BROWN BROTHERS HARRIMAN

May 22, 2006

Mr. Robert Herz, Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

LETTER OF COMMENT NO. 39

Re: 1025-300 Exposure Draft, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132 (R)*

Dear Mr. Herz,

Brown Brothers Harriman & Co., a private bank pursuant to Article IV of the Banking Law of the State of New York ("BBH"), appreciates the opportunity to comment on the above-referenced Exposure Draft.

We strongly agree with the need for reform in pension accounting and commend the Board in its efforts. However, we have significant concerns on the expedited time line and transition period proposed to implement the new standard.

Change in Accounting Treatment

We support the requirement for companies to report the over- and under- funding of pension plans as assets or liabilities on the balance sheet and the concept that actuarial gains and losses and service costs be recognized on an on-going basis. We agree with the Board that these changes should be undertaken to provide an accurate assessment of the status of the pension plan and full disclosure to shareholders and employees who are beneficiaries of the pension plan. Our issue is with the proposed implementation of these changes.

Transition Period and Effective Date

We have significant concerns with the transition requiring that all unrecognized actuarial losses and prior service costs that have arisen since the adoption of the FASB Statements No. 87, *Employers' Accounting for Pensions*, and No. 106, *Employers' Accounting for Postretirement Benefits Other than Pensions* (the "Original FASB Statements") be charged to Other Comprehensive Income ("OCI") at once. We appreciate that the on-going recognition of actuarial losses and service costs may be better practice and would enhance the usefulness of the financial statements, but these losses were accumulated

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over time and should be booked to OCI over time as well. Furthermore, the Board has not adequately articulated the reason that would require the charge to OCI for all unrecognized losses to be taken immediately. In fact, if the Board's goal is to increase the accuracy and transparency of financial statements, this potentially large immediate charge to OCI may have the opposite consequences – a one-time catchup charge to equity may be misleading and lead to adverse consequences as further described below.

We believe that the Exposure Draft provides companies with insufficient time to adopt the new accounting practices. Implementation periods for similar changes in pension plan accounting tend to be longer than what is contemplated in the Exposure Draft. The UK Accounting Standards Board's comparable accounting rule, Financial Reporting Standard No. 17, *Retirement Benefits*, provided for a 2 ½ year implementation period (subsequently extended to 4 years) and, during the implementation period, required companies to include disclosures either in the footnotes or to adopt the new accounting rule and reflect them in the financial statements. The UK's approach allowed companies to absorb the changes at a reasonable pace and, at the same time, provided a mechanism to progressively increase disclosures.

Additionally, we believe that private companies will need more time to implement the proposed changes. There is precedent that the Board has treated public and private companies differently in the past. In FASB Statement No. 132(R), *Employers' Disclosures about Pensions and Other Postretirement Benefits*, the Board allowed private companies more time to implement the pension plan accounting pronouncement. We believe such a distinction is appropriate here as well. Unlike public companies, private companies do not have the ability to go into the market to raise more equity; any additional equity must come from private sources. Private companies need more time to manage their limitations on raising additional capital.

We would like to propose (i) that the unrecognized actuarial gains and losses and prior service costs be charged to OCI over a transition period of 5 years and (ii) that the effective date for public companies be extended to 2007 and for private companies to 2008 to allow companies more time to implement the new standards. We would further support enhancing footnote disclosures to disclose the future amortization of the balance during the transition period.

Effect on the Banking Industry and Regulatory Capital Requirements –

We are concerned with the effect a potentially large immediate charge to OCI may have on the ability of a bank or financial institution to satisfy the minimum capital requirements imposed by the Federal Reserve and state regulatory authorities.[1]

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[1] In Issue 3(b) of the Exposure Draft, the Board requests comments on contractual arrangements that reference metrics based on financial statement amounts (e.g. debt-to-equity ratios). But, as a regulated entity with minimum capital requirements, we believe that the potential negative impact the Exposure Draft's change in the calculation of capital to be even more severe and should have the Board's utmost attention.

Currently, the calculation of minimum capital requirements imposed by the banking regulations does not provide for an addback of pension adjustments recorded in OCI.[2] The implementation of the proposed amendments in December 2006 will not provide the banking regulators with sufficient time to analyze the changes and adjust the method of calculating capital to address such a change, and as a result, many banks and financial institutions across the country may be in violation of minimum capital requirements. Moreover, banking regulators are currently in the process of deliberating on the merits of a significant change to the measurement of risk adjusted capital in order to comply with the Basel II capital requirements. The changes in the Exposure Draft will add significant complication to this important work. We believe regulators will need time to analyze the impact of the Board's proposed changes on banks and financial institutions in connection with the proposed Basel II requirements and impose their own changes in reaction to the final Statement.

We believe the impact of the proposed changes will be disproportionately punitive on banks and other regulated financial services companies as compared to companies in other industries. Companies with no regulatorily mandated equity will still have cash flow and be able to operate even if their equity is completely wiped out as a result of the proposed changes. However, regulated members of the financial services industry may be prohibited by the regulatory authorities from operating in similar circumstances as the accounting changes will threaten their minimum capital required. It cannot be the intention of the Board to disproportionately burden the financial services industry by imposing these changes.

In addition, this one time charge to OCI may result in a depletion of capital all at once, at banking and financial institutions across the system, which could contribute to a decline in public confidence in the banking system as a whole. The Federal and state governments have imposed safety and soundness standards and minimum capital requirements on banks and financial institutions to prevent such a decline in consumer confidence in the banking industry. But the one time charge to equity may have the opposite effect, potentially leading to financial difficulties of certain banks and putting a strain on the banking industry's reserves.

Effect on Responsible Companies –

We do not support an immediate one-time catchup charge to OCI, as it may have the undesired effect of penalizing the very companies that kept the plans healthy by making the required contributions that ensured their plans were fully funded. These companies funded their pension plans and then amortized their actuarial losses over time, relying upon the Original FASB Statements that have been in effect for the last 20 years. They acted in a manner to protect their employees and shareholders, the very people intended to be the beneficiaries of the new, more transparent, method of pension plan accounting. The FASB Statement No. 87 required a charge to OCI for the companies who were not

[2] BBH is regulated by the New York State Banking Department, which imposes the Federal Reserve's minimum capital requirements.

able to fund their obligations. Now the "healthy and responsible" companies will end up in the same position as those companies that did not fund their obligations. Moreover, the Board's proposal that the charge to OCI be effective immediately and be taken all at once will not provide the companies that relied on and acted in compliance with the Original FASB Statements set by the Board sufficient time to adopt the revised practices and may have a negative impact on these companies.

Given the complications associated with the implementation of the new standards as described above, we would propose (i) that the unrecognized actuarial gains and losses and prior service costs be charged to OCI over a transition period of 5 years and (ii) that the effective date for public companies be extended to 2007 and for private companies to 2008.

We appreciate the opportunity to submit our views and would be pleased to discuss our comments with you at your convenience. If you have any questions please contact Michael McConnell at (212) 493-7820 or Hampton Lynch at (212) 493-8203.

Very truly yours,

Brown Brothers Harriman & Co.

By:
Michael W. McConnell
Managing Partner