

Norman R. Nelson  
General Counsel

450 West 33rd Street  
New York, NY 10001  
tele 212.612.9205

norm.nelson@theclearinghouse.org



March 31, 2009



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

LETTER OF COMMENT NO. 272

Re: File References: Proposed FSP FAS 157-e

Dear Mr. Golden:

The Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks,<sup>1</sup> appreciates the opportunity to comment on the FASB Staff Proposal FAS 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed* (the "Proposed FSP").

The Clearing House strongly agrees with the Board's rationale to provide additional guidance regarding the issues addressed within the Proposed FSP to clarify whether a market for a financial asset is not active and a transaction is not distressed for fair value measurements under FASB Statement No. 157, *Fair Value Measurements* (FAS 157). The Board recently issued FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset is Not Active*, to address valuing financial assets in inactive markets; however, that FSP did not provide sufficient guidance to determine when a market has gone from being active to inactive and did not provide clear guidance on the ability to move from an observable market transaction to another valuation technique utilizing both market data and management judgment. As a result, a strong bias toward quoted prices remained regardless of the substance of those quotes. We believe the Proposed FSP provides adequate guidance to allow preparers to apply

<sup>1</sup> The members of The Clearing House are: ABN AMRO Bank N.V.; Bank of America, National Association; The Bank of New York Mellon; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; UBS AG; U.S. Bank National Association; and Wells Fargo Bank, National Association.

judgment in a logical manner in order to determine fair values as FAS 157 had originally intended, without bias toward using data that is not representative of the true fair value of a financial asset. The inherent complexities associated with valuing financial instruments in illiquid markets along with the application of guidance on valuing those instruments in such markets has been difficult. The disconnect between fair value required under the current accounting guidance and preparers' views of reasonable and appropriate valuations of certain financial instruments has furthered the lack of transparency and the proposed guidance takes an appropriate step to align those views from both an income recognition and financial statement disclosure perspective.

Although we believe the Proposed FSP clearly defines an inactive market and a distressed transaction and provides an operational model for preparers to determine whether a transaction is distressed, we have several recommendations which should result in more consistent determinations of distressed transactions in practice, thereby, resulting in more transparent and consistent financial reporting. Our comments and recommendations regarding the Board's specific questions are as follows:

1. *Is the proposed effective date of interim and annual periods ending after March 15, 2009, operational?*

Response:

The Clearing House agrees with the proposed effective date and believes the Proposed FSP to be operational. We believe existing infrastructures will allow preparers to derive fair values for the instruments in scope using appropriate present value techniques. Please refer to our response 3. for suggested improvements to the two-step model to improve a preparers' ability to adopt the Proposed FSP for the first quarter.

2. *Will this proposed FSP meet the project's objective to improve financial reporting by addressing fair value measurement application issues identified by constituents related to determining whether a market is not active and a transaction is not distressed? Do you believe the amendments to Statement 157 in this proposed FSP are necessary, or do you believe the current requirements in Statement 157 should be retained?*

Response:

The Clearing House believes the Proposed FSP substantially meets the project's objective. We believe the Proposed FSP clearly defines an inactive market and a distressed transaction and provides an operational model for preparers to determine whether a transaction is distressed, which should result in more consistent determinations of distressed transactions in practice, thereby, resulting in more transparent and consistent financial reporting.

We recommend the Board consider revising the prescriptive guidance included in paragraph 15 of the Proposed FSP to allow preparers to exercise judgment in determining fair value. As written, the Proposed FSP states, "the reporting entity **must** use a valuation technique other

than one that uses the quoted price without significant adjustment.” Generally, the Proposed FSP reinforces the need to exercise prudent management judgment and consider all evidence in determining fair value; however, in this case the Proposed FSP requires management to ignore certain evidence. After investigation, management may consider those inputs to be relevant to the fair value measurement and requiring the exclusion of that data may have unintended consequences, requiring pricing information for entire trading portfolios to be discarded, resulting in measurements and disclosures that do not faithfully represent an entity’s best estimate of fair value. We would suggest the Board consider revising the sentence to read, “...the reporting entity **should consider all available evidence and may use other methods of determining fair value including, but not limited to,** using a valuation technique other than the one that uses the quoted price without significant judgment.” The suggested change would allow management to exercise judgment without a prescriptive approach to determining fair value for distressed transactions.

3. *Do you believe the proposed two-step model for determining whether a market is not active and a transaction is not distressed is understandable and operational? If not, please suggest alternative ways of identifying inactive markets and distressed transactions.*

Response:

The Clearing House believes that there should not be a bias either way in deciding whether a transaction in an inactive market is distressed. While we believe Step 1 of the model contains an appropriate set of factors for management to consider in determining when a market is inactive, we believe the guidance in Step 2 will be difficult to apply. Step 2(a) states, “there was sufficient time before the measurement date to allow for usual and customary marketing activities for the asset,” which we believe conceptually would indicate a transaction was not distressed. In practice, preparers would be required to obtain evidence supporting their attempts to determine whether or not this factor was present and the guidance does not give enough clear direction in defining “sufficient time” and “usual and customary marketing.” Because these terms will vary for different types of assets and will likely change depending on current market conditions, in practice it will be difficult to apply this piece of the proposed guidance. We do not believe prescriptive guidance would be appropriate in this step; however, we do recommend the Board consider revising the language to eliminate the practice issues identified.

Step 2(b) states, “there were multiple bidders for the asset.” The Clearing House believes the Proposed FSP is attempting to address whether or not the market is active; however, we do not believe the language included in the step will be applied in practice as intended. Situations may exist where multiple bidders placed “low ball” offers on an asset. We believe the Board should consider changing the language in Step 2(b) to the following, “**there were multiple executable offers to buy the asset.**” Based upon our understanding of the intended purpose of the step, we believe changing the language would eliminate the problem highlighted above.

4. *Are the factors listed in paragraph 11 of the FSP that indicate that a market is not active appropriate? Please provide any other factors that indicate that a market is not active.*

Response:

The Clearing House believes the factors listed in paragraph 11 of the Proposed FSP are appropriate and should not be considered to be all inclusive.

5. *What costs do you expect to incur if the Board were to issue this proposed FSP in its current form as a final FSP? How could the Board further reduce the costs of applying the requirements of the FSP without reducing the benefits?*

Response:

The Clearing House does not believe preparers will incur significant additional costs in applying the requirements of the Proposed FSP. The Proposed FSP does not introduce new measurement methodologies or techniques that do not already exist within the current infrastructure. Additionally, we believe the benefits of increased quality of financial reporting and transparency outweigh any additional costs preparers may incur in applying the Proposed FSP.

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Thank you for considering the comments provided in this letter. If you have any questions or are in need of any further information, please contact me at (212) 612-9205.

Sincerely yours,

