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LETTER OF COMMENT NO.

April 1, 2009

Director@FASB.org
Via email

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

Dear FASB:

Performance Trust Capital Partners, LLC focuses on advising community financial institutions through strategic financial advisory services. Much of our focus is on teaching analytics and strategy for disciplined, responsible portfolio management in the fixed-income marketplace which includes extensive modeling of structured financial instruments. We work with over 500 community financial institutions nationwide and have approximately 90 full-time employees. Our principal offices are in Chicago, Illinois.

We appreciate the FASB providing application guidance and more clarity as to the intent of SFAS 157 by the issuance of FSP FAS 157-e ("157-e") and FSP 115-a 124-a EITF 99-20-b ("115-a"). Fair value is defined in SFAS 157 as the price that market participants would pay in an orderly transaction, not the price in a forced sale or distressed sale. It has been our experience that many in the industry, including pricing services, have focused solely on the concept of "exit price" and consequently look to the last trades of similar securities to determine a fair value of a specific security. Reporting entities that have followed the application guidance of SFAS 157 with well documented and researched determination of fair value for specific securities have often had their analysis rejected by reviewing parties solely because they are different than those determined by third-parties who primarily look to recent trades regardless of whether the particular market is inactive or if the trades were distressed. 157-e goes a long way to clarifying the issue but may stop short of settling the confusion and having a meaningful impact in modifying current application.

Effective Date

The FASB is on record at various conferences, board meetings and with Chairman Herz's testimony in front of the Financial Services Committee that the original intent of SFAS 157 was that liquidation value was not fair value, and if the market was inactive and trades were forced, then reporting entities could determine fair value using the present value of expected cash flows using a reasonable discount rate of a willing buyer and seller. This was further clarified with the issuance of SFAS 157-3 during the 4th quarter of 2008.

157-e has an effective date for periods ending after March 15, 2009. Given that 157-e is providing more application guidance to SFAS 157 and does not represent a significant change in the intent, we are concerned that the effective date may raise questions for those who followed similar guidance already established for determining fair value for previous reporting periods. This could be resolved by allowing retrospective application or by articulating that 157-e is simply clarifying the original intent of SFAS 157 that always existed.

Determining whether a market is inactive and a transaction is distressed

157-e establishes a two-step process to determine if a market is active and a transaction is distressed. The factors listed in paragraph 11 to help determine if a market is inactive appear reasonable.

However, if it is determined that the market is inactive, the reporting entity must then determine if a quoted price of a transaction is based on a distressed transaction. The two factors listed in paragraph 12 to determine if a transaction is distressed relate to the amount of time the security was marketed and whether there were multiple bidders for the asset. Practically speaking, we don't believe this is operational as this information may not be available to reporting entities. Further, if a particular market is large enough there would always be multiple bidders for a given security even in scenarios that are otherwise unambiguously distressed. However, in non-active markets these bidders will demand a return that represents a fire sale liquidation value or they will not transact. Clarity must be provided on this point if a change from current application is to be achieved. As an alternative or supplement, we believe that the criteria listed in paragraph 11 to determine if a *market* is inactive could be applied to determine if a specific *transaction* is distressed. For example, if the implied yield of a transaction based on an expected range of cash flows is 15-20% or greater, one could assume the seller has to sell and that the transaction is distressed. The financial and real estate markets are in unprecedented times and it would not be unreasonable to conclude that an entire market sector is inactive and dominated by distressed sales and therefore, any quoted prices from trades would need significant adjustment to determine fair value.

Determining the appropriate discount rate

Paragraph 15 of 157-e, along with public record comments of the FASB mentioned earlier, go a long way to clarify the intent of SFAS 157 when the market is inactive. Fair value represents the price of a willing buyer and seller in an orderly non-distressed transaction. Paragraph 15 suggests a valuation technique using expected cash flows discounted at a rate that reflects a reasonable risk premium in an orderly and a non-distressed transaction. It specifically states that one should not use a quoted price without adjustment.

However, paragraph A32e provides an example of how to determine an appropriate discount rate and lists five factors that may continue the current confusion regarding the application of SFAS 157. Specifically, the 3rd factor states that reasonable assumptions regarding liquidity and non-performance risk of orderly transactions based on **current market conditions** should be used to determine a discount rate. Including "current market conditions" will undoubtedly invite the same confusion that exists today which causes many third-parties to focus on the last trade to determine fair value.

Another factor listed is the credit spread of similar rated securities. It should be noted that credit ratings only measure the probability of default and not the magnitude of a loss. Since the magnitude of loss is significantly different based on the security type and/or the specific security, the information may not be relevant, and therefore credit spreads of similar rated securities may not be meaningful. Further, credit risk is already factored in with the determination of expected cash flows, and since each security has such a unique credit profile it may not be relevant to assume a similar rated security has similar credit risk profile.

The most significant step in a fair value determination is determining the expected range and timing of cash flows. The appropriate discount rate then should be estimated to reflect the uncertainty of that range but assuming an active market and an orderly transaction.

FSP 115-a 124-a and EITF 99-20-b

FSP 115-a 124-a EITF 99-20-b ("115-a") represents a significant improvement over the prior guidance as it brings the impairment guidance of securities closer to loans held directly by financial institutions and international accounting guidance.

One significant concern is that many in the industry that oversee the application of accounting and regulatory principles continue to suggest there is no materiality considerations when determining if a security is other-than-temporarily impaired (OTTI). Many suggest that a \$1 dollar decrease in expected cash flows of a security represents an "adverse change" in expected cash flows and therefore the security is OTTI. This seems contrary to accounting principles which always allow for materiality and typically avoid bright-line measurements. Further, the significant judgment involved in projecting cash flows in the current market would make such an arbitrary determination nonsensical. To the extent 115-a can help clarify the meaning of "adverse change", this would be a significant benefit to financial statement preparers and users. The standard disclaimer that this "need not be applied to immaterial items" does not appear to be enough.

Effective Date and Transition

The effective date for 115-a is for periods ending after March 15, 2009 on a prospective basis. Due to the significance of the OTTI adjustments made in the last quarter of 2008 (and in some cases still being estimated), a cumulative effect transition adjustment to retained earnings or other comprehensive income for impairment charges taken in previous reporting periods should be recorded to the beginning balance in the period of initial adoption.

We appreciate the opportunity to comment on 157-e and 115-a and look forward to its resolution.

Regards,



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