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Group Accounting Policy

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1 April 2009



Proposed FSP No. FAS 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed*

Dear Mr. Golden:

We appreciate the opportunity to comment on Proposed FASB Staff Position No. FAS 157-e, *Determining Whether a Market is Not Active and a Transaction Is Not Distressed* (the Proposed FSP). We recognize that financial markets are passing through extraordinary times, and therefore, we generally support the FASB's decision to issue guidance that clarifies how judgment should be used in measuring fair value especially when markets are not active. Our responses to the specific questions on the Proposed FSP raised by the FASB staff are included in the appendix attached to this letter.

UBS is a global financial institution that uses International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB) as its basis for financial reporting. We also have US subsidiaries that are regulated and use US GAAP for stand-alone financial reporting; thus, we are greatly interested in the complete elimination of differences between IFRS and US GAAP. While there are important differences between the fair value measurement frameworks of IFRS and US GAAP, we believe that they share many key similarities. We believe that the Proposed FSP may increase the number of differences between those two frameworks. We are concerned that such an important issue was not closely coordinated with the IASB.

The timing of the Proposed FSP leaves insufficient time for the IASB to adequately consider the guidance, expose it for comment and, if necessary, amend the relevant IFRS standard. In response to the FASB's action, the IASB has issued a formal process document requesting views from its constituents on the Proposed FSP. Comments on that document are due 20 April 2009. In the meantime, the FASB will issue a final FSP. That final FSP may become effective before the IASB has received comments and has had time to fully consider those comments. Therefore, we strongly urge that the FASB consider an effective date of "interim and annual periods beginning after June 15, 2009" at a minimum. Additionally, we strongly encourage that the FASB coordinate the issuance of any other such guidance with the IASB to avoid the creation of unlevel playing fields that impair the health and stability of global capital markets.

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Once again, we appreciate the opportunity to participate in the FASB's due process. Independent standard setters and robust due process are the cornerstones of high quality accounting standards. If you have any questions regarding our comments, please call John Gallagher at (203) 719-4212 or Mike Tovey at (203) 719-8164.

Kind Regards,

UBS AG

John Gallagher Managing Director Group Accounting Policy Mike Tovey Executive Director Group Accounting Policy

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Appendix

UBS Responses to Questions from the Proposed FSP, Determining Whether a Market Is Not Active and a Transaction Is Not Distressed

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

No, we do not believe that the proposed effective date of interim and annual periods ending after March 15, 2009, is feasible for many entities. Appropriately estimating the values of thousands of financial instruments is a complex process that requires significant judgment and due care. There is insufficient time to address the implementation issues if the Proposed FSP is issued in its current form. Thus, we recommend at a minimum an effective date of "all periods ending after June 15, 2009, with early adoption permitted for the quarter ended March 31, 2009." We concur with the proposed prospective application given that we would consider any changes resulting from the Proposed FSP as a change in estimate.

Question 2: Will the 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?

We support the issuance of guidance that provides further clarifications on determining whether a market is not active and a transaction is distressed. We also support the issuance of guidance that clarifies that fair value measurement requires the use of significant judgment that should not be inadvertently circumvented by robotic reliance on transaction prices generated in markets that are not active. Many of the FASB's constituents have asked for additional guidance on those matters (including the SEC as pointed out by the FASB staff in paragraph 7 of the Proposed FSP). In light of those requests, we believe that it is necessary for the FASB to issue guidance.

While we support the FASB's intent in issuing the Proposed FSP and believe that some guidance on those issues should be provided, we do not agree with all aspects of the Proposed FSP. In our response to Question 3 below, we discuss aspects of the Proposed FSP with which we disagree and make recommendations for improving the Proposed FSP, including its operationality.

Question 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.

We believe that the key objective of the Proposed FSP should be to reinforce that fair value measurement requires the use of significant judgment. Any effort to clarify how that judgment should be used helps improve its application. When measuring the fair value of a particular instrument, observable transaction information may not be relevant without adjustment. Entities must exercise judgment and be allowed to exercise judgment in measuring those fair values and making adjustments to observable transaction information. We believe that any guidance issued by the Board should address that issue.

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We do not believe that the proposed two-step model is understandable and operational as currently written in the Proposed FSP. We generally agree with Step 1 as it represents factors that should be considered in identifying an inactive market (refer to our response to Question 4). However, Step 2 presents a rebuttable presumption that the pricing information from such inactive markets is distressed and *must* be significantly adjusted. We believe that the criteria stipulated to overcome the presumption may set too high a hurdle to overcome and may result in an entity automatically disregarding relevant pricing information. Consequently, we recommend eliminating criteria 2(a) and 2(b) of paragraph 13 of the Proposed FSP. In their stead, we propose that the determination of whether the presumption can be overcome is a matter of judgment based on available facts and circumstances. In that context, we also propose that the Board change the language in paragraph 15 of the FSP, which stipulates that pricing information must be significantly adjusted in order to be used. We believe that language is too rigid and may require that an entity automatically disregard relevant pricing information. Therefore, the standard should make it clear that a presumed distressed price may need adjustment but also may contain relevant pricing information. Additionally, the standard should clarify that the presumed distressed price might be deemed fully relevant. We believe that such a view would be consistent with the discussion in paragraph 14; that is, a non-distressed transaction price in a market that is not active may need to be adjusted for any other relevant factors or conditions.

The following paragraphs provide additional discussion to support the elimination of criteria 2(a) and 2(b). With regard to criterion 2(a), it does not appear feasible to establish a mechanism for readily obtaining such information from third party pricing services. Such information might only be possible to obtain in a transaction in which the reporting entity is directly participating (as buyer or seller).

Criterion 2(b) also is not operational. There are very few instruments that are subject to a natural bidding process in a market that is not active. Many such instruments would be traded on a bilateral basis, that is, the seller identifies a buyer (or vice versa) and negotiates a transfer. Pricing information from bilateral trading would be considered to be relevant in valuing the same or similar assets; however, because there is a lack of multiple bidders, we believe that the strict construction of Criterion 2(b) would require that such information be ignored unless significant adjustment were made (although one may not be deemed necessary). Additionally, third party pricing information would lack the visibility necessary to know if such information came from transactions with multiple bidders. To reiterate our earlier proposal, we believe that criteria 2(a) and 2(b) should be eliminated in favour of a judgment-based approach as discussed.

Question 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.

Yes, we believe that all of the factors in Step 1 to indicate that a market is not active are appropriate. Additionally, we concur with the explicit language stating that such indicators should not be considered all inclusive because other factors may also indicate that a market is not active (for example, relatively few dealers for a particular product).

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Question 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?

Refer to our response to Question 1.