SUNTRUST

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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Attention: Comments
regs.comments@federalreserve.gov

Re: Comments to Proposed Rule OMB Control Number 7100-0341

Ladies and Gentlemen,

On behalf of SunTrust Banks, Inc. ("SunTrust") and many of its employees who have contributed to this analysis, I would like to take this opportunity to provide comments to the Board of Governors of the Federal Reserve System (the "Board") proposed rulemaking that requests comment on how the Board may collect information on litigation loss reserves from financial institutions, which proposed rule was published in the Federal Register on June 4, 2012 (the "Proposed Rule"). SunTrust presumes that the Board's interest in the information on litigation loss reserves is solely for the purpose of inputting the data into the Board's supervisory stress test models to more accurately forecast and better distinguish among institutions and SunTrust proposes herein an alternative that, SunTrust believes, best meets the competing needs of input for the Board's stress test modeling and maintaining the confidentiality of SunTrust's litigation loss reserves.

Issue

It is SunTrust's view that some background into our general concerns about sharing information about litigation loss reserves may provide some helpful context. Under Financial Account Standard No. 5 ("FAS 5"), a company must create a litigation loss reserve if (1) a loss is probable and (2) the amount of the expected loss is material and reasonably estimable. In the context of individual legal disputes, a determination that a loss is probable and estimable requires the subjective expertise of internal and/or external counsel familiar with the dispute, and inherently involves and reveals attorneys' assessments of anticipated trial and settlement strategies and of the strength and weaknesses of factual and legal defenses. For several compelling policy reasons, such assessments have long been protected from disclosure by law. As a result of this reality, disclosure of the existence and amount of a litigation loss reserve in a legal dispute can be extremely damaging to a company because it (a) reveals to an adversary significant information about the company's perception of the strength (or weakness) of its position, and (b) reveals to an adversary information that will dramatically impact any settlement, or potential for settlement, in the case. Indeed, it is hard to imagine a legal dispute ever settling for an amount less than the litigation reserve if this information is disclosed. In SunTrust's view, disclosure of litigation loss reserves to the Board may result in disclosure of this information to three sets of potential adversaries: (i) any litigation adversary who could obtain the information via a FOIA request or public disclosure by an agency or arm

of the government to the extent the Board shared such information with other government agencies or arms of the government; (ii) a government agency, to the extent the Board shared litigation loss reserves with such government agency, either via a memorandum of understanding to share information or otherwise; and (iii) with the Board to the extent the Board is adverse to a financial institution disclosing the information to the Board.

Finally, SunTrust notes for the Board's consideration that, on average, SunTrust has approximately twelve (12) to twenty-four (24) matters with litigation loss reserves in excess of $100,000 at any time and it has been our experience that SunTrust typically adds only three (3) to six (6) new matters requiring a litigation loss reserve in any new quarter (noting also that the last 4 years in particular have been more litigious than other periods in the past, which may be attributable to the economic crisis). The relatively small number of total litigation reserves, and the even smaller period-to-period changes in the number and dollar amount of such reserves, makes efforts to address SunTrust's concerns about disclosure through aggregation and other techniques significantly more challenging.

Proposed Alternatives in the Proposed Rule

In light of the background above, it is more clearly understood why the three (3) alternatives set forth in the Proposed Rule fail to assuage the concerns SunTrust has about disclosing its litigation loss reserves to the Board. The first alternative would be to collect data on an aggregate level rather than a loss-event level and report the number of loss events broken out by line of business. While this approach has promise, we note (i) when the most important matters need to be reserved (and these are more rare than even the numbers described above, perhaps once (1) a year or every other year), the number generally dwarfs the other numbers in the total and, because of the sometimes highly public nature of important matters, very obvious even when aggregated in the total, and (ii) the examples of matrices SunTrust has seen as examples for reporting loss events are very detailed with as many as eighteen (18) different fields in which a loss event can be reported. As previously stated, because there are so few matters reserved at any one time and so many fields into which these matters are to be categorized, SunTrust would anticipate most of the fields would either contain zeros (0s) or ones (1s). Since the reporting would be done on a quarterly basis, it would be very easy to spot when a field that previously reported a zero (0) changes to report a one (1) and if the field corresponds to a field in which it is publicly known there is a very important lawsuit being defended or a controversy with regulators it would be very easy to infer whether or not a loss reserve has been taken in that matter. If the matter is an extremely important matter and the amount in controversy significant, it could also be the case that the aggregate amount of the loss reserve reported would jump significantly. Again, because the reporting is done on a quarterly basis, noting both the change of the reporting of a loss event from a zero (0) to a one (1) and a significant increase in the aggregate loss reserve an opponent could infer not only whether SunTrust considers a loss to be probable in a case but the amount of that loss. A further concern about this alternative arises if the loss event is related to an investigation by the Board or an action by the Department of Justice or the Consumer Financial Protection Board and the Board shares this report with those agencies. In such instances, it is easy to understand the concern that disclosure of litigation reserve information would seriously undermine due process of law and fundamental fairness if a financial institution is compelled to disclose this information about an active controversy to its adversary in that controversy.

