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March 31, 2009

Russell G. Golden  
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Via Email to: [director@fasb.org](mailto:director@fasb.org)

LETTER OF COMMENT NO. 279

Re: File Reference: Proposed FSP FAS 157-e

Dear Mr. Golden:

Fannie Mae appreciates the opportunity to comment on the Proposed FASB Staff Position No. FAS 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed* (the "Proposed FSP"). We are supportive of the Financial Accounting Standards Board's ("FASB") efforts to improve fair value measurements of financial assets in markets that are not active, but believe we would experience significant operational challenges implementing the guidance by the proposed effective date. We also believe the proposed guidance forces certain conclusions and limits management's judgment as contemplated under FAS 157. We think the suggested alternatives described below will improve the proposed guidance.

### **Proposed Effective Date**

We do not believe that the proposed effective date of the quarter ending March 31, 2009, for calendar-year companies is reasonable in the circumstances. Based on the proposed FSP's presumption that a transaction in an inactive market is distressed unless evidence exists that there is both 1) sufficient time for customary marketing activities and 2) multiple bidders for the asset, many financial statement preparers will be forced to consider alternative valuation techniques, including an income approach. Use of an income approach to determine fair value estimates for financial reporting will require us to develop or modify our current systems and procedures, including the implementation of internal controls that can be documented and tested for compliance with the requirements of the Sarbanes-Oxley Act of 2002. Due to the relatively brief time period between the anticipated release of the final FSP and the filing deadlines for calendar quarter-end financial statement filers, we face significant challenges applying the proposed

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guidance in a controlled manner and in compliance with the timely reporting requirements of the Securities and Exchange Commission ("SEC").

We request that the FASB revise the effective date to interim and annual periods ending after June 15, 2009, and permit early adoption.

### **Proposed Two-Step Process**

Joint guidance issued by the SEC staff and the FASB staff on September 30, 2008 says that "[d]etermining whether a particular transaction is forced or disorderly requires judgment," and the proposed FSP also acknowledges and requires judgment in determining whether a market is active. However, the proposed guidance's presumption that all transactions in an inactive market are distressed does not allow for judgment. We believe that evaluating whether a quoted price is associated with a distressed transaction is a practice issue best addressed with application guidance that identifies factors to consider when making a judgment. We also believe that the most effective application guidance provides relevant examples that illustrate concepts supporting the provisions of the guidance. We do not think that addressing the practice issues that have been perceived as a misapplication of SFAS 157 in estimating the fair value of certain financial assets are best remedied by prescribing broad presumptions and documentation requirements that fundamentally change the standard.

We believe that not all transactions in an inactive market are distressed, and that a reasoned judgment can be made without gathering "evidence" of the conditions specified in paragraph 13 of the proposal. Therefore, we recommend that the presumption in step 2 be replaced with a statement in step 1 that "the determination that a market is not active is a strong indicator that quoted prices in that market may be associated with distressed transactions" and that "further evaluation is necessary". We also recommend that the factors identified in step 2 be characterized as items to consider, rather than conclusive evidence.

We note that the first factor in step 2 of the proposed guidance is based on the description of an orderly transaction in paragraph 7 of SFAS 157. Therefore, the presumption that transactions in inactive markets are distressed implies that orderly transactions can only be expected to occur in active markets. If that implication is intended, it would appear that the measurement objective would be a change from an exit price at the measurement date to a price that would be received in a hypothetical active market, which could be based on little to no market-observable inputs. Additionally, there appears to be tension on the interaction between a willing seller and an orderly transaction. For example, assets sold in transactions that, based on the seller's intent, have generally been thought of as forced or distressed transactions could have been exposed to the market for the usual and customary time period and received multiple bids, albeit at depressed prices. Therefore we encourage the board to clearly state the measurement objective of the proposed guidance and consider providing additional factors or examples that clarify the difference between a seller that is simply motivated and a seller that is forced or otherwise compelled to transact.

We believe the changes described above permit the exercise of judgment, just as it is exercised in determining whether a market is active. Because distressed or forced transactions can also occur

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in active markets, we also believe that delinking the evaluation of a distressed transaction from the assessment of market activity provides guidance that is applicable in all circumstances.

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The opinions expressed in this comment letter are solely those of Fannie Mae and do not purport to represent the views of the Federal Housing Finance Agency.

Thank you for considering our views. Please feel free to contact me at (202) 752-6549 if you have any questions.

Sincerely,



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