion to their respective ownership interests except for adequate servicing fees and a share of contractual interest representing a transferor's gain on sale. Paragraph 8A(c) expands on this requirement by prohibiting the subordination of any participating interest(s). These requirements would prevent any participant from having a priority claim on cash flows even if all other participants authorize such a structure. As described above, since the primary purpose for loan participations is the transfer of credit risk, why should an unequal distribution of credit risk automatically disqualify a loan participation from qualifying for sale treatment? We believe that if all participants accept their respective levels of credit risk, then the participation should qualify as a sale.

Additionally, in certain types of participation arrangements (e.g., construction loans) the transferor performs certain activities (e.g., site visits) that go beyond the generally accepted activities that a servicer of mortgage loans would include within a servicing liability assessment. We are uncertain as to whether actions of this type would be considered part of the servicing obligation for a participation or whether such cash flows would result in a disparate allocation of cash flows towards the transferor in comparison to the other participants. In order to address our concerns, we propose that the current requirements of paragraph 8A(b) be modified to indicate that cash flows should be distributed among the participants in accordance with an agreed-upon methodology, which can include subordination of certain interests. We note that this would be consistent with the FASB's logic in permitting sale treatment for securitizations even when certain beneficial interests (normally those of the transferor) are subordinated to other beneficial interests.

**Participation Ownership Shares**

Paragraph 8A(b) also indicates that ownership shares in the participation must remain constant over the life of the associated loan. We believe this requirement fails to acknowledge that participation documents often provide for multiple funding events on lines of credit and that participants may transfer their interests to existing or new participants. Further, while a single note agreement is effected with the borrower, participants may have individual funding caps, or participation in secondary rounds of funding may be elective. As currently proposed, it appears that sale accounting would be precluded in such situations. We believe that the economics of these transactions remain consistent with the spirit of transferring control and risk inherent in the associated financial assets, and accordingly we believe that the last sentence of paragraph 8A(b) be removed from the final standard. If the sentence is not removed, we believe additional clarification should be provided to indicate that each round of funding is considered a separate participation event, creating new participating interests, thus making each event subject to the recognition criteria of Paragraph 8A. If individual participants have funding limitations that that exist at the time of a participation, such caps should not prevent the transaction from qualifying as a transfer because both the transferor and the transferee are fully aware of such a cap at the time of the transfer.

**Servicing Rights for Participating Interests**

Paragraph 10(d) requires the recognition and initial fair value measurement for servicing rights, servicing obligations and all other assets obtained from a participation transaction. As exemplified in the illustration provided in paragraph 60, historically servicing rights and
obligations have not been recognized in accounting for loan participations because there is a presumption that the servicing fees are just enough to compensate for the servicing obligation. This is consistent with the economics of a participation transaction, where the transfer is performed primarily to distribute credit risk among participants, not to create an ongoing cash flow stream for the transferor. Further, the transferor typically has no intention of recognizing a gain on sale because that is not the basis for the transaction. However, the Transfers Amendment brings new focus on participation arrangements, and we believe that the presumption of offsetting servicing rights and obligations will be challenged due to the technical requirements of paragraph 10(d).

In participations, the transferor may receive a slightly higher portion of interest from the borrower in compensation for its servicing obligation. However, servicing rights are not contractually specified in participation documents. Since servicing rights have not previously been recognized for participation transactions and due to each participation having unique characteristics based on the type of lending relationship with the borrower, we anticipate that most companies will attempt to apply the "practicable" exception of paragraph 71 for recognition of servicing rights and obligations for participations. In applying paragraph 71, servicing rights must be assigned a value of zero and recognition of gain is prohibited if a company is unable to determine the fair value of its servicing obligations. As previously mentioned, the denial of gain recognition per paragraph 71 is not an issue in the vast majority of participation transactions.

Paragraphs 71(a) and 71(b) detail the accounting requirements where the fair value of servicing obligations cannot be estimated. The test of paragraph 71(a) is not meaningful for loan participations because a transferor does not typically receive any other assets or incur other obligations in conjunction with a loan participation meeting the requirements of paragraph 8A. Thus, the requirements of paragraph 71(b) are used. This requires the use of Statement of Financial Accounting Standards No. 5, Accounting for Contingencies ("SFAS No. 5"), and FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss ("Interpretation No. 14"), in measuring the servicing obligation. We believe that this is the most reasonable standard for measuring the servicing obligations arising from loan participations.

In order to resolve any issues regarding the necessity of "proving" that servicing rights are at least equal to servicing obligations we propose that a practical exemption be provided for certain participation transactions meeting the transfer requirements of paragraph 8A. If a transferor does not recognize a gain or loss at the time of transfer, the associated servicing rights and obligations should be presumed to initially offset. Subsequently, a transferor would use the provisions of paragraph 71(b) in determining whether a liability (loss) should be recognized related to any servicing obligation.

