MORTGAGE BANKERS ASSOCIATION
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VIA Electronic Mail (director@fasb.org)

LETTER OF COMMENT NO. 210

December 30, 2008

Technical Director
Financial Accounting Standards Board
401 Merritt 7, P. O. Box 5116
Norwalk, CT 06856-5116

File Reference: Proposed FSP EITF 99-20-a

Dear Board Members and FASB Staff:

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity to comment on the proposed FASB Staff Position (FSP), *Amendments to the Impairment and Interest Income Measurement Guidance of EITF No. 99-20* (the proposed FSP). MBA agrees with the Board's decision and rationale to amend EITF 99-20. The proposed FSP requires that debt securities subject to EITF 99-20 be evaluated for other-than temporary impairment ("OTTI") in accordance with FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (FAS 115). The MBA believes that the resulting uniform model for determining OTTI recognition for debt securities under U.S. GAAP reduces the risk of financial statement user confusion and eliminates an unnecessary distinction in how impairment is recognized.

MBA's Comments

General Comments: MBA agrees with the proposed changes to EITF 99-20. MBA believes that OTTI guidance should be consistent for all debt instruments. MBA believes the proposed amendment improves financial reporting as present guidance can result in different OTTI outcomes for similar securities. The primary inconsistency between the two models is how the evaluation of a security's credit risk – that is, the risk of not collecting future cash flows according to the security's contractual terms – affects the determination of OTTI. MBA can think of no technical justification for evaluating credit risk differently based upon the security class or the security acquisition date. For example, generally investments in securitized assets rated below 'AA' at initial

[1] *The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry,* an industry that employs more than 370,000 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.

acquisition are subject to the EITF 99-20 model. Yet investments in securitized assets rated 'AA' or above at initial acquisition and investments in non-securitized assets such as corporate or municipal bonds are subject to the FAS 115 model. The result is debt securities that may have similar credit quality, such as noninvestment grade corporate bonds and noninvestment grade securitized assets, are evaluated for OTTI differently. Additionally, because the scope assessment of EITF 99-20 is required only when the security is initially recognized by the reporting entity, rating changes (e.g., downgrades) can result in application of two different OTTI models for the *same security*, depending solely upon when the security was initially recognized by the reporting entity. We believe these criteria for determining how to assess OTTI create unnecessary inconsistency in accounting results. Therefore, MBA supports the Board's move toward a single OTTI recognition model for debt securities. The question then becomes which model is appropriate and how should OTTI be measured.

Currently, a debt security within the scope of EITF 99-20 requires OTTI recognition if the reporting entity's estimate of cash flows that a market participant would use in determining the fair value of the security has adversely changed. Accordingly, use of market participant assumptions in developing cash flow estimates is required and cannot be overcome by reasonable management judgment regarding the probability of collecting future cash flows, regardless of whether the underlying assets are performing. For most EITF 99-20 debt securities, the financial markets do not provide reporting entities with readily available or reliable source of market participant estimated cash flows. Therefore, in practice, determination of whether these cash flows have deteriorated defaults to what the security's fair value (or market yield implied by the fair value) implies about market participant's views of the cash flows. Declines in fair value (or increases in market yield) to a certain level is often considered prima facie evidence by independent auditors of an adverse change in estimated cash flows that market participants are signaling and therefore OTTI is recognized, regardless of the probability of collecting the cash flows. In dislocated markets, EITF 99-20 securities can experience severe price declines due to factors other than credit risk (e.g., liquidity risk). This scenario has been exemplified by securities having experienced price declines even when the cash flows from the underlying assets are expected to be sufficient to pay all amounts contractually due on the security. MBA believes recognition of OTTI in such instances is not appropriate and is not what the authors of EITF 99-20 intended. MBA's response to this presumption is that the current low price / high yield required in the *market may not be a reflection of expected losses in the investment security, but rather a* by-product of the massive liquidity premium that is required in the market under current conditions for EITF 99-20 securities. This liquidity premium can be observed in the low prices / high yields required for even certain very senior AAA-rated investment securities that may not have any reasonable risk of credit loss. MBA thus concludes that the FAS 115 model for identifying OTTI is the more appropriate of the two models.

Specific Responses: The following is MBA's response to FASB's specific questions in the exposure draft notice.

1. Issue 99-20 applies to beneficial interests that are not of a high credit quality or that can be prepaid or otherwise settled in such a way that the holder would not

recover substantially all of its recorded investment. Other debt securities (for example, a corporate bond) with similar credit quality are not within the scope of Issue 99-20. The Board decided that similar instruments should be subject to the same impairment model. Do you agree with the Board's decision? Does the presence of prepayment risk warrant a different impairment model?

MBA Response: MBA agrees that similar instruments should be subject to the same impairment model. This consistency reduces inconsistencies in financial reporting and provides more useful data to investors. However, MBA believes that the guidance is not clear for instruments with significant prepayment risk. For example, an enterprise that holds an interest only security (IO) may receive all payments "contractually due" but those payments may be insufficient to cover its recorded value if prepayment speeds increase. MBA requests that the FASB provide specific guidance on analyzing OTTI in these instances. One suggested approach would be to use the guidance in SOP 03-03 for IO's which states, "The investor should consider both the timing and amount of cash flows expected to be collected in making a determination about whether it is probable that the investor is unable to collect all cash flows expected at acquisition plus any additional cash flows arising from changes in estimates after acquisition."[2]

2. The FSP amends Issue 99-20 to align the Issue 99-20 impairment model with the Statement 115 impairment model, resulting in a consistent determination of whether other-than-temporary impairments of available-for-sale or held-to maturity debt securities have occurred. Statement 115 requires entities to assess whether it is probable that the holder will be unable to collect all amounts due according to the contractual terms. Is the Statement 115 impairment model operational for beneficial interests that were previously within the scope of Issue 99-20?

MBA Response: See MBA's general comments above and MBA's response to specific question 1 above.

3. The Board is proposing that the FSP be effective for interim (including the fourth quarter for an SEC registrant) and annual reporting periods ending after December 15, 2008, applied prospectively. Do you agree with the proposed effective date? Should the Board consider making the FSP effective for periods beginning after December 15, 2008?

MBA Response: MBA agrees that the effective date should be for periods ending after December 15, 2008.

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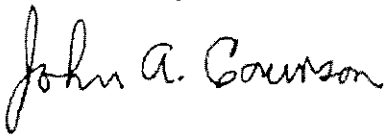
[2] Accounting Standards Executive Committee, Statement of Position 03-3, *Accounting for Loans or Certain Debt Securities Acquired in a Transfer,* American Institute of Certified Public Accountants, © 2003, paragraph 7a.

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.

Most sincerely,



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