

RICHARD H. MURRAY CHAIRMAN

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LETTER OF COMMENT NO.

April 1, 2009

Mr. Russell Golden Technical Director Financial Accounting Standards Board 301 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-05116



Re: Comments to Proposed FSP FAS 157-e, Determining Whether a Market is Not Active and a Transaction is Not Distressed; Proposed FSP FAS 115-a, FAS-124-a and EITF 99-20-b, Recognition and Presentation of Other-Than-Temporary Impairments.

Dear Mr. Golden:

The U.S. Chamber of Commerce created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. Effective and transparent financial reporting policy is a vital portion of the CCMC's agenda.

Over the past several months, the CCMC has called for and suggested initiatives to improve fair value accounting. These proposals included providing increased guidance regarding inactive markets and distressed sales, as well as necessary reforms to impairment rules. We believe that these changes are needed to address the magnification aspects that some accounting standards exhibited during the ongoing financial crisis. Treasury Secretary Geithner's proposal last week to purchase toxic assets heightens the urgency in addressing these valuation issues. Many of the CCMC's suggestions are encompassed in the FASB's proposals.

While the CCMC is supportive of the FASB's reforms to fair value accounting and impairments, these proposals can be greatly enhanced through several of the refinements listed below.

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Government Intervention Must Be Addressed in Guidance for Inactive Markets and Distressed Sales.

While the FASB proposals give greater clarity on the definition and identification of inactive markets and distressed sales, it is important to note that aspects of the financial crisis must be addressed in a more comprehensive manner. As mentioned earlier, Treasury Secretary Geithner announced a plan to resolve the issue of toxic assets that sit at the center of the financial crisis. This plan seeks to create a Public Private Investment Program ("PPIP"), through which private entities will be responsible for the valuation, purchase, management and ultimate disposition of toxic assets.

These valuation issues are of extreme importance because they will determine the amount of losses that must be recognized by financial institutions, as well as the possibility for taxpayers to recoup a return on investment. Valuations that are too low will amplify the losses of financial institutions, perhaps endangering their ability to survive. On the other hand, valuations that are too high will prevent taxpayers from achieving a profit, while making it harder to trade instruments ultimately negating the intent of the Geithner plan. It must also be understood that the PPIP will be a fundamental initial step in restarting the markets linked to securitized instruments.

By all accounts, a market that requires massive government intervention to stimulate trading is an inactive market. Therefore, during its early stages, the efforts of the PPIP cannot be viewed or considered to be a normal market function. Additionally, and for the same reasons, transactions by the PPIP must be viewed as distressed transactions. Such transactions are efforts to resolve a crisis and cannot be treated as market making events.

A market cannot be presumed to be active until normal and customary trading has been resumed. We recognize that the Geithner plan was announced after FASB released the current proposals. Yet for greater clarity and recognition of unfolding events, more guidance is needed to address these issues.

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Accordingly, the CCMC recommends that proposed FSP FAS 157-e be amended to give more guidance on inactive markets and distressed transactions, in light of the Geithner plan, and make the needed adjustments to insure an accurate reflection of resumption of normal market functions to determine appropriate asset values.

Allowances Must be Made for New Standards to be Used in Determining 2008 Values for Assets.

The current recession and financial crisis began in 2007 with the rising number of foreclosures in the subprime mortgage market. As we know, the contagion spread throughout the financial system shutting down markets in securitized instruments and eventually locking up the flow of credit. This led to a series of asset write-downs contributing to the undermining of the stabilization of the financial system. Similarly, the procyclical aspects of fair value accounting began to exacerbate the recognition and size of losses creating a self-reinforcing cycle that created additional harm to the economy. This led to the loss of hundreds of billions of dollars of capital, which under current rules cannot be recovered, even if the financial instruments and underlying assets retain value and substantial financial performance.