**Creation of Participating Interest Asset**

As presented in the example participation transaction within paragraph 60 of the Transfers Amendment, the FASB is indicating that the transfer of a loan in a participation creates a new asset (identified as a "Participating Interest") for the transferor and the transferee(s). The FASB makes this concept clear by removing the full carrying value of the loan from the transferor and simultaneously recognizing a Participating Interest for the portion of the loan retained by the transferor. Paragraph 10 further indicates that Participating Interests acquired should be initially measured at fair value by transferees. However, the Transfers Amendment is silent regarding the prospective accounting for Participating Interests. Note that the vast
majority of Participating Interests would not qualify for the guidance of paragraph 14 because they cannot be prepaid in a manner where the holder would not recover substantially all of its recorded investment.

Historically, financial institutions have considered both retained and acquired participations as loans because they represent de facto extensions of credit to the ultimate borrower by each participant. This accounting practice was supported in SFAS No. 140's original presentation of paragraph 60. We believe that the economics for loan participations continue to merit recognition as loans in the financial statements of participants. Accordingly, we presume it is the FASB's intent to apply existing loan accounting guidance to Participating Interests, specifically AICPA Statement of Position 01-6, Accounting by Certain Entities (Including Entities with Trade Receivables) That Lend to or Finance the Activities of Others ("SOP 01-6"), Statement of Financial Accounting Standards No. 91, Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases - An Amendment of FASB Statements No. 13, 60, and 65 and a Recission of FASB Statement No. 17, SFAS No. 5, Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan - An Amendment of FASB Statements No. 5 and 15, and Statement of Financial Accounting Standards No. 118, Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures.

To alleviate any confusion that may arise regarding the prospective accounting for Participating Interests, we propose that the FASB specifically permit these items to be classified as loans by all participants. In lieu of this treatment, the FASB should include within the Transfers Amendment a specific reference that Participating Interests not included within the scope of paragraph 14 should be subjected to the same accounting standards as loans even though they are considered a separate class of assets.

Subsequent Accounting for Secured Borrowings

As currently proposed, the Transfers Amendment would add a prospective accounting requirement to Paragraph 12 of SFAS No. 140 which we believe could result in an unintentional negative consequence to financial reporting. By adding the requirement that a transferor should continue to account for transactions that do not qualify for sale treatment with no change in measurement methodology for the related assets, the FASB is creating a conflict with SOP 01-6 and Statement of Financial Accounting Standards No. 65, Accounting for Certain Mortgage Banking Activities. Both of these standards indicate that the ability and intent of management is critical in determining whether loans should be classified as Held-for-Sale (lower of cost or market) or Held-to-Maturity (realizable value). In a situation where loans are classified as Held-for-Sale prior to execution of a secured borrowing transaction (nonqualifying), the proposed revision to paragraph 12 could be interpreted in a manner whereby management must continue classifying the loans as Held-for-Sale even though the company is now compelled to use the cash flows from the loans to satisfy the associated debt. Presumably, such a transaction structure would be consistent with management's intent to classify the associated loans as Held-to-Maturity.

Effective Date and Transition

We strongly support the proposed effective date and transition guidance presented in the Exposure Drafts as it relates to securitizations and the related measurement of servicing rights and beneficial interests. We believe that the FASB should act expeditiously in
consideration of respondents' comments and make every effort to issue the final standard in the fourth quarter of 2005. This would permit a January 1, 2006, implementation date for the Servicing Amendment and the Hybrids Amendment for calendar year companies. Consistent with the FASB's transition guidance, we believe that the beginning of a fiscal year is the best time to make an accounting change of this magnitude.

We request that the disclosure requirements of paragraph 17(f) be waived for prior periods for any class of servicing rights for which a fair value election is made as of the date of initial adoption of the revised standard. Presentation of prior periods in the disclosure would not be meaningful because of the vast differences in accounting for servicing rights under the Fair Value Measurement Method in comparison to the Amortization Method. Further, we believe that investors are primarily concerned with the future prospects of operations and since the election to measure servicing rights at fair value is irrevocable, such historical information has little relevance.

We also request that the proposed exemption for servicing rights and obligations (related to loan participations) discussed above be afforded to all existing participation structures in which a gain or loss was not recognized at the time of transfer. This would alleviate the necessity of revisiting all existing participation structures to determine if a servicing right or obligation exists. Note that we believe companies currently apply the guidance of SFAS No. 5 and Interpretation No. 14 in determining whether any contingent servicing obligations arise from a participation.

If you have any questions or comments regarding the comments presented in this letter, please contact me at (901) 537-1937.

Sincerely,

/s/ Shawn P. Luke

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