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



LETTER OF COMMENT NO. 166

Via E-mail: director@fasb.org

Re: File Reference No. 1025-300, Proposed Statement of Financial Accounting Standards, Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans -- an amendment of FASB Statements No. 87, 88, 106, and 132(R)

Dear Director:

The New York Bankers Association (NYBA) appreciates the opportunity to submit comments on the Financial Accounting Standards Board's (FASB) Proposed Statement of Financial Accounting Standards, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans -- an amendment of FASB Statements No. 87, 88, 106, and 132(R)* (the proposal). For more than a century, the New York Bankers Association (NYBA) has been at the vanguard of the financial services industry. NYBA is comprised of the commercial banks and thrift institutions that engage in the banking business in New York State. Our members have aggregate assets in excess of \$4 trillion and more than 340,000 New York employees.

NYBA supports the FASB's efforts to improve the transparency, simplicity and usefulness of financial statements for users. However, we have several concerns with regards to the proposal. First, we believe that the elimination of the 90-day measurement date window will place unnecessary burdens on and increase costs to preparers. Second, we believe that the PBO is an inappropriate measure of a company's defined benefit pension liabilities on the balance sheet. Third, it is our view that the proposal to accelerate recognition of balance sheet items for which FASB previously provided periodic inclusion, will

create damaging volatility to corporate balance sheets. Additionally, the proposed one-time charge for gains and losses related to prior years does not accurately reflect the historical behavior of the assets. We believe that the proposed accelerated recognition of balance sheet items, as well as the one-time charge for gains and losses related to prior years, will also have the serious (but perhaps unanticipated) side-effect on financial institutions of, generally, reducing regulatory capital upon adoption. In light of these significant potential ramifications to pension plan providers, we finally would urge the FASB to consider postponement of any changes until they can be accomplished in a one-phase project, rather than in the two-phases currently contemplated.

Measurement Date

Currently, the 90-day window for measurement allows companies to schedule their postretirement valuation work in a manner which is consistent with and complimentary to the resources dedicated to preparing the information. As elimination of the 90-day window significantly compresses the time in which to do postretirement valuation work, significant strain will be put upon the affected companies' employees and current staffing levels. It is important to recognize, as well, that the 90-day window also allows pension companies and actuaries, charged with providing the necessary assumptions, the ability to provide their limited resources to their client companies at a reasonable cost and effort. This 90-day window further allows all work to be completed by fiscal year-end such that the measurement and valuations of the pension plan do not interfere or hinder the issuance of timely financials as regulators have required increasingly short turnarounds from the close of the fiscal year to the delivery of the annual financial statements for public companies.

NYBA believes that the elimination of the window for calculation will therefore, place an increased burden on companies' human resources, and on those of their actuaries. The window elimination will also increase costs to filers due to the limited number of actuarial resources available. If this change is enacted, additional costs will be incurred in the first year, because of the need to run through the process twice to get a year-end amount that can be rolled forward to the first fiscal year-end balance sheet date. Elimination of the 90 day measurement window will also necessitate that the FASB communicate with regulators to ensure that requirements for timely filing remain practicable.

It is therefore NYBA's view that before changing the current practice, a full assessment be done by FASB, evaluating whether any potential information enhancement to be obtained by elimination of the 90-day window, is outweighed by the increased costs and additional strain on the already stretched resources of

the affected companies and their service providers. This could perhaps be accomplished through a formal study.

Measurement of Defined Pension Benefit Liability

The pension liability required to be used to calculate the defined benefit pension plan obligation is the Projected Benefit Obligation (PBO) as defined in SFAS 87, *Employers' Accounting for Pensions* (SFAS 87). The PBO is defined as "[t]he actuarial present value as of a date of all benefits attributed by the pension benefit formula to employee service rendered prior to that date. The projected benefit obligation is measured using assumptions as to future compensation levels if the pension benefit formula is based on those future compensation levels (pay-related, final-pay, final-average-pay, or career-average-pay plans)."