The separation of losses amongst credit and liquidity provides for the recognition of real economic losses, while allowing for the potential recoupment of other losses. Such a separation must be transparent and disclosed to allow investors and businesses to understand the true nature of losses and provide the information needed to make sound decisions. By adopting this proposal, there is recognition that not all of the losses occurred are real and that there is a potential for liquidity losses to be recouped. This indeed is a central part of the Geithner plan to clean up toxic assets. As such, those liquidity losses suffered during 2008 should be allowed the same treatment for potential recoupment as 2009 losses will be. This will provide an accurate assessment of realistic economic activities and allow for some of the capital to be restored if appropriate conditions warrant.

Accordingly, the CCMC recommends that the proposed guidance and changes to accounting standards be applied to 2008 asset valuations in 2009 financial data to provide more accurate financial data for investors, businesses and the markets.

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A clearer reflection of asset values will also assist with recovery efforts including the Geithner plan to resolve the toxic asset issue.

The Effective Date for the New Standards Must Be Flexible to Allow for Implementation in the First or Second Quarter Based on a Company's Ability to File.

While the CCMC has publicly stated that changes to Fair Value accounting were needed earlier, there is a general recognition and appreciation with the speed and dispatch that FASB has considered and released these proposals. Nevertheless, if FASB is to keep its timeline and adopt these proposals by April 2nd, such action will occur at a time when businesses are already drafting their financial statements for the end of the first quarter.

Some businesses, because of their size, will be able to apply the new standards to first quarter data and be able to use the new valuation techniques successfully. However, many mid-size and smaller businesses may be challenged to readjust systems to use new techniques in such a short space of time.

Accordingly, the CCMC recommends flexibility in the effective date to allow those companies that can use the new standards for the first quarter to do so, and to make the standards effective for all other businesses by the end of the second quarter.

Clarification of Held to Maturity Rules is Needed.

FAS 115 classifies investments in equity and debt instruments into three categories: trading, available for sale ("AFS") and held to maturity ("HTM"). We believe that the intent for HTM is to accommodate investors that use securities for cash flow matching and recognize that the fair value of such securities should be disclosed but not reported in the balance sheet unless other than temporarily impaired. Unfortunately cash flow models change and companies need the flexibility to trade securities from time-to-time to accommodate an active asset-liability matched management style as well as respond to unforeseen liquidity needs. It goes without saying that the recent liquidity issues facing the economy have been the most challenging in the past 75 years.

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While the intent and ability to hold requirements for AFS were addressed in the changes to EITF 99-20 this past January, we believe that the ability and intent to hold provisions of the HTM category need to be revisited to make the category more widely available. The guidance should allow companies to transfer securities into this category and provide a closer alignment of U.S. GAAP with IFRS.

Because past decisions on portfolio management could not anticipate the recent catastrophic economic events, the CCMC believes that the FASB proposals should affirmatively reflect the drastically changed circumstances. In that vein, the proposals must insure that a business following the guidance under FAS 157-e will not taint its portfolio. In other words, the intent of the portfolio decision should not be called into question based on these proposals and the drastically changed circumstances over the past several years. Furthermore, the Geithner plan will seek to increase trading in asset backed securities and businesses should not be penalized for attempting to participate in economic recovery activities.

Accordingly, the CCMC requests a clarification of HTM requirements to allow businesses to more accurately accommodate liquidity needs in these economically challenging times.

Conclusion

The financial crisis is ongoing and the ramifications persist to spread throughout the economy. If allowed to continue, the current treatment of fair value accounting and impairment standards will make it difficult to accurately reflect the value of assets. If left unchanged the present financial reporting architecture will also make it difficult for recovery efforts, including the Geithner plan, to take hold and provide the maximum benefit needed to jump start the financial markets.

The FASB proposals are a step in the right direction to more accurate reflect asset valuations, while insuring that accounting standards reflect economic activity and not drive it. While the CCMC supports these proposals, improvements are needed to more effectively realize their intent. Additionally, the CCMC, and others, strongly believe that similar actions are needed by the appropriate authorities to provide similar guidance for auditors.

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Unless such action is taken, the impact of the FASB proposals may be obviated and the exacerbating aspects of fair value accounting allowed to continue.

Thank you for your consideration of this matter and we stand by to assist in any manner.

Sincerely,

Richard Murray

Chairman

U.S. Chamber of Commerce

Center for Capital Markets Competitiveness