

Re: Proposed FASB Staff Position No. 157-e,
Transaction Is Not Distressed



LETTER OF COMMENT NO. 376

Dear Financial Accounting Standards Board:

American Equity Investment Life Holding Company (AEL) appreciates the opportunity to comment on the proposed FASB Staff Position (FSP) No. FAS 157-e, *Determining Whether a Market is Not Active and a Transaction is Not Distressed*. AEL is a leading underwriter of indexed and fixed annuity products with total assets at December 31, 2008 of \$17 billion and investments in fixed maturity and equity securities of more than \$10 billion.

As you have recognized, the current fair value rules do not result in accurate accounting and financial reporting for many financial instruments. More importantly, efforts to interpret such rules by companies and their auditors have frequently resulted in tortured and nonsensical accounting treatments. We understand that broad theories of value must be embodied in the rules; however, some recognition of the practical implications of implementing such broad concepts is greatly needed.

In 2008, AEL was required to recognize losses on a set of securities which (i) it has no intention of selling and (ii) are performing in accordance with their terms and are expected to continue to perform for the foreseeable future. Further, in all likelihood, we will recognize high levels of income in future periods due to the extremely depressed values to which we recorded impairments based upon observable inputs in dysfunctional markets. The fair values that were observable in the market were used since those values were interpreted to be the required and most reliable source, no matter how the market was functioning.

As discussed by the FASB in its March 16, 2009, meeting, the role of judgment in accounting determinations has created much tension between management and their auditors. The high degree of subjectivity in fair value accounting requires management's judgment. Auditors are required to review management's assessments and issue an opinion on management's ability to properly apply these standards with the goal of presenting financial statements fairly. Through auditors' current understanding and interpretation of SFAS 157 we don't envision a climate in which one could possibly determine that markets are deemed inactive and that fair values more appropriately determined by some other manner besides observable market data, even if that observable market data is nonsensical to most investors.

Auditors have taken the position that the markets are active, functioning and the best source of fair value. When a standard is written with the phrase, "A quoted price in an active market provides the **most reliable evidence** of fair value and **shall be used** to measure fair value whenever available," we shouldn't be surprised that the auditors interpret "active market" to mean any market that gives investors the ability to buy and sell assets. There truly was little consideration of "market participants" and "active market" as defined in SFAS 157 in determining fair value for the preparation of financial statements for the year ended December 31, 2008. You have recognized that the only means by which we can return to an interpretation of inactive markets as you intended it to be in SFAS 157 is by implementing guidance.

Therefore, the guidance that you have released in FSP FAS 157-e to help determine when a market is not be the best source for reliable fair values is welcome. Defining the factors that could result in the determination that a market is inactive is critical and necessary, and the factors that you have identified are reasonable and on-point. However, there is still a high degree of ambiguity in the factors. Terms such as 1) abnormal, 2) highly correlated and 3) little information are all left to interpretation and judgment. We fear that auditors will again revert to the use of nonsensical observable market data without more definition in the rules around the latitude to be given management in exercising its judgment.

As accountants we have learned a set of rules that were based on math and logic to arrive at the correct answer. Over time we have slowly entered an environment where estimates and judgment have determined how we appropriately apply accounting standards. In a world where auditors and management have greater consequences for inaccurate estimates and bad judgment it makes it more difficult to apply these types of accounting standards in any manner other than extremely conservative to a point where unreliable financial statements may be the result. Therefore, we suggest "bright-line" types of tests to be added to the FSP, such as "If the current market spreads are xx% more/less than the previous 5 year average, observable market data should not be used (with highs or lows being ignored in the 5 year average)."

Again, we appreciate the opportunity to submit this letter and the efforts of the FASB and its staff on this topic. We look forward to seeing any final FSP issued.

Sincerely,

American Equity Investment Life Holding Company