



Michael M. Monahan
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LETTER OF COMMENT NO. 3

December 23, 2008

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

Re: File Reference: Proposed FSP EITF 99-20-a

Dear Mr. Golden:

The American Council of Life Insurers (“ACLI”) appreciates the opportunity to comment on the proposed FASB Staff Position (FSP), *Amendments to the Impairment and Interest Income Measurement Guidance of EITF Issue No. 99-20* (“EITF 99-20-a”). The ACLI represents three hundred fifty-three (353) member companies operating in the United States, of which three hundred forty-five (345) are legal reserve life insurance companies, and eight (8) are fraternal benefit societies. These 353 member companies account for 93 percent of total assets, 93 percent of the life insurance premiums, and 94 percent of annuity considerations in the United States.

We believe that it is appropriate to align the other-than-temporary impairment (“OTTI”) models within EITF 99-20 and FASB Statement No. 115 (“FAS 115”). We agree that similar financial instruments such as beneficial interests in securitized assets whether or not under the scope of EITF 99-20 and other debt securities such as corporate bonds under the scope of FAS 115 should be subject to the same impairment model. However, we believe that this proposed guidance does not adequately and sufficiently address the concerns that have arisen from the current financial crisis relating to the accounting for financial instruments. Additionally, we would like to offer our comments on the additional disclosure requirements being considered by the Board for exposure within the next week. We do not believe that these disclosures provide an adequate alternative to providing a meaningful accounting change prior to the end of the year, and we plan to issue a separate comment letter upon issuance of the exposure document.

The guidance proposed in EITF 99-20-a does not address the concerns that we raised to the Board in our letter dated December 12, 2008 responding to the Global Economic Crisis Roundtable. In our letter, we recommended two actions on which the Board should focus which can be implemented timely, provide for greater convergence with IFRS, and improve financial reporting while still providing meaningful information to analysts and users:

1. Improve the trigger for OTTI on debt securities by eliminating the “intent and ability to hold” requirement of FAS 115 and replace it with objective evidence of a credit event; and
2. Improve the provisions of FAS 115 to provide for further use of the held to maturity (HTM) category for cash flow investors.

We believe that the “intent and ability to hold” requirement in FAS 115 can lead to premature recognition of realized losses in a period of high interest rates or wide credit spreads. Replacing this OTTI trigger with the criteria of objective evidence of a credit event improves financial reporting by reducing the misleading recognition of losses in the income statement followed by the subsequent accretion of exaggerated discounts into future earnings. We believe that allowing for further use of the HTM category in FAS 115 improves financial reporting by recording the value that aligns with the company’s intention for the security on the balance sheet, while still providing meaningful disclosures about the fair value of the security in the FAS 107 footnote disclosure.

Recommendation #1: Improve the trigger for OTTI

We believe that modifying FAS 115 to replace the “intent and ability to hold” criteria for recording OTTI with objective evidence of a credit event, such as a default or debt restructuring, provides meaningful improvement to financial reporting. This would provide greater consistency within US GAAP for impairment of other assets such as loans and receivables as well as represent convergence with IFRS. It would provide a more meaningful distinction of fair value changes recorded through OCI versus those recorded through income and eliminating the distorting impact to operating income of amortizing an exaggerated discount into earnings. We believe that such a change can be incorporated into existing accounting pronouncements and the change can be easily implemented by companies.

Recommendation #2: Provide for further use of HTM

The insurance industry has not been able to utilize this category to its full intent due to our needs to rebalance our portfolios as cash flow models change and to accommodate an active asset-liability management style. As cash flow investors, insurance companies have generally little turnover in their core investment portfolios. We believe that allowing companies to transfer securities into this category will provide for better insight by analysts and other financial statement users into the intended purpose of these assets by our companies. Additionally, this change will align with IFRS as it will provide an alternative in GAAP to compare to the loans and receivables category. We believe that understanding if a company invests for cash flow purposes versus total return is a meaningful distinction and changing FAS 115 will provide for improved financial reporting.

