

March 30, 2009

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

File Reference: Proposed FSP FAS 157-e



LETTER OF COMMENT NO.

207

Dear Mr. Golden:

Re:

Bank of America appreciates the opportunity to comment on the Proposed FASB Staff Position No. FAS 157-e, Determining Whether a Market Is Not Active and a Transaction Is Not Distressed (the proposed FSP). Bank of America is one of the world's largest financial institutions providing a diverse range of financial services and products. Bank of America supports the FASB's efforts to clarify the provisions of FASB Statement No. 157, Fair Value Measurements (Statement 157) and to continue providing relevant and meaningful information to users of financial statements.

Overall, Bank of America supports the proposed FSP. We believe that the amendments to Statement 157 in the proposed FSP are helpful in clarifying the application issues identified by many constituents. It provides preparers and auditors a better framework to use when determining whether a market is inactive and if an external market price from such market is considered to be from a distressed transaction. We believe the proposed FSP will relieve some of the tension on preparers to use the last quoted market price when fair valuing certain financial instruments that may be trading in an inactive market by allowing them to use other valuation methods and techniques.

We are concerned with the language included in paragraphs 13 and 15 of the proposed FSP. Paragraph 13 requires that an entity must presume that a quoted price from an inactive market is considered to be distressed unless the reporting entity has evidence that there was sufficient time before the measurement date to allow for usual and customary marketing activities for the asset and there were multiple bidders for the asset. Paragraph 15 states that if the reporting entity does not have evidence that both factors in paragraph 13 are present for a given quoted price, then the reporting entity shall consider that quoted price to be associated with a distressed transaction. We believe that this language (in particular the words "must" and "shall") appears to limit the use of judgment by the reporting entity in determining the fair value of the related asset(s). This two-step test may create the unintended consequence that many transactions in an inactive market will be considered to be distressed because it may be difficult to obtain information in the market place to satisfy the factors included in paragraph 13. Notwithstanding this, there may be situations where an entity based on the use of judgment would conclude that a quoted price from an inactive market is reflective of the current fair value but which would be required to either make an adjustment to the quoted price or use a different valuation methodology if evidence cannot be obtained to satisfy both factors. Accordingly, we recommend that the word "may" be used instead of the current words "must" and "shall", which we believe will provide more flexibility for the use of judgment,

Currently, the scope of the proposed FSP includes only financial assets measured at fair value; however we believe the scope should be expanded to cover non-financial assets, which is consistent with FASB Staff Position FAS 157-2, Effective Date of FASB Statement No. 157. We believe many of the same issues that exist in estimating the fair value of financial assets exist for other types of assets. For example, in estimating goodwill impairment, a company may use a discounted cash flow approach to estimate the fair value of a reporting unit. If market comparables used to estimate the discount rate result from distressed transactions, then the guidance in this proposed FSP could also be relevant and could be followed.

We support the effective date and transition for the proposed FSP. However, given the current wording included in Steps 1 and 2 of the proposed FSP where there is a presumption that a quoted price in an inactive market is a distressed price, we believe that many entities may need additional time to implement the proposed changes. Therefore, if the wording noted above is not changed, we believe that an alternative approach would be acceptable whereby the proposed FSP would be effective for periods ending after June 15, 2009 with early adoption permitted.

Bank of America was an early adopter of Statement 157 and is supportive of the use of fair value for assets and liabilities included in high-velocity, market-based businesses where the earnings process is predominately completed through the sale of assets. Statement 157 requires the use of exit price when determining the fair value of assets. We continue to believe that there is a bias inherent in the exit price notion that may have exacerbated the market turmoil since 2007 due to the pro-cyclicality caused by entities being forced to sell marked-down positions. This may have resulted in exit prices being used which were not truly indicative of the fair value of the related asset. We also believe that the price at which a seller would be willing to transact is equally important to the price at which a buyer would transact; however, the exit price notion nullifies the importance of the willing seller as a market participant. We understand that with the urgency to finalize the proposed FSP this issue will not be addressed. However, we encourage the FASB to consider revising the exit price notion as it works with the IASB on improving the accounting for financial instruments and conform with the existing IFRS definition of fair value: "the amount for which an asset could be exchanged, a liability settled, or an equity instrument granted could be exchanged, between knowledgeable, willing parties in an arm's length transaction."

\* \* \*

Bank of America appreciates the opportunity to express our views in this letter. Should you have any questions, please feel free to contact Randall Shearer at 980-388-8433 or me at 980-387-4997.

Sincerely,

CC:

John M. James

Senior Vice President and Corporate Controller

Craig R. Rosato, Chief Accounting Officer Randall J. Shearer, Accounting Policy Executive