The second and third alternatives, that data be collected on legal reserves in an anonymous fashion such that neither the identity of the financial institution or the loss event be known or submitting actual and randomized data, is interesting but raises certain questions. While ideally SunTrust would like information to collected such that no opponent would be able to link the information back to SunTrust and determine whether (a) a loss reserve has been taken or (b) the amount of that reserve, it is not clear (i) how this can be accomplished or (ii) how not being able to determine to which financial institution certain loss reserves can be attributed advances the Board's goal of using the data as input into the Board's models to stress test specific institutions. If the thought is that the Board could take the data from all the institutions to whom the rule applies, determine an average or mode of aggregate loss reserves and use that number in all of its models as a predetermined filler for all institutions, the idea has some merit; however, that approach raises questions such as (a) how would the Board determine whether all institutions actually submitted data to the Board for compliance purposes if the submission is truly anonymous and (b) how would an institution submit such data without some trail leading the data back to them? SunTrust has no answers to these questions, but would be open to any suggestions that might solve these difficult issues.

SunTrust Proposed Alternative

In a call held among the Board, banking industry groups and certain financial institutions on July 24, 2012, and subsequently in writing, two additional alternatives were set forth by the Board which included (i) submitting on a quarterly basis the number of loss reserve events, but only submitting once annually an aggregate dollar amount of total litigation loss reserves and (ii) combining all operational loss elements on the same reporting matrices (intermingled with litigation loss reserves) and not reporting any distinctions between litigation loss reserves and other operational losses. These additional alternatives both address different concerns SunTrust has with respect to disclosing litigation loss reserves. The first alternative mitigates the sequential nature of reporting amounts by reducing reporting to an annual basis. This makes inferring the amount of any particular reserve more difficult because the connection of a zero (0) changing to a one (1) and any jump in the amount of the reserve is less obvious because jumps in reserves could occur at any time during the preceding three (3) quarters. However, because the matrices SunTrust has seen as examples are so specific and the number of legal events SunTrust would typically report so small, it would still be evident from quarter to quarter if and when a litigation loss reserve is taken (a zero (0) moving to a one (1)) in a public matter. Moreover, because of the relatively small number of events involved, it still may be possible in some instances to associate a large increase in the annually-disclosed aggregate dollar amount of litigation reserves with a particular matter with a reasonable degree of confidence.

The second alternative better masks the changes and number of loss reserves by co-mingling litigation loss reserves with other operational loss events. SunTrust's concern with this alternative, however, is that it involves reporting the amount of each loss event separately. This is a concern because operational losses generally are relatively small in amount compared to litigation loss reserves and, as a result, disclosure in this manner will not effectively mask large litigation loss reserves because those events will be obvious due to the significant difference in size between them and the events that surround them.

Of the five (5) alternatives proposed by the Board to date, SunTrust believes that alternative 4 has the most potential. As noted, however, SunTrust believes that alternative 4 still carries an unacceptable risk of disclosure of highly sensitive litigation reserve information. This risk can be further mitigated by supplementing alternative 4 with a concept found in alternative 5. Specifically, SunTrust proposes amending alternative 4 to include both litigation loss reserves and other operational loss events. In this proposal, an institution would populate a chart showing the combined number of litigation reserves and loss events, by category, and would disclose annually the aggregate dollar amount of the reserves and other operational loss events. This proposal retains the benefits of alternative 4 but mitigates the risk arising from the small number of litigation loss reserves by ensuring there would be fewer zeros (0s) and ones (1s). SunTrust also believes that this solution would provide the data input required by the Board to the same extent the other alternatives suggested by the Board would; however, SunTrust would be interested in understanding the Board's position on the matter in case SunTrust has missed the mark.

Please do not hesitate to contact me directly with any questions or comments you may have about this letter.

Regards,

McHenry Kane

Cc: Ray Fortin
Brian Edwards
Jim Sproull