We believe that the two recommendations outlined above as well as in our letter dated December 12, 2008 will improve financial reporting by addressing the flaws in the current financial reporting framework that have been highlighted in the current economic crisis. We believe that these changes can be implemented swiftly and provide for meaningful change to address accounting for fixed income securities in the fourth quarter. We do not believe that the changes put forth by the Board in FSP EITF 99-20-a adequately address the concerns caused by the OTTI model within FAS 115 or the rigidity of the HTM category with FAS 115, and we urge the Board to issue guidance which will sufficiently address these concerns.

We understand that the Board also has plans to issue guidance requiring additional disclosures in 2008 year end financial statements which will apply to all financial instruments classified as HTM and AFS, as well as loans and non-security receivables. This disclosure will require the pro forma effect on earnings and equity as if all of these securities and loans were carried at the present value of expected future cash flows. We plan to issue a separate comment letter to the Board in response to the guidance when it is exposed; however, we do not believe that additional disclosure will provide as much meaning to financial statement users as the changes we have proposed to FAS 115 as outlined above. We do not support that disclosure is an acceptable alternative to poor accounting requirements. The basic financial statements should provide the best information available to investors, regulators and analysts. Therefore, we recommend that the Board focus on implementing changes to FAS 115 for year end reporting instead of increased disclosures.

We appreciate this opportunity to offer our comments and recommendations to the FASB. I would be happy to discuss these recommendations in more detail or address any questions you may have at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Monahan". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Michael M. Monahan
Director, Accounting Policy
American Council of Life Insurers



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December 12, 2008

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

Re: Global Economic Crisis Roundtable Follow Up

Dear Chairman Herz:

The American Council of Life Insurers ("ACLI")¹ is very concerned about the apparent direction of the FASB in addressing the near term need for accounting change in response to the current economic crisis. The FASB has expressed through speeches as well as commentary in the recent roundtables on the global financial crisis hosted jointly by the FASB and IASB its concern about implementing changes to the accounting standards for fair value and other than temporary impairment. The FASB has indicated its intention to address the concern expressed by industry via financial statement disclosure rather than implementing changes to current guidance. While certainly disclosure is a useful tool that can provide much needed explanation and data to financial statement users, it should not be used as a replacement for adequately addressing the accounting changes required to address the current crisis.

The current economic crisis has highlighted the flaws of the other than temporary impairment model for available for sale (AFS) securities in FASB Statement No. 115 ("FAS 115") and the need to provide better information to financial statement users regarding liquidity issues and the impact of credit versus market losses on securities. We believe that changes to existing accounting guidance can be quickly implemented; provide for convergence with IAS 39; and address many concerns of industry while providing meaningful information to analysts and other financial statement users. We believe that the Board should focus primarily on two items to address our current fair value accounting concerns: **1) Improve the trigger for other than temporary impairment on securities by eliminating the intent and ability to hold requirement of FAS 115 and replace it with objective evidence of a credit event; 2) Improve provisions of FAS 115 to provide for further use of the held to maturity (HTM) category for cash flow investors.**

These changes focus on FAS 115. While we continue to believe that FAS 157 also lacks adequate guidance to account for securities trading in dislocated markets, we have not included recommendations to address FAS 157 in the near term. It is clear to us that the analyst community is committed to the exit value model provided by FAS 157 and while we believe it shows values that are inconsistent with true economic values, we will forego this argument in recognition of the preference of the Board and the

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analysts. Instead, we intend to focus on the changes that can be and should be made to FAS 115 that we believe will improve financial reporting and convergence with IFRS.

It has been mentioned in the public roundtables that FAS 115 has been around for quite some time and is tried and true. We are not in agreement with this belief. We are experiencing an economic crisis of a magnitude not seen since FAS 115 was implemented in 1994. Moreover, many of the provisions of FAS 115 that we have concern with have not been in effect during the entire life of the statement. The rigid view of positive intent and ability to hold to recovery for otherwise temporarily impaired AFS securities has only been in effect for the past five years or so. As this view was emerging, industry was very outspoken about the risk of that model in an environment similar to the one we are in today, and now we are headed away from a fair value model for AFS securities to a lower of cost or market model. The implementation of FAS 157 this year has further exaggerated the impact of these artificial triggers in financial reporting.

