



LETTER OF COMMENT NO. 215

August 8, 2008

Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

By email to: director@fasb.org

Re: File Reference No. 1600-100

Director:

First Horizon National Corporation appreciates the opportunity to comment on the Exposure Draft for the Proposed Statement of Financial Accounting Standards, Disclosure of Certain Loss Contingencies (the "Exposure Draft"). In our view, implementation of the Exposure Draft's provisions would not result in enhanced financial reporting and would reduce the reliability of information within financial statements while also likely increasing the costs of settling loss contingencies, costs which would be borne by the shareholders of public companies. Our views are expressed in responses to the questions posed by the Board.

1. Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

Response: We do not believe that the Exposure Draft will meet the objective of providing enhanced disclosures whose benefits exceed the incremental costs of implementation. Much of the quantitative information that would be required for disclosure under the Exposure Draft is highly judgmental, even speculative, in nature; reducing the reliability (and beneficial nature) of information provided to financial statement users. Such information would be especially unreliable for loss contingencies that are in the early stages of negotiation or litigation. Further, the Exposure Draft would require that the loss contingency disclosures be repeated every quarter, significantly increasing the costs in relation to current reporting requirements.

The Exposure Draft requires disclosure of the amount of a claim against a company, including treble or punitive damages. In situations where a claim has not been filed, or in the very common situation where punitive, consequential or other types of ● Page 2 August 8, 2008

damages are claimed without any amount having been specified; management would be required to develop its best estimate of the maximum possible loss, which is not required under Statement of Financial Accounting Standards No. 5, Accounting for Contingencies ("Statement 5"), until a loss is considered "reasonably possible". Disclosure of management's best estimate of maximum loss from unasserted claims practically invites litigation for the applicable contingency. Further, since asserted claims and maximum loss estimates are, by definition, high in relation to any actual expected damages, management would be compelled (the Exposure Draft makes this elective) to provide a more reasonable amount (i.e., a range of possible loss) for financial statement users.

The potential costs of the additional disclosures are not limited to the cost of additional preparation time and resources. Rather, considering the litigious nature of the U.S. corporate environment, the proposed enhanced disclosures would increase the risk that the information would be used by adversarial parties as leverage against a company in negotiations and/or litigation. For asserted claims, the disclosure would provide plaintiffs and their lawyers with a critical window into the company's knowledge, concerns, and litigation strategies; while the company would enjoy no such advantage in return. For unasserted claims, disclosure of management's best estimate of maximum loss as well as other details would provide plaintiffs and the plaintiffs' bar both a signal flare and a road map which would greatly increase the probability that the unasserted claim would turn into an actual loss. In other words, the new disclosures would not merely report the facts; they would affect and in many cases would drive the outcomes of many, if not most, litigation contingencies. In doing so the new disclosures often would result in incremental costs that would ultimately be absorbed by a company's shareholders through diminution of their investment value, both through increased legal fees as well as the increased likelihood of less favorable resolutions to loss contingencies.

We also have concerns regarding the breach of attorney-client privilege that may result from implementation of the standard as information previously covered under such privilege would be exposed to a company's external reporting processes, including being subject to review by auditors and regulatory authorities. This would further subject confidential information to potential exposure that could only negatively affect a company's positions regarding existing and potential loss contingencies.

Lastly, in many if not most litigation matters the new disclosure rules would force a company to disclose estimates that fundamentally cannot be made with any serious degree of precision. In the early stages of most litigation matters, and even in the later stages of many matters, a company's estimate of its possible exposure can be inaccurate through no fault of the company. Disclosure of specific amounts related to inherently unknowable matters will, over the long run, significantly increase the risk that a company will be sued because, in hindsight, the disclosure proved to be substantially incorrect. In other words, the proposed disclosure rule not only is likely to increase the likelihood that litigation will arise and alter the outcome of suits that are brought; it is likely to foster altogether new litigation contingencies.

Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for Page 3
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a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?

Response: We are not involved with any multiemployer benefit plans and thus have no comment on this issue.

3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a "severe impact' upon the operations of the entity? Why or why not?

Response: We find it difficult to understand why disclosure of contingencies that are considered remote has any benefit to financial statement users even if the potential loss would have a "severe impact" on the company. Contingencies whose likelihood of loss is considered remote should not require any additional effort by management regarding the quantification of the potential loss. Any additional effort expended on claims considered remote would be incremental to existing disclosure requirements. Thus, we find this requirement to be excessive and not cost beneficial to the users of financial statements.

- 4. Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.
 - a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?

Response: The requirement to disclose the amount of the claim or assessment or management's best estimate of the maximum exposure to loss would not represent an improvement in financial reporting. Typically, the amount of a claim is significantly in excess of any reasonable resolution scenario. Further, management's best estimate of maximum potential loss requires development of a single amount that implies a precision that simply does not exist in the vast majority of loss contingencies until the point of resolution.

b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?

