

# LETTER OF COMMENT NO.

Robert L. Morris
Executive Vice President
and Chief Accounting Officer

August 8, 2008

Director of Technical Application and Implementation Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, Connecticut 06856-5116

Re: File Reference No. 1600-100

Dear Director:

We are writing in response to your invitation to comment on the Exposure Draft entitled, "Disclosures of Certain Loss Contingencies: An Amendment of FASB Statements No. 5 and 141(R) ("the Exposure Draft").

KeyCorp (Key), headquartered in Cleveland, Ohio, is a bank-based financial services company that, at June 30, 2008, had assets of approximately \$102 billion. Key encourages and promotes disclosures that provide investors with information that is useful and relevant. These types of disclosures are extremely valuable to investors, employees and other users of financial information. Key supports the Board's goal of improving the transparency, timeliness and usefulness of financial information that is disclosed. The loss contingency disclosures Key currently provides in its interim and annual reporting to its investors and users of financial information demonstrate Key's focus on transparency and presenting facts and circumstances that are easily understood and, to the extent possible, quantifiable and detectable.

We appreciate the opportunity to comment on the Exposure Draft and support the Board's commitment to developing high-quality financial accounting standards and improving the comparability of financial information while promoting international convergence of accounting standards. Key takes pride in providing detailed, timely and comprehensive financial information to the investment community, and supports standards and interpretations that clearly result in reliable and relevant information that can improve investor understanding and allow for more informed decisions.

Key believes that the proposed disclosure requirements addressed in the Exposure Draft will not provide relevant or useful information to investors, may lead investors to exaggerate the extent to which outcomes and losses can be predicted and will detract from the progress made in providing relevant and useful financial disclosure. The following discussion sets forth Key's major concerns with this proposed accounting



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guidance. We have not provided any suggestions for improvement of this proposed guidance since it is Key's position that it is fundamentally flawed and will not result in providing investors with disclosures regarding loss contingencies that are relevant or useful.

#### Requirement to Disclose Claim Amount

The proposal to disclose the plaintiff's maximum claim in a particular litigation matter will not provide useful or relevant information for investors. Although some may consider the claim amount in a litigation matter to be a fact, its disclosure may create among investors the expectation that there is substantially more risk than there is in reality since most, if not all cases, result in settlements or verdicts that are typically far less than the claim amount.

#### Requirement to Disclose Maximum Amount of Possible Loss

The proposed requirement to disclose the defendant's estimate of the maximum amount of possible loss where no claim is stated by the plaintiff is unreasonable. If the reporting defendant does not believe that those amounts reflect the real likelihood of a loss, the proposed requirement to disclose an estimated range of likely losses is equally unreasonable particularly when the defendant does not know the plaintiff's ultimate goal or expectations or the particular strengths and/or weaknesses of the plaintiff's case. Attempting to estimate such an amount when there is no basis to determine an amount and particularly when the plaintiff has been unwilling or unable to do so is problematic. This proposed requirement that the defendant provide either its maximum potential loss or a range of possible losses will provide the financial statement user with a false impression or an illusion of transparency. Rarely are claims quantifiable early in the process of any litigation. Key contends that disclosing such an "estimate" or "guess" to investors does not provide them with any information that is useful or relevant.

#### Fair Value of Contingency?

Estimating the fair value of a contingency, due to litigation, is definitely not similar to the definition of fair value under Statement of Financial Accounting Standards No. 157, Fair Value Measurements, that states, "fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." Other than the established process, nothing about litigation would be considered orderly and the plaintiff and defendant relationship hardly meets the definition of willing market participants. The mere process of valuing assets or liabilities when there is an orderly transaction between willing market participants is onerous and recently has drawn much scrutiny. The requirement to value and disclose information relative to a particular litigation matter before it is probable and reasonably estimable as required under Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (SFAS 5) does not provide reliable or useful information to investors. Requiring the valuation and creation of reserves at a time when the litigation matter is not far enough advanced to permit accurate estimation of what the reserve would be does not result in reliable and relevant information that can improve investor understanding and

allow for more informed decisions. In fact, such a requirement would likely result in misleading information being conveyed to investors.

## Potentially Additional Liability for Preparer Entities

If the disclosures prove to be inaccurate as a result of changes that occur in the course of the proceedings, such erroneous disclosures may be a source of additional liability for the entity providing such disclosures. Providing information that may be inaccurate or not meaningful would seem to be exactly the opposite of what the FASB intends in its efforts to promote improved financial disclosures.

### **Disclosures Based on Speculation**

The proposed requirement to value claims at the outset and periodically update those estimates through tabular disclosure or to measure the economic exposures from litigation does not provide any relevant or useful information to investors for the same reasons set forth above. Given the unpredictable course that a particular litigation matter can take, in many situations a preparer's estimates of possible liability could be outdated or irrelevant almost as soon as they are made. It is Key's contention that financial disclosures based on speculation and any such disclosure in the case of litigation contingencies, prior to the time that the outcome of the litigation matter becomes probable and reasonably estimable, would be misleading and serves no purpose other than to exacerbate the legal process and more likely than not disadvantage the defendant. The potential for negative reputation risk associated with the misleading and/or speculative financial disclosures this proposed guidance would require is not one that should be borne by preparers of financial statements.

### **Existing SFAS 5 Guidance is Sufficient**

It is Key's position that the existing accounting guidance set forth in SFAS 5 works well and is consistent with basic accounting concepts. The criteria for recognition in paragraph 8 of SFAS 5 that states, "an estimated loss contingency shall be accrued by a charge to income if both of the following conditions are met":

- 1. It is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements
- 2. The amount of the loss can be reasonably estimated

The requirement that a contingency needs to be valued if its capable of being valued makes sense and is in line with the preparer providing disclosures that are relevant and useful to investors. SFAS 5 has several advantages including:

- (i) ease of application
- (ii) ability to support transparency in presenting facts and circumstances that are
  - (a) easily and currently understood by constituents and
  - (b) to the extent possible, quantifiable and detectable

- (iii) being cost effective,
- (iv) protecting the legal rights and strategies of the disclosing entity, and
- (v) being auditable.

The accounting guidance proposed in the Exposure Draft diminishes these advantages and is inconsistent with the basic tenet of the FASB standards of reliability and consistency of financial reporting. We are deeply concerned that the Exposure Draft's approach to non-financial liabilities involving litigation would be a step backwards in the journey toward achieving more transparent, timely and useful financial information. The requirements of the Exposure Draft conflict with sound thinking and diminish the progress that the FASB has already made through its issuance of existing accounting standards such as SFAS 5. Key believes that SFAS 5 represents a good, time-tested, well understood (i.e., transparent) balance and provides an appropriate and reasonable financial assessment including the protection of a company's legal rights and the needs of investors and other financial statement users for current meaningful financial information.

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We hope these comments are useful and positively influence the final guidance. We welcome the opportunity to discuss this issue in more detail. Please feel free to contact Chuck Maimbourg, Director of Accounting Policy & Research, at 216-689-4082 or me at 216-689-7841.

Sincerely,

Robert L. Morris

Executive Vice President &

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Chief Accounting Officer