LETTER OF COMMENT NO. 258

Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102

March 31, 2009

Technical Director
FASB
401 Merritt 7, PO Box 5116
Norwalk, CT 06856
director@fasb.org

LETTER OF COMMENT NO. 297

Re: Proposed FSP FAS 157-e, FSP FAS 115-a, FAS 124-a, and EITF 99-20-b

Dear Sir:

Capital One Financial Corporation and its banking subsidiaries (collectively, "Capital One") appreciate the opportunity to comment on the proposed FSP FAS 157-e, FSP FAS 115-a, FAS 124-a, and EITF 99-20-b.

Capital One Financial Corporation (www.capitalone.com) is a financial holding company whose subsidiaries, which include Capital One, N.A. and Capital One Bank (USA), N. A., collectively had $109 billion in deposits and $210 billion in total managed assets as of December 31, 2008. In addition, Capital One's newly acquired subsidiary, Chevy Chase Bank, F.S.B., had more than $16 billion in assets and $13 billion in deposits as of December 31, 2008. Capital One, N.A. and Chevy Chase Bank, F.S.B. have approximately 1,000 branch locations primarily in New York, New Jersey, Texas, Louisiana, Maryland, Virginia and the District of Columbia.

Capital One supports the FASB's objective to provide more guidance on fair value measurements and other-than-temporary impairments (OTTI). We have several comments on these interrelated sets of guidance and have divided our comment letter into three sections:

1. We seek additional clarity around the determination of inactive markets and distressed transactions;

2. We highlight a number of operational concerns that may limit an entity's ability to take advantage of the proposed benefits provided by FSP FAS 157-e within the stated timelines. As such, we request a phased-in approach to mark-to-model accounting; and

3. We emphasize the importance of meaningfully implementing FAS 157 in order to avoid unnecessarily penalizing a company's earnings or capital.

FSP FAS 157-e – Determining Whether a Market Is Not Active and a Transaction Is Not Distressed

Currently, most market participants interpret the concept of "exit price" within FAS 157 to require the use of "last transaction" pricing when determining an asset's fair value. In a well-functioning market, the mark-to-market and "last transaction" pricing approach generally reflect the actual fair value of financial assets. However, during times of severe market dislocation, this mark-to-market accounting approach has led to assets being reported on financial statements at far below their true realizable value and has resulted in the unnecessary degradation of capital in our financial system

It is imperative that mark-to-model accounting is operationally feasible and actually accepted by investors, regulators and auditors when applied in practice. In this market environment, preparers and accounting firms have struggled to determine appropriate fair values of financial assets and have had an understandable bias towards conservatism. Without an abundance of supportable evidence to the contrary, auditors have required entities to rely on the "last transaction", without allowing significant adjustments, to derive at the fair value. This is evidenced by our and other market participants' experience that valuation inputs did not notably change in late 2008 following the SEC's press release and the FASB's related issuance of FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active,* despite what appeared to be the SEC's and FASB's intentions.

Accordingly, we request that the FASB address the following interpretive and operational concerns with FSP FAS 157-e to ensure clarity among all concerned parties:

- Step 1: We request that the FASB explicitly state the following points in the final standard:
    - The factors currently proposed in the FSP are only examples and are not all-inclusive when determining whether a market is inactive;
    - The Board should state that no one criterion will be considered more important than another and that the presence of only one factor could be supportable evidence of an inactive market. Companies should have the discretion to determine the relative importance of various factors according to the facts and circumstances related to each product or sector; and
    - We request that the absence of new issue benchmarks be included as an additional factor that may indicate a market is not active.

- Step 2: We believe that strictly applying the two factors listed below to a quoted transaction price may lead many entities to conclude that a transaction in an inactive market is not distressed:

- "Marketing activities that are usual and customary for transactions involving such assets or liabilities", if applied to the usual process for selling a security in the secondary market, simply involve working through a broker and putting the relevant securities on a "bid list". The turnaround time between assets being put on a bid list and ultimately being sold is generally less than 24 hours. Entities might therefore conclude that it would be a very rare circumstance where such time would not be available prior to the transaction date.

- Regarding the existence of multiple bidders for an asset, the bid list process will normally include cover bids from brokers and potentially throw away bids by other Wall Street firms in an effort to support market liquidity. The fact that these bids are made does not imply the transaction is not distressed, as the relevant issue is not one of how many bids but more one of how close was each bid to the actual value of the asset.

In a fire sale situation, for example, marketing activities would likely be accomplished rapidly, with multiple bidders seeking the assets in question. Thus, instead of requiring companies to apply the above two factors in determining whether a transaction is distressed, we request that the FASB consider incorporating these criteria (absence of typical marketing activities or multiple bidders) as part of Step 1.

We also request clarification regarding the scope of the proposed FSP. The proposal indicates that it "provides additional guidance on determining whether a market for a financial asset is not active and a transaction is not distressed". We believe that this additional guidance should apply to both financial assets and financial liabilities to avoid creating additional confusion or inconsistency.

FSP FAS 157-e – We Would Request a Phased-In Approach

We believe many institutions, particularly regional banks, do not yet possess the systems, models, collateral data, or governance processes needed to run appropriate cash flow analyses, and will have to make substantial investments in valuation tools and resources. As such, we request that the FASB allow for a phased adoption during 2009. For example, we suggest that an entity be allowed to apply mark-to-model valuation techniques on a product-by-product basis, as it is prepared to do so within the control framework of the organization. Entities can provide adequate disclosure to financial statement users to enable them to understand where mark-to-model was used in inactive markets.

FSP FAS 115-a, FAS 124-a, and EITF 99-20-b – Recognition and Presentation of Other-Than-Temporary Impairments

Historically, FAS 115 required the recognition of the entire unrealized loss on an investment that was deemed to be other-than-temporarily impaired. The unrealized loss recorded in earnings included components related to credit, interest rate adjustments and illiquidity. We believe the FASB has taken an important step by acknowledging that the entire difference between the fair value and carrying amount of an other than temporarily impaired asset is not necessarily an impairment to be recorded in earnings. However, we are still concerned that non-credit-related impairment (e.g. illiquidity) on an asset held as "Available for Sale", which *a company plans to and has the capacity to hold until maturity,* could still have a material impact on OCI and thus capital if a company is not permitted to ignore illiquidity and apply the mark-to-model approach.

This further magnifies the criticality of ensuring that the proposed FSP FAS 157-e concepts regarding inactive and distressed markets are generally accepted and applied in practice by all relevant parties. As such, it is imperative that the FAS 157 guidance be implemented in a meaningful manner, with present value calculations appropriately excluding market illiquidity in inactive markets when there is no intention or need to sell. Requiring illiquidity related impairments to flow through earnings or OCI simply does not reflect the true economics of an investment and consequently causes the balance sheet to be understated, thus misrepresentative of an entity's true value.

While we agree that expected credit losses should be reflected as other-than-temporary impairment and recorded in earnings when it is probable that a loss has been incurred, we request that the Board consider allowing these credit losses to be reversed if credit related to a debt security improves as the economy recovers. Not only is it difficult to fair value financial assets due to the current illiquidity in the market place, it is equally difficult to predict with certainty expected credit losses. This is a highly subjective calculation and will inevitably change as economic indicators either improve or decline. As such, we do not believe that recovery should span over a period until maturity or sale, especially since some securities have lives in excess of 5-10 years. Therefore, we request that the FASB consider allowing for reversal of impairment within the provisions of this FSP, instead of deferring consideration of that change to the broader impairment project.

Sincerely,

Susan McFarland
Executive Vice President and Controller