

December 24, 2008

Technical Director
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LETTER OF COMMENT NO. 10

Ladies and Gentlemen:

File Reference: Proposed FSP EITF 99-20-a

Your proposal, if I understand it completely, is a great step forward.

I, and many of my colleagues in the valuation profession, have complained that the SFAS 157 definition of Fair Value (“FV”) did not accord with actual business practice. We have argued for determining the value of a newly acquired asset on the basis of what the acquirer plans to do with it, and utilizing his estimates of cash flow. We have been firmly opposed to the concept of valuing an asset solely on the basis of what some hypothetical ‘market participant’ thinks. In regard to tangible and intangible assets, (leaving financial instruments out of the discussion) it is far more useful in terms of understanding future cash flow to determine what the actual buyer will do or plans to do, rather than what some hypothetical market participant might do.

Many of us feel that real business decisions are both more relevant and more reliable than hypothetical assumptions of what someone else might do. Nonetheless, despite these repeated criticisms, there seemingly has been no flexibility on your part to reconsider the rigid SFAS 157 definition of FV.

Your proposed FSP is a breath of fresh air, one that we may want to refer to in the future.

In ¶ 12 b. you have directly struck out the following words: “An entity should apply the impairment of securities if, based on a **holder’s best estimate of cash flows that a market participant would use** in determining the current fair value of the beneficial interest.....” [emphasis supplied]

Instead you now have explained in ¶ 13 “estimated cash flows are defined as the **holder’s best estimate**...considering current information and events.” [emphasis supplied]

This finally admits what we, and others, have been arguing for all along. It is the holder’s judgment that should control the determination of FV, not some theoretical construct that can neither be audited nor supported.

If we understand the thrust of this proposed FSP it is critical that you not try to limit this new approach to a certain small class of beneficial interests. For the last two and a half years you have consistently argued that there should be only one definition of Fair Value. We agree that there should be only one definition; it is just that we disagreed with your specific SFAS 157 definition based on exit value and market participants.

If you make this change, and we hope you will, it should be made crystal clear to all parties in financial reporting, including auditors, the SEC and the PCAOB, that you have *made a fundamental change in the definition of Fair Value. You either define FV on the basis of market participants or on the basis of a holder's judgment. You can not have it both ways.*

We support the issuance of the proposed FSB on the suggested timetable; it should go into effect immediately upon issuance.

We would be pleased to respond to any questions you may have.

Respectfully submitted,

/s/ *Marshall & Stevens, Inc.*

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