

# CAPMARK®

October 9, 2008

## VIA EMAIL

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



LETTER OF COMMENT NO.

99

File Reference: Proposed FSP FAS 157-d (the "Proposed FSP")

Dear Mr. Golden:

Capmark Financial Group Inc. ("Capmark") appreciates the opportunity to comment on the FSP Proposal and recognizes the priority you have placed on producing this guidance in an expedited fashion. We have reviewed the Proposed FSP, and Capmark has certain comments and suggestions as detailed below.

### Concerns With The Proposed FSP

We would respectfully suggest that the FASB consider including financial liabilities within the scope of the Proposed FSP (paragraph 7). While we understand that the more pressing need is for clarification on the application of SFAS No. 157 for financial assets, it is reasonable to assume the guidance may also be useful in the valuation of certain financial liabilities.

With respect to the example reflected in paragraph 11 of the Proposed FSP ("the Example"), we believe it would be helpful to include clarifying language that addresses the appropriate use of judgment in determining risk adjustments when current market conditions deter market participants (either buyers or sellers) from engaging in orderly transactions (sometimes referred to as a distressed or "frozen" market). For example, current press articles report the U.S. is experiencing market conditions in which liquidity premiums in some sectors have reached such levels that market participants have *concluded that transactions are economically illogical or unrealistic: there is no activity*. Seemingly the use of risk adjustments reflective of such conditions would result in fair values that would only occur in distressed or forced liquidation transactions. This result would be in conflict with one of the stated objectives of Statement 157: the price that

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would be received by the holder of the financial asset in an orderly transaction that is not a forced liquidation or distress sale at the measurement date. We respectfully suggest modifying the Example to provide explicit recognition that risk adjustments which may not be current but are representative of an orderly transaction for the same or similar financial assets or liabilities can be considered relevant, along with current observable inputs, in determining fair value. We would further suggest specifically including descriptions of the circumstances that the FASB considers representative of distressed (disorderly) sales and inactive markets, as discussed in the joint press release issued by the Office of the Chief Accountant of the Securities and Exchange Commission and the FASB staff as well as in paragraph A32B of the Example. This guidance would be helpful in allowing preparers and auditors to assess the existence of market conditions where less emphasis on current observable inputs would be reasonable in the determination of fair value.

#### **Additional Concern with SFAS No. 159**

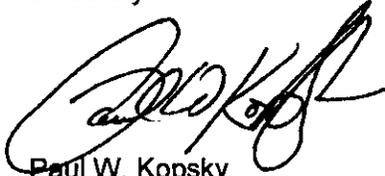
*While not directly related to the Proposed FSP, we would like to address a concern with the application of paragraph 9(e) of SFAS No. 159. Included within paragraph 9(e) is a reference to paragraph 10, which describes "some of the events that would require remeasurement of eligible items at fair value, initial recognition of eligible items, or both, and thereby create an election date for the fair value option." In discussions with a variety of preparers and auditors of financial statements, we have come to understand that some view the list of events described in subparagraphs (a) through (c) of paragraph 10 as the definitive list of situations that would meet the criteria set forth in paragraph 9(e). Unless the transaction or event falls within the list contained in paragraph 11, there are no other circumstances where paragraph 9(e) would apply. However, we are aware of several other instances that would also meet the paragraph 9(e) criteria. For example, the reclassification of loans from "held for sale" to "held for investment" as described in paragraph 6 of SFAS No. 65.*

We believe the current economic turmoil and significant declines in the fair value of financial assets could result in enterprises desiring to consider transactions, such as the SFAS No. 65 example described above, that would otherwise meet the criteria set forth in paragraph 9(e), but is not listed in paragraph 10. We respectfully submit that the narrow view of paragraph 10 could be a misinterpretation of the FASB's intent in describing *some* of the events that could result in an election date. It is suggested that the FASB consider providing further clarification on the application of paragraphs 9(e) and 10.

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Thank you for your consideration of the concerns described above. Capmark would welcome the opportunity to meet with the Board or the Staff to discuss these concerns or to answer any questions you might have about this letter. Please contact Paul Kopsky at (610) 328-1021 or Rik Chichester at (610) 328-3618 at your convenience.

Sincerely

A handwritten signature in black ink, appearing to read 'Paul W. Kopsky', written in a cursive style.

Paul W. Kopsky  
Executive Vice President and Enterprise Controller

PWK:rlc