The following is a summary of our recommendation:

Other Than Temporary Impairment

Fair values of all securities included in the AFS category under FAS 115 are recorded in the balance sheet with the changes in fair value reported through other comprehensive income. The issue the industry believes needs to be addressed is the trigger that requires those fair value changes to be recorded into the income statement. In our discussion, we are mostly concerned with the treatment of fixed income securities.

We ask that the FASB modify FAS 115 and associated FSPs to remove "intent to hold" criteria for recording other than temporary impairments, and replace with objective evidence of a credit event, such as either a default or a debt restructuring, as impairment triggers. This would align with the impairment model for other assets that are not securities, such as loans and receivables, and with IFRS. It would also provide a more meaningful distinction of fair value changes recorded through OCI, versus those recorded through income, than that provided by the current model. It would also remove the distorting effect on an insurer's operating income of taking impairment losses for securities that are "money good", then amortizing an exaggerated discount into earnings over remaining maturity. Fair value changes recorded into the income statement using the current model are very often determined based on arbitrary bright lines and company-specific intent and ability to hold a security to recovery. If intent and ability cannot be asserted on a security or a portfolio of securities, the resulting lower of cost or market accounting is not a preferred accounting model. It also results in materially different treatment of like assets depending on whether they are securities or not.

We are not convinced that a change to this requirement is inconsistent with the Conceptual Framework. Nor do we believe that it is inconsistent with the general direction of new accounting guidance provided by the FASB or the efforts around convergence. The change can be made and implemented quickly and we ask for consideration by the Board of such action.

Held to Maturity category

The HTM category under FAS 115 has long been a problem for the insurance industry. While there are three categories provided by FAS 115, there is only one that is used by the industry in a significant way – the AFS category. In fact, the AFS category is broadly used and applied to assets of companies that manage on a total return basis that are actively traded and those of companies that are cash flow matched with liabilities providing for minimal trading. We believe that the intent of the HTM category is to accommodate investors that use securities for cash flow matching and recognize that the fair value of such instruments should be disclosed but not reported in the balance sheet unless other than temporarily impaired. Unfortunately, cash flow models change and companies need the flexibility to

trade securities from time-to-time to accommodate an active asset-liability matched ("ALM") management style as well as to respond to unforeseen liquidity needs. A cash flow matched investor may turn over 10% of its portfolio versus a total return manager that could turn over greater than 100% of its portfolio. However both would fail the tainting provisions of HTM in FAS 115 as it is written today. We believe that the accounting should provide for a distinction between these two investors. Today, the restrictions of the HTM category and the volatility created by the use of the trading category result in both investors using the AFS category.

The current lack of liquidity in the market place has made the use of the HTM model more attractive for many insurers:

- Given that GAAP does not permit a loans and receivables category similar to IFRS, we believe that FASB should consider revisiting the intent to hold provisions of the HTM category to make it more widely available, and
- The guidance should allow companies to transfer securities into this category. This will provide for greater consistency and comparison for US GAAP filers with that of IFRS filers and provide for better insight into the use of different assets by different companies. We believe that understanding if a company is cash flow matched and investing with a HTM model versus a company that is not cash flow matched and investing for total return is an important distinction that investors today cannot ascertain from the financial statements.

In summary, these uncertain and difficult periods challenge the accounting model and due process for setting standards. While our industry has previously expressed many of the concerns that we articulate in this letter about FAS 115, the magnitude and breadth of the global economic crisis has shown very acutely the flaws of the other than temporary impairment model in U.S. GAAP. The need to address this is critical and it is urgent. As much as we support and appreciate the due process that the FASB provides in its standards setting, we believe that this need to respond to the flaws within FAS 115 trumps that need. We believe that the Board should act promptly to issue guidance that provides for a meaningful change to address accounting for fixed income securities as described in our recommendations by the end of the year. Disclosure alone will not address the issue of a flawed accounting model. We welcome any additional questions or concerns you wish to discuss.

Sincerely,



Michael M. Monahan
Director, Accounting Policy

cc: Chairman Christopher Cox, U.S. Securities and Exchange Commission