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LETTER OF COMMENT NO. 270

File Reference: Proposed FSP FAS 157-e

SunTrust Banks, Inc. is pleased to comment on Proposed FASB Staff Position No. FAS 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed* (“Proposed FSP 157-e”).

We support the issuance of interpretive guidance as a means of ensuring transparent and consistent application of accounting principles. Despite the issuance of several pieces of literature that intended to provide guidance on estimating fair value in inactive markets, namely: (i) Statement of Financial Accounting Standards (“SFAS”) No. 157, Fair Value Measurements (“Statement 157”), FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*; (ii) SEC Release 2008-234, *SEC Office of the Chief Accountant and FASB Staff Clarification on Fair Value Accounting*; and (iii) the white paper, *Measurements of Fair Value in Illiquid (or Less Liquid) Markets*, issued as part of the Center for Audit Quality’s Alert #2007-51, inconsistent application and significant questions in practice continue to interfere with producing informative financial reporting. We encourage the Board to ensure that the guidance in Proposed FSP 157-e provides very clear and definable interpretations in order to resolve the current issues pertaining to fair value measurements.

Our overriding comment, therefore, is focused on the clarity of the objective of Proposed FSP 157-e. It appears that the purpose of Proposed FSP 157-e is to clarify the original provisions of SFAS No. 157 related to the concepts of an orderly transaction and willing buyers/sellers in inactive markets by requiring a reduction of excessive market risk assumptions that have manifested themselves through overstated liquidity premiums in the current markets. If our understanding is accurate, to ensure appropriate and consistent application, we suggest that the Board clearly state its objective, as we believe Proposed FSP 157-e, as drafted, fails to provide clear enough linkage between these concepts and “exit price”.

We will first address the Board’s questions and then provide specific additional comments.

Board’s Specific Questions

1 *Is the proposed effective date of interim and annual periods ending after March 15, 2009, operational?*

We recommend that the effective date be for interim periods ending after June 15, 2009, with early application permitted.

2. Will this proposed FSP meet the project's objective to improve financial reporting by addressing fair value measurement application issues identified by constituents related to determining whether a market is not active and a transaction is not distressed? Do you believe the amendments to Statement 157 in this proposed FSP are necessary, or do you believe the current requirements in Statement 157 should be retained?

Similar to our comments in the introduction to this letter, we understand that the intent of Proposed FSP 157-e is to provide additional clarity around the use of market data from inactive markets and distressed trades, but we do not believe the Proposed FSP provides clear enough linkage to “exit price” when markets are inactive.

The draft guidance in ¶10 is too broad and may foster inconsistent applications. We suggest that the provisions of ¶10 specify that the evaluation should be of whether the “principal market” is inactive and a transaction for the “identical or similar instrument” is not distressed. Without this specific guidance, we are concerned that applications will be broader than intended by ignoring relevant market data and placing an improper and unintended amount of reliance on management’s judgments.

Further, without additional clarity around assumptions that should be used to derive the discount rate in a fair value estimate in ¶15 and certain aspects of the example that begins in ¶A32A, we do not believe that the provisions of Proposed FSP 157-e are clear enough to support consistent and faithful application. We support the ultimate conclusion in ¶A32F, but believe that the following clarifying points should be explicitly incorporated into Proposed FSP 157-e.

- “Exit price” is not a single price in an active or inactive market, but is the result of negotiations between a willing buyer and a willing seller of a range of reasonable prices in an orderly “market”.
- Wide ranges of prices or values in inactive markets are likely indicators of liquidity premiums being included in the prices. Even in active markets, liquidity premiums exist, but an “exit price” in an orderly “market” should reflect reasonable or normal liquidity premiums. Companies may estimate normal liquidity premiums by analyzing historical market pricing when markets were active and included multiple types and numbers of market participants.
- The guidance in Proposed FSP 157-e is not supporting a move to full offer price, as it is generally not supportable to assume that willing buyers and willing sellers would execute transactions at such levels in an orderly “market”.
- We are concerned that the focus on how Entity A, as a willing seller, would view a particular price could be broadly interpreted to be re-introducing the concept of entity-specific fair value and diverging from “exit price”, which we do not believe to be the intent of Proposed FSP 157-e.
- The reference to the use of “[r]easonable assumptions regarding liquidity and nonperformance...risk...in an orderly transaction based on current market conditions” in ¶A32E(3) appears contradictory. If this example is based on an inactive market (i.e., “current market conditions”), an orderly transaction does not exist; therefore, this factor would imply that the values need to include the current inactive market liquidity premiums. If a distressed transaction price should not be

used to determine value, yet the example uses a distressed price to establish a price range, it is unclear what factors should be used.

- The criterion in ¶A32E(2) (“current issuances of similarly rated securities”) appears to conflict with the concept of an inactive market. We agree that judgment should be applied to the criteria in ¶11, but if enough current issuances of similar securities exist such that the data can be used as a reliable input for valuation, it would appear that this criterion would trump any other factors that may be present.

3. Do you believe the proposed two-step model for determining whether a market is not active and a transaction is not distressed is understandable and operational? If not, please suggest alternative ways of identifying inactive markets and distressed transactions.

