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Letter of Comment No: 89
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Mr. Robert Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
Norwalk, Connecticut 06856-5166

Mr. Lawrence Smith
Chairman
Emerging Issues Task Force
Financial Accounting Standards Board
401 Merritt 7
Norwalk, Connecticut 06856-5166

Re: EITF 03-1 "The Meaning of Other Than Temporary Impairment and its Application to Certain Investments"

Dear Messrs. Herz and Smith,

I am writing to comment on your recently issued EITF Issue 03-1 "The Meaning of Other Than Temporary Impairment and Its' Application to Certain Investments" ("EITF 03-1"). I am the Chief Financial Officer of Center Bancorp, Inc. We are a $970 million Bank Holding Company that is publicly-traded on NASDAQ (CNBC).

We are very apprehensive about the potential negative ramifications of EITF 03-1. For example:

- reported financial statements that do not accurately reflect the results of our business activities (earnings volatility, asset carrying values, capital levels, risk profile, etc.);
- as a result of above, very real Sarbanes-Oxley related concerns associated with required signatures by senior Bank officers on financial statements that might be "technically correct" from an accounting perspective, yet materially misleading as to the true financial performance and risk profile of our Bank;
- ability to prudently manage risks, such as liquidity and interest rate sensitivity, at the enterprise level;
- a systemic lowering of banking industry earnings;
- inappropriately reduced regulatory capital levels that constrains the banking industry's ability to support economic growth (especially for community Banks); and
- decreased availability and/or higher cost of raising capital.

In this regard our primary concern is the introduction of potential other than temporary impairment (OTTI) accounting treatment on fixed income investment securities that have a diminished market value due solely to changes in interest rates (levels or yield curve shape), market volatility variables, and/or sector spreads.

Changing of the rules

Notwithstanding our specific concerns (some of which are noted below), the proposed guidance appears to reflect more of a "breaking of new ground" (establishing new accounting principles) than a clarifying of existing accounting principles. Since the inception of FAS115, we are not aware of any confusion or inconsistency regarding the use of the Available-For-Sale classification as a vehicle for realizing losses on the sale of fixed income securities.

Candidly, we view this as a severely problematic unwarranted changing of the rules. A change whose timing exacerbates the potential cost to a banking industry whose unprecedented levels of security purchases in the last few years would likely have taken a very materially different tact if the "new rules" had been known. Our Bank very likely would have altered its investment strategy.

Inconsistent with Bank performance and risk management

Most importantly, the proposed accounting application is in conflict with the way that the vast majority of Banks: 1) generate earnings, and 2) measure and manage the liquidity and interest rate risks of their balance sheet. As managers of balance sheet spread, the focus is appropriately on total portfolio risk (enterprise level), not individual financial instrument risk.

To broaden the concept of OTTI to interest rate only issues invites a level of volatility into our and most Bank financial statements that will potentially diminish the value of the related information for the industry as a whole. Why not let the current disclosures within other comprehensive income (OCI) continue as is, also avoiding the unnecessary and problematic reduction in regulatory capital? If the user, including Bank regulators, "doubts" the carrying values it is quite easy for them to make the corresponding adjustments to earnings, and act accordingly.

Ability and Intent

The EITF guidance implies that ability and intent is a one-time "permanent" declaration as it relates to underwater securities.

We believe that ability and intent is a dynamic set of variables that can change over time when market conditions change, risk positions (e.g. interest rate and liquidity) change, strategic direction changes, senior management teams change, etc.

Accordingly, we believe that a narrow and static interpretation of ability and intent is inherently problematic.

Fair Value Accounting and piecemeal application thereof

One of our greatest concerns with EITF 03-1 is the continued trend in accounting literature towards mark-to-market accounting on only portions of the balance sheet.

We believe this in itself will lead to misleading representations of financial performance for Banks; especially banks whose primary business model relates to managing the stability of total balance sheet spread over interest rate cycles as opposed to variations in monthly prices of financial instruments. We encourage FASB to enable the accounting to reflect how earnings are created and managed vs. dictating it.

More importantly, we do not believe that the solution rests in full fair market value accounting for the entire balance sheet for similar reasons; notwithstanding the inherent inconsistencies associated with "estimating" fair values for Bank deposit bases.

Recommendations

Our recommendation is to clarify FAS115 by excluding other than temporary impairment accounting from situations where there have been market value declines due solely to interest rate related changes; unless an entity's actions speak clearly to exception treatment. For example, in situations where there is a definitive plan for sale (voluntary or otherwise), Banks should record a charge at the time of determination of the plan and not wait for the transaction to occur. Similarly, if there was an "egregious" pattern of selling that would seem to indicate that a portion or all of a portfolio was misclassified as available for sale rather than trading.

If FASB moves forward with EITF 03-1, then at the very least it should address clearly with pertinent examples some of the more common issues facing a typical community bank. This is especially important when considering the accounting profession's (e.g. "Big 4") recent tendencies to try to interpret anything FASB puts into writing as if it were "tax law"; analyzing every word as if it were inserted with a singular exact meaning in mind with little room for application of common sense and materiality. We do not believe that FASB's intent is to be intentionally vague leaving it to the accountants to figure out FASB's desired outcome. Some of the more salient issues requiring a more definitive clarification include:

- Enable sales to be conducted for documented strategies related to prudent risk management such as interest rate sensitivity and liquidity management.

- Provide a "bright-line" test for minor impairment (at least 5%, and preferably more) whereby impairment would be assumed to be temporary without requiring further analysis/documentation. Requiring formal analysis/documentation for every security with an unrealized loss would be an extreme burden. With bank portfolios skewed heavily towards AFS classifications, this could result in most if not all securities requiring specific documentation in a rising interest rate environment.

- For pre-payable/callable premium securities with book prices above the "bright-line" test, provide concrete examples of typical securities and how they would be accounted for under the "new rule". For example, premium mortgage-backed securities (MBS) and collateralized mortgage obligations (CMO), callable bonds priced at premiums and amortized to call date, long-term municipal bonds, premium commercial MBS and other types of premium bonds with yield maintenance agreements and/or prepayment

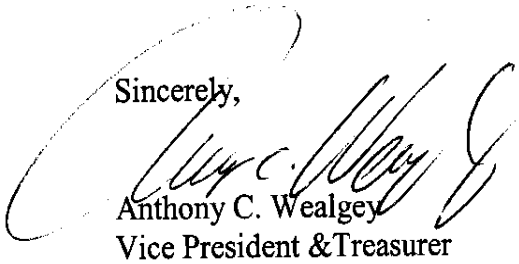
penalties. On thing is clear, industry experts (accounting firms, broker-dealers, investment advisors/specialists) are inconsistent with their interpretations.

- Allow rate related impairments to be recovered up to amortized cost as is done for mortgage servicing rights. Why create a new "permanent" cost basis that implies a low probability of recovery for a financial instrument whose value changes daily and is expected to increase with business cycles (when rates decline) and/or as time passes (the security moves closer to maturity)?

- Provide tangible guidance on what constitutes a pattern of selling (e.g. relative level of sales either in # of transactions or $ volume; time period over which activity analyzed, etc.). Interpretations from the accounting profession have varied greatly.

Thank you for taking the time to consider Center Bancorp's comments regarding the very critical issues associated with EITF 03-1 and the related ramifications for my bank specifically, and for the banking industry in general.

Sincerely,



Anthony C. Wealgey
Vice President &Treasurer