



VIA Electronic Mail (director@fasb.org)

April 1, 2009

Technical Director  
Financial Accounting Standards Board  
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LETTER OF COMMENT NO.

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File Reference: Proposed FSP FAS 157-e

Dear Board Members and FASB Staff:

The Mortgage Bankers Association<sup>1</sup> (MBA) appreciates the opportunity to comment on the proposed FASB Staff Position (FSP), *Determining Whether a Market Is Not Active and a Transaction Is Not Stressed* (the proposed FSP).

The present rules in Statement of Accounting Standards No. 157, *Fair Value Measures* (FAS 157), provide guidance on measuring fair value. The market crisis that commenced in August 2007 and continues today have caused markets for many debt securities to become inactive, and the implied yield on those sales that do occur represent, to a great extent, a sizeable discount related to the current illiquidity of the market. FASB attempted to address this in October of 2008 in its FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active* (FSP 157-3). FASB's example in FSP 157-3 does not appear to allow a company to exclude the liquidity risk factor based upon recent sales in an inactive market by distressed sellers. This appears to be having a "circular" impact. On the one hand, FASB is guiding toward use of future cash flow models in an inactive market but, on the other hand, requiring the consideration of a liquidity factor from infrequent, observable sales that may be distressed. The results of such cash flow models are similar to using the distressed sale results themselves.

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

The stated purpose of the proposed FSP is to provide additional guidance on determining whether a market for a financial asset is not active and a transaction is not distressed. Although not a stated objective, the FSP does appear to offer additional guidance for measuring fair value in an inactive market.

MBA generally agrees with the guidance in the proposed FSP as to indicators of an inactive market, and MBA urges FASB to issue the guidance in time for first quarter 2009 reporting.

The following is MBA's specific comments with respect to the proposed FSP.

**Effective Date:** The proposed FSP is to be effective for interim and annual periods ending after March 15, 2009. MBA notes that many preparers are utilizing outside brokers or pricing services to price their respective portfolios and will be unable to bring the discounted cash flow modeling "in house" in time to complete a timely closing for the quarter ending March 31, 2009. However, many preparers will be ready and desire to implement the new guidance as suggested. Accordingly, MBA urges FASB to change the guidance to be effective for interim and annual reporting periods ending after June 15, 2009, with earlier application permitted.

**Step 2 Distressed Sale Guidance:** Paragraph 13 of the proposed FSP includes two criteria that are indicative of a distressed sale. The first has to do with whether there was sufficient time to allow for usual and customary marketing activities and the second relates to the number of bidders on the transaction. MBA believes that the two criteria are not conceptually sound and may not be operational in practice.

The first criterion is not conceptually sound because the time to market the asset is relative to market conditions. In a highly active market, a normal marketing period may be a week. In a less active market, the norm may be several months. The second criterion appears to relate more to Step 1 in determining if a market is active, not to determine if a sale is distressed.

As to whether the distressed sale guidance is operational, obtaining this kind of information about sales is difficult in an active market, and it is likely to be even more difficult in an inactive market. FASB has obviously considered this in stating that the presumption is that in an inactive market a sale is deemed to be distressed unless the preparer has evidence to the contrary. However, how hard should the preparer look for the evidence? Should they attempt to contact the buyer or seller?

MBA suggests that the wording in the second paragraph be changed from "must" to "may" to take into account that some markets generally have few transactions, and the few transactions that do happen are indicative of market. Likewise, MBA recommends that "quoted price" be changed to "transaction price" in that same

sentence. The proposed FSP is currently written to analyze whether a broker quote is distressed. A broker quote may be based on inputs from a distressed transaction, but it doesn't seem possible for the quote itself to be distressed. MBA recommends these same changes for the first sentence in paragraph 15.

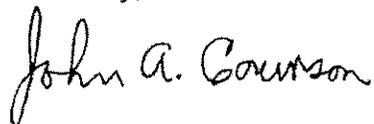
**Ability to Exercise More Judgment in Determining Fair Value:** MBA recommends that FASB consider changing the prescriptive guidance in paragraph 15 and in the example to allow management to exercise judgment in determining fair value in an inactive market. There are diverse sources of information that management can look to for value discovery, and management can best weigh the relevance and competence of each in determining the assumptions to use in cash flow models.

**Risk Premium:** In providing guidance to estimating fair value in an inactive market, paragraph 15 of the proposed FSP indicates that the preparer should "reflect all risks inherent in the asset including a reasonable risk premium for bearing uncertainty." Paragraph A32E(1) guides toward use of "reasonable assumptions regarding liquidity and nonperformance." MBA is concerned that the language still may lead to having to use the current liquidity premium in an inactive market. MBA suggests that the present value calculation should use a discount rate that takes into consideration risks associated with the specific asset, but exclude risks associated with the current illiquid market. Therefore, the discount rate would reflect an appropriate credit spread and a factor that takes into account the current uncertainty related to the projection of default frequency and loss severity.

**Use of Midpoint of Estimated Range:** MBA notes that the proposed FSP includes an example that results in a conclusion to use the midpoint in a range of values in paragraph A32F. MBA believes that this paragraph should conclude a value other than the midpoint to emphasize the principle of using the best estimate in the range.

The MBA appreciates the opportunity to share these comments with the Board. Any questions about MBA's comments should be directed to Jim Gross, Associate Vice President and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or [jgross@mortgagebankers.org](mailto:jgross@mortgagebankers.org).

Sincerely,



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