

THE BANK OF NEW YORK MELLON

Robert P. Kelly

Chairman and Chief Executive Officer

January 5, 2009

Mr. Bob Herz Chairman Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

LETTER OF COMMENT NO. 3

Christopher Cox Chairman U.S. Securities and Exchange Commission 100 F Street NE Washington, DC 20549

RE: OTTI - SEC Recommendation - Study on Mark to Market Accounting

Dear Messrs. Herz and Cox:

The Bank of New York Mellon, Inc. ("The Company"), has read the Study on Mark to Market Accounting report released by the Securities and Exchange Commission ("SEC") with great interest. We would like to commend the SEC on the timeliness of its release, the same day as the FASB's comment deadline on its project titled Amendments to the Impairment and Interest Income Measurement Guidance of EITF Issue No. 99-20 (the "Exposure Draft").

The SEC report contains a recommendation (reproduced in Appendix A.) that "The Accounting for Financial Asset Impairments Should be Readdressed". We, along with almost 200 other financial institutions who have provided written comments to the FASB on the Exposure Draft could not agree more with the recommendation of the SEC. The accounting for impairment of financial assets, primarily debt securities, is indeed "one of the most significant areas of necessary improvement" and the SEC recommendation is very consistent with that which has been outlined by many banks. As explained in the Clearing House Association's comment letter and our own letter to the FASB, dated December 30, 2008, we agree with the SEC's preference for a model that "would require recognizing impairments through income related only to credit losses (calculated on an incurred loss basis consistent with impairments on loans), while the remaining decline in fair value of an investment (the portion that is not related to incurred losses) would be recognized in OCI."

The Clearing House Association letter provides in its Appendix a simple solution that would align the accounting for other than temporary impairments of debt securities with that of the loan and receivables impairment model.

The SEC appears to be clear in its views on this issue and the solution appears to be simple. The solution requires a change in the measurement of impairment that banks are able to perform reliably. We encourage the FASB to take action now in time for 2008 Fiscal Year End financial reporting.

Sincerely,

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One Wall Street, 10th Floor, New York, NY 10286

4. Recommendation - The Accounting for Financial Asset Impairments Should be Readdressed

The Staff recommends that the FASB reassess current impairment accounting models for financial instruments. The evaluation should consider the narrowing of the number of models that currently exist in U.S. GAAP. In conjunction with evaluating current impairment guidance, consideration should be given to increasing the prominence of OCI by requiring a separate statement or presentation on the face of the income statement. Further, the utility and consistency of information provided to investors should be improved, including the implementation of measures to provide investors with insight into management's expectations of probable cash flow declines.

During the course of our study, the accounting for impairment was identified as one of the most significant areas of necessary improvement. As noted earlier, as part of its guidance on perpetual preferred securities, the Staff requested the FASB expeditiously address issues that have arisen in the application of the impairment model in SFAS No. 115. This request was a response to challenges encountered in the application of existing OTTI guidance in the current market and the complexity created by multiple impairment models for financial instruments.

One of the most significant concerns expressed in this area is the fact that under existing U.S. GAAP, there are multiple sets of impairment rules for financial instruments. The model applied often depends on the characteristics of the financial instrument at the date of acquisition, and the models are not always consistent with the reporting of impairments for other non-securitized investments (such as direct investments in mortgage loans). In the absence of uniform accounting treatment for impairments, investors are provided with information that is not recognized, calculated or reported on a comparable basis. Further, the treatment of impairments for investments under U.S. GAAP is not consistent with the reporting of impairments under IFRS. U.S. GAAP also requires that once an impairment is recorded, future increases in value (e.g., when the market price recovers) cannot be reported in income until the security is sold. IFRS currently requires, for certain investments, the recognition of increases in value in income when prices recover. The Staff believes that a reconsideration of impairment standards should also include a reconsideration of this preclusion. Further, the Staff notes that the Boards have already initiated efforts to address this concern.

The development of a single model addressing the accounting for impairments could reduce the complexity and increase the comparability of financial statements. The FASB should evaluate the need for modifications (or the elimination) of current OTTI guidance to provide for a more uniform system of impairment testing standards for financial instruments. While there are a number of alternative models that the FASB should consider, several commenters have suggested the development of a model that would require recognizing impainments through income related only to credit losses (calculated on an incurred loss basis consistent with impairments on loans), while the remaining decline in fair value of an investment (the portion that is not related to incurred losses) would be recognized in OCI. The Staff believes that this model has the potential to provide investors with both fair value information as well as transparent information regarding the cash flows management expects to receive by holding investments, rather than through accessing the market currently. That is, such a model would appear to help bridge the gap between the current fair value and the value expected from holding investment positions until markets return to normal liquidity levels. Other models, including the elimination of OTTI in favor of more prominent reporting of impairments in OCI, should also be evaluated. Further, in reassessing impairment the FASB should consider whether the "ability and intent to hold to recovery" test under SFAS No. 115 is sufficiently operational, including whether the operation of the model in practice is consistent with the notion of an AFS security.