Response: For the reasons discussed in the response to question 4(a), we believe that disclosure of a range of possible loss would result in a more

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appropriate information regarding the potential effects of the ultimate settlement of a loss contingency.

c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

Response: We believe that the current reporting requirements for loss contingencies under Statement 5 are reasonable and appropriate when disclosing loss contingencies. Development of ranges of possible loss is a difficult process that can change frequently as a loss contingency evolves. Estimates are especially difficult in the early states of negotiation or litigation. Thus, there are many instances where a range of possible loss truly cannot be reasonably estimated. However, in situations where a range of loss can be developed, Statement 5 currently requires disclosure of this range, which we believe is beneficial to financial statement users.

5. If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

Response: As discussed in the response to question 4(a), development of a single point estimate of maximum exposure would not be realistic. Rather, a range of possible losses, as required by Statement 5, would be more appropriate for disclosure purposes. However, either approach would require incremental cost due to the inclusion of loss contingencies whose risk of loss is considered remote (if they are expected to be resolved within twelve months from the balance sheet and could have a severe impact on the company) within the disclosure requirements of the Exposure Draft.

6. Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?

Response: Since settlement offers are often used as negotiating positions and since they often consider the costs of resolution (e.g., attorney's fees) in addition to the actual loss contingency, we believe that disclosure of settlement offers would not represent valuable information to financial statement users.

7. Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?

Response: We believe that providing information about changes in loss contingency amounts in the financial statements, whether aggregated or not, will risk the disclosure of prejudicial information. Further, accrual estimates frequently change as new information is discovered and judicial rulings are rendered. These changes

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must be disclosed under existing requirements if the effects are material to the financial statements. The current disclosures under Statement 5 require the disclosure of estimated resolution amounts (accruals) related to contingencies where the risk of loss is considered probable, but due to the nature of arbitration and judicial processes, the timing of any associated payments is frequently uncertain. Disclosures by public companies for settled matters currently include the maximum amount of the settlement, the amount of the expected loss, the expected payment period, and the amount of liability remaining at the balance sheet date. We believe that these are sufficient for financial statement users to understand the actual and potential effects of loss contingences on a company's future cash flows and balance sheet.

8. This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

Response: We strongly agree that, if the Exposure Draft is adopted, an exemption from disclosure should be provided for information that could be considered prejudicial given the almost certain negative impact that would occur should such information be disclosed. Disclosure of such information would increase the cost of resolving the loss contingency as it would severely impair management's position in negotiation and/or litigation of the loss contingency.

9. If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

Response: We believe that aggregation of prejudicial information would provide sufficient protection from excessive disclosure for large companies with a large number of outstanding loss contingencies. However, for smaller companies or companies with a limited number of high exposure loss contingencies, aggregation would not be sufficient to address the likely negative effects of disclosure. This is especially true given that the qualitative disclosures regarding individual loss contingencies would likely reveal the contingencies with the highest associated amount of potential loss.

10. The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, Provisions, Contingent Liabilities and Contingent Assets, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

Response: We believe that situations where the disclosure of information regarding loss contingencies could be considered prejudicial is far more common than the Board expresses in the Exposure Draft. Thus, we believe that the Board should not address the frequency of the existence of prejudicial information within the standard. Stating that such instances are expected to be rare appears to be an effort at limiting

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the scope of application for the term prejudicial, which should more appropriately be determined by financial statement preparers, their auditors and applicable regulatory bodies.

11. Do you agree with the description of *prejudicial information* as information whose "disclosure . . . could affect, to the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define *prejudicial information* and why?

Response: We agree with the definition of prejudicial information as described in the Exposure Draft.

12. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

Response: As discussed above, considering the likely significant costs of preparing the disclosures on a quarterly basis, we believe that it is most appropriate, if implemented, to provide the full disclosures required by the Exposure Draft only on an annual basis. Companies should be required to provide updates regarding material changes that occur in interim periods.

13. Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?

Response: As stated above, we do not believe that additional disclosures beyond those currently required are either cost beneficial or necessary.

14. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

Response: As a calendar year enterprise, we do not believe that adoption within the financial statements for the year ended December 31, 2008 provides a reasonable time frame for implementation of the Exposure Draft's requirements. The qualitative information required for each loss contingency would require a significant amount of time to develop, including consultation with internal and external counsel, engagement of experts for valuation of certain contingencies, and identification of all possible sources of indemnification for each loss contingency for which disclosure is required. Obtaining claim amounts or developing management's best estimate of the maximum exposure to loss for each loss contingency requiring disclosure will also require a significant amount of time. These issues will be most prominent for loss contingencies that were previously considered remote, but which meet the disclosure requirements of the Exposure Draft.

Conclusion

We have significant concerns regarding the Exposure Draft's disclosure requirements for loss contingencies. We believe that the benefits derived from the enhanced disclosures will not exceed the costs of implementation and many of the additional disclosure requirements represent information that will be unreliable and/or unrealistic when compared to the amounts that will ultimately be reflecting in a company's financial statements. Further, we believe that

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the Exposure Draft would increase the risk of parties utilizing the additional disclosures for purposes detrimental to shareholders. The current standard reflects a careful balance between many competing interests and concerns. Accordingly, any change to Statement 5 should represent a net improvement taking those same interests and considerations into account. For the reasons discussed above, we believe that the Exposure Draft does not strike an appropriate balance and would not represent a net improvement to existing disclosures.

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

Sincerely,

/s/ Shawn P. Luke

Shawn P. Luke Senior Manager Corporate Controller's Division First Horizon National Corporation