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October 3, 2008

LETTER OF COMMENT NO. 79

Mr. Russell G. Golden
FASB Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference – Proposed FASB Staff Position No. 157-d: *Determining Fair Value in a Market That Is Not Active*

Dear Mr. Golden:

Nationwide Insurance Group appreciates the opportunity to comment on the Exposure Draft of the Proposed FASB Staff Position No. 157-d: *Determining Fair Value in a Market That Is Not Active* (Exposure Draft or Proposed FSP). Nationwide Insurance Group (Nationwide) is comprised of three affiliated mutual insurance companies and their subsidiaries under common management. Nationwide Financial Services, Inc. is a Securities and Exchange Commission registrant, in which Nationwide has majority equity and voting interests. Nationwide is one of the largest diversified insurance and financial services organizations in the world, with more than $161 billion in assets and annual revenues of $22 billion.

We agree with the Board's objective to clarify the framework within which financial statement users, preparers, auditors, and others operate to determine the fair value of assets and liabilities when markets are not active, however, we disagree that the Proposed FSP achieves this objective without the need for more explanation. The Exposure Draft would leave unresolved questions and more FASB Statement No. 157, *Fair Value Measurement* (FAS 157) implementation issues for preparers and auditors. Herein we outline our main concerns with the Proposed FSP and our recommended changes.

<u>OBJECTIVES OF PROPOSED GUIDANCE</u>
The Board has proposed an illustrative example of how to determine the fair value of a financial asset when the market for that financial asset is not active. There are four key items that we respectively recommend the FASB consider to improve the effectiveness of the Proposed FSP:

- Provide specific definitions of inactive market and distressed or forced sale transaction
- Clarify that in inactive markets, broker quotes may have limited or no relevance for other-than-temporary impairment assessment
- Clarify that "bright line" application for other-than-temporary impairment assessments based on severity and duration is not appropriate and judgment should be utilized
- Allow for retrospective application utilizing guidance from the Proposed FSP

We agree, as proposed in the FSP, that transactions in an inactive market should not be determinative to measuring fair value. The rationale being that it is not consistent with an orderly transaction between market participants. However, we believe FASB should clarify that the current market environment views of the market participant would adjust as orderly transactions become inactive or distressed. In particular, as markets may evolve to "inactive", the applicable market participant may also change to reflect the use of an internal valuation model.

Further, distressed or forced sale transactions should not be considered when determining fair value. Some practitioners may use the IASB's definition of a forced transaction, which includes: a legal requirement to transact, a necessity to dispose of an asset immediately and insufficient time to market the asset to be sold, and the existence of a single potential buyer as a result of the legal or time restrictions imposed. We think that the IASB definition is too narrow and therefore, would like a formal clarification from the FASB. The broader definition should include items such as: inactive markets, minimal trading, widening of spreads, and varying prices on transactions over time.

The SEC clarified the use of management's internal assumptions to measure fair value as follows: "Statement 157 discusses a range of information and valuation techniques that a reasonable preparer might use to estimate fair value when relevant market data may be unavailable, which may be the case during this period of market uncertainty. This can, in appropriate circumstances, include expected cash flows from an asset. Further, in some cases using unobservable inputs (level 3) might be more appropriate than using observable inputs (level 2)." Our understanding of the Proposed FSP is that it is consistent with the SEC's clarification; however, it appears that the SEC views, in some cases, that a level 3 valuation is more appropriate for FAS 157 than a level 2. This appears to be inconsistent with the Proposed FSP. We agree with the SEC's clarification that level 3 inputs may be more appropriate than using level 2 inputs in an inactive market, and thus should be incorporated in the Proposed FSP as clarification is needed for application by both preparers and auditors. We also request that the FASB acknowledge that judgment may be used to assess the reliance on broker quotes obtained in inactive markets. In some cases, facts and circumstances may determine that such broker quotes have no relevance in relation to other-than-temporary impairment assessments.

We agree with the example and believe it appropriately reflects an internal valuation in an inactive market; however, looking at the example, one may interpret the rational for conclusion inconsistently under FAS 157. If an active market does not exist, we would expect that an internal valuation model could be used as opposed to a broker quote for determination of the EITF 99-20 adverse cash flow evaluation and fair value measurement under FAS 157. We request that the FASB note that in many cases practitioners may utilize an internal model, a broker quote, or a derivation thereof based on the facts and circumstances. Using judgment is appropriate in determining the fair value measurement. One could erroneously conclude from the example fact pattern that in all cases, it would be appropriate to extrapolate a price between internal and external broker valuations.

The Proposed FSP should include clarification regarding determining whether an investment is other-than-temporarily impaired. Given the current market environment, an explanation should be provided around the significance of the following factor: "the length of time and the extent to which the market value has been less than cost" within SAB Topic 5M. We request the clarification that the impact of this factor in assessing other-than-temporary impairments is less relevant as compared to the other factors within SAB Topic 5M in an inactive market. For example, a security may have a significant decline in fair value for nine months, but cash flows models show cash is being received, recovery is expected and the fundamentals are still sound. Other evidence, such as the assessment of the underlying issuer performance, the structure over the long-term, and the intent and ability to hold a security to expected recovery should be weighted more heavily in the assessment of an other-than-temporary impairment than the factors of duration and severity of the decline. Interpretation by some audit firms has resulted in practitioners establishing a "bright line" based on severity and duration of impaired securities. We would like the FASB to clarify that a "bright line" is not appropriate and facts and circumstances may allow for not taking an impairment on securities even though prices may depressed for a long period of time.

The market dislocation was at least partially attributable to the decrease in capital of banks related to the impairments taken as the fair value measurement declined. The release of the Proposed FSP demonstrates that the existing guidance may have been inappropriately applied during 2008 when the markets became inactive. We believe given the market environment, it should be appropriate depending on the facts and circumstances for practitioners to apply the Proposed FSP retrospectively for 2008. In some cases, this may have a material impact on previously issued financial statements. Our recommendation is a cumulative catch-up to allow firms to retrospectively adjust financial statements as applicable, due to the revised guidance from the Proposed FSP.

CONCLUSION

Overall we do not believe the Proposed FSP provides enough clarification for successful implementation. Additional guidance is needed in order to reach the objective of clarifying the framework around fair value measurement in an inactive market.

We hope these comments assist the Board during its redeliberations of the Proposed FSP. In the event that any Board or FASB staff member would like any further clarification of our positions we are happy to explain them in greater detail.

Respectfully,

Martha L. Frye
Senior Vice President and Chief Accounting Officer
Nationwide Insurance