We suggest deleting the concept of a distressed transaction in ¶13, as we do not believe the factors provided are substantive. Specifically, we believe that the factors provided in ¶13 will likely lead to a conclusion that a transaction in an inactive market would be distressed in almost all cases, as it is unlikely that sufficient evidence will exist to confirm the “sufficient time” requirement or the existence of multiple bidders. Subject to our comments in the next question, we believe that the inactive market factors in ¶11 are a more principles-based methodology to achieve the objective of Proposed FSP 157-e.

We believe that the guidance in ¶15 should be amended to indicate that a company “may” use 3rd party information associated with inactive markets. The current language indicates that a reporting entity “must” use a valuation technique other than quoted market prices, which could unnecessarily result in costly and time consuming alternative valuation techniques.

4. Are the factors listed in paragraph 11 of the FSP that indicate that a market is not active appropriate? Please provide any other factors that indicate that a market is not active.

The factors in ¶11 are generally indicative of an inactive market, but we have the following comments.

- We suggest amending factor (a) to clarify that transactional data may incorporate both new issuance and secondary market trades.
- We suggest editing factor (c). Price quotations have the potential to vary between market makers, even in orderly markets. As such, we suggest that “price quotations” be replaced with “prices from actual transactions”. The inclusion of bid/ask spreads in factor (f) addresses variability in price quotations, such that this factor (c), as drafted, appears duplicative.
- The notion of an index being “highly correlated” in factor (d) seems to be a high threshold. While indices are often used as proxies for valuation, we believe that the term “reasonably correlated” is more operational.
- We suggest deleting factor (g), as many instruments are traded in non-public arenas, such that this factor is not necessarily indicative of inactive markets.
- Following onto our comment to delete the condition of a distressed transaction, we suggest incorporating “multiple bidders” into ¶11 as an additional factor that would be indicative of an inactive market. However, we believe multiple bidders should be clarified to include both number and types of multiple bidders in order to get a representative estimate of a reasonable rate of return.

An additional consideration for the Board is that the provisions in ¶11 of Proposed FSP 157-e appear to be largely similar to those in ¶28(b) of SFAS No. 157. Because users of financial statements place a significant degree of importance on the classification of an instrument as level 2 versus level 3 and due to the similarities of the provisions in ¶11 of Proposed FSP 157-e and ¶28(b) of SFAS No. 157, we believe the Board should incorporate clarifying guidance on how an inactive market should be viewed within the fair value hierarchy. Such clarity would help to (i) increase transparency, given the spotlight on level 3 instruments, (ii) reduce inconsistent applications of inactive markets in the context of the fair value hierarchy, which exist in practice, despite the guidance in ¶28(b) of SFAS No. 157, and (iii) clarify potential misperceptions of the reliability and sufficiency of market information in a level 2 classification related to an inactive market.

5. What costs do you expect to incur if the Board were to issue this proposed FSP in its current form as a final FSP? How could the Board further reduce the costs of applying the requirements of the FSP without reducing the benefits?

We do not believe that we will incur any substantial costs in applying this interpretation.

Additional Comments

Scope (¶8)

We disagree with the scope of Proposed FSP 157-e, which is limited to “financial assets”, and believe that financial liabilities should be included. A financial liability for one party is a financial asset for another, such that the same valuation guidance should apply.

Guidance on Determining Whether a Market Is Not Active and a Transaction Is Not Distressed (¶15)

We believe that the Board should consider changing “orderly transaction” to “orderly market”. We believe such a change in terminology would link much more clearly to the factors in ¶11, as those factors are market-based, not transaction-based.

Proposed FSP 157-e does not adequately address how transactions a company may enter into should affect its valuations of the same or similar securities. If a company determines that a particular security is subject to the guidance in Proposed FSP 157-e, but willingly purchases or sells the same or similar security in that inactive market, it is unclear how such a willing purchase or sale should be considered. It is reasonable to assume that such purchase or sale may be significantly below where other similar securities are valued, such that the application of the guidance in Proposed FSP 157-e may lead to significant “day 1” gains when similar securities are purchased and may raise questions about the values of similar securities still held when sales are executed. For purchases, we question whether the Board intends for this accounting result to occur, but believe that this outcome may become a reality. As such, we encourage the Board to provide clarifying guidance in Proposed FSP 157-e related to willing participation in an inactive market; specifically, it is unclear how the pricing of purchases of similar securities to those that one owns and sales of securities at values below where a company has the same or similar securities valued should be evaluated.

Appendix

We support the inclusion of the example beginning in ¶A32A. However, we do not believe that underlying nonconforming residential mortgage loans should be used as the example, as the valuation

of this asset class is highly dependent on factors such as vintage and geography, which will vary substantially. We suggest that the underlying collateral be more generic, such as "debt instruments". In ¶A32G, it is unclear why the entity "voluntarily" discloses the change in inputs. It appears that ¶17 would require such disclosure upon initial adoption at March 31, 2009.

SunTrust Banks, Inc. appreciates the opportunity to comment on Proposed FSP 157-e. If you have any questions concerning our comments, please contact Tom Panther at (404) 588-8585.

Sincerely,

Tom Panther
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SunTrust Banks, Inc.

cc: Mark Chancy
Chief Financial Officer
SunTrust Banks, Inc.