The definition of PBO, due to the inclusion of assumptions of future compensation increases, does not fit the definition of a liability according to other guidance issued in FASB concept statements. FASB Statement of Financial Accounting Concept Statement No. 6, Elements of Financial Statements, a replacement of FASB Concepts Statement No. 3 (incorporating an amendment of FASB Concepts Statement No. 2) (CON6), paragraph 36, states that "[a] liability has three essential characteristics: (a) it embodies a present duty or responsibility to one or more other entities that entails settlement by probable future transfer or use of assets at a specified or determinable date, on occurrence of a specified event, or on demand, (b) the duty or responsibility obligates a particular entity, leaving it little or no discretion to avoid the future sacrifice, and (c) the transaction or other event obligating the entity has already happened." The PBO in SFAS 87 has only the first of these essential characteristics. The second characteristic's absence of discretion requirement is not met by the PBO, since companies have the ability to freeze or convert their defined benefit pension plans, which would effectively exclude any future compensation increases from impacting the calculation of defined benefit pension liabilities. The third essential characteristic is equally inapplicable to the PBO as the event obligating the increased benefits is the future service itself.

The Accumulated Benefit Obligation (ABO) is a more appropriate measure of the defined benefit pension liability for the very reasons that the PBO fails the liability criteria of CON6. The ABO is defined in SFAS 87 as "[t]he actuarial present value of benefits (whether vested or nonvested) attributed by the pension benefit formula to employee service rendered before a specified date and based on employee service and compensation (if applicable) prior to that date. The accumulated benefit obligation differs from the projected benefit obligation in that it includes no assumption about future compensation levels. For plans with flat-

benefit or non-pay-related pension benefit formulas, the accumulated benefit obligation and the projected benefit obligation are the same."

Adjustments to Other Comprehensive Income/Regulatory Capital Impact

The proposal includes several adjustments to be made to preparers' financial statements and does so on the first statements for which the proposal is effective. These adjustments, which unreasonably accelerate recognition of items for which the FASB previously provided periodic inclusion (through amortization and the "smoothing" mechanisms provided in SFAS 87, c.) will result in extreme volatility on companies' balance sheets and income statements, which volatility can cause unrelated and unintended negative business consequences. (Ironically, well-funded pension plans may be even more negatively impacted by this volatility than less well-funded plans.)

Financial institutions will be uniquely negatively impacted, as they are required by banking regulators to maintain certain levels of capital and liquidity in order to guarantee the safety and soundness of the domestic banking system. The effect of the current changes will likely cause downward shifts in financial institutions' regulatory capital which could place them out of compliance with mandated banking regulations. Because of consequences such as this, we do not believe that the current SFAS 87 method for accruing gains and losses be altered at this time.

If such changes are implemented however, we believe there should be at least a one-year transition period, allowing previously accrued gains and losses to be recognized according to the SFAS 87 method under which they were accrued - not by means of an exaggerated and meaningless one-time adjustment. Current gains and losses would then be recognized in OCI on a go-forward basis.

Ramifications of a Bifurcated Approach

In light of the ramifications of the proposed changes to companies offering pension plans to their employees as well as to such companies' service providers, we would urge the FASB to reconsider its decision to adopt a two-phase project. This approach disconnects the reporting of single-employer defined benefit pensions and other post-employment benefits (OPEBs) on employers' balance sheets from the FASB's later, comprehensive reassessment of all aspects of employers' accounting for pensions and OPEBs. Adopting the proposal in two phases will require employers to adopt standards under the initial phase that are dependent on decisions to be made under the FASB's second phase. This would seem to be completely at odds with the FASB's call for improved financial reporting, as a two-pronged approach will produce results that do not accurately represent the underlying transactions and financial

arrangements. Moreover, if the issues are addressed in a unified approach, it is highly likely that many of the other concerns we have addressed above, could be eliminated.

Thank you for your consideration in this matter. If you would like to discuss this matter in additional detail, please do not hesitate to contact me, or you can contact Roberta Kotkin at (212) 297-1684, or by e-mail at rkotkin@nyba.com.

Sincerely,

Michael P. Smith