R.G. Associates, Inc.

Investment Research/ Investment Management 201 N. Charles Street, Suite 806 Baltimore, MD 21201

Jack T. Ciesielski, CPA, CFA President

Phone: (410)783-0672 Fax: (410)783-0687

March 31, 2009

Mr. Russell Golden FASB Technical Director Financial Accounting Standards Board P.O. Box 5116 Norwalk, CT 06856-5116



LETTER OF COMMENT NO. 250



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

Mr. Golden.

I appreciate the opportunity to comment on this proposed Staff Position. I believe that this is a flawed proposal resulting from a flawed, though superficially rigorous, process. Though the FASB has met its due process requirements, I do not believe investors will be served well by a hastily developed FSP that eviscerates a carefully crafted standard. It also creates difficulties for the FASB's long-term credibility as an independent standard setter. There is a nearly "Groundhog Day"-like sameness developing in the accounting standard world: at the end of the quarter, politicians acting in the interests of some of their constituents pressure either the IASB or the FASB to "do something" about an unfair standard, and a rapidresponse amendment that weakens an existing standard is developed.

This template needs to be broken if investor confidence is to be restored to capital markets. This proposal does not break that template.

The following are my responses to the specific questions asked in the document.

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

I don't believe it can be effectively implemented in the short time span between now and first quarter reporting season. As proposed, this FSP will broadly increase the number of reported Level 3 values. While some firms may have extensively modeled securities values for which they are currently reporting on a Level 1 or Level 2 basis, I find it hard to believe that there has been broad enough experimentation to believe that all firms are ready to report rigorously-devised estimates of fair values on such short notice.

Some firms may say it is operational in this quarter, and they may be correct - in their own case. I remain skeptical that all firms will be prepared for what amounts to a two or three week "grace period" before the reporting of first quarter results. A lack of preparedness will not enable companies to provide better information to markets. If the purpose of this proposal, as determined by Congressional inquisitors, is to instill confidence in market participants, the inability to rigorously prepare for implementation may result in less confidence.

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?

In my view, the listing of indicators in paragraph 11 for an inactive market will spawn "check-the-box" thinking on the part of preparers and auditors, and will foster bright line testing that may be used by preparers to develop an estimated fair value when one is desired. Besides, they are too absolute: it seems that those attributes could be present in active markets as well. For example, wide bid-ask prices might be the norm for a volatile yet active market.

I think this guidance has ventured well past accounting standards and become more of a handbook for settling preparer-auditor squabbles by defining market conditions. It can only lead to more requests for guidance. Statement 157 has been a fairly "principles-based" standard as conceived, and the amendments to date (notably last fall's FSP 157-3) should serve as enough guidance. The amendments in this proposal are not only unnecessary, they set a bad precedent for issuing more and more minute guidance that does not bring illuminating information to investors, but only creates a comfort zone for preparers and auditors.

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.

I believe that the two-step model, as discussed above, is overly absolute in step 1: I believe it will result in labeling a market as inactive, when in fact it might be active. I also believe that in step 2, the presumption of inactive markets - and the burden of proof that they're not - should be reversed. Instead of requiring the preparer to prove that the market is *not* inactive by looking for multiple bidders and judging whether there was sufficient time for normal marketing activities, the preparer should be required to prove that there weren't multiple bidders and that there was insufficient time for normal marketing activities in order to prove that the market was inactive.

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.

See comments above.

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?

I think the explicit costs might be negligible at first, because I don't think the FSP will be applied with much rigor in the first quarter. It may become more costly as firms start developing more questions after applying it.

I believe the proposed FSP will be costly in terms of market confidence, however. This proposal does not provide more meaningful information to investors, and they may exact more of a risk premium in pricing the securities of firms making heavy use of the proposed reporting.

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If you have any questions on the above or wish to discuss any other aspects of the proposal with me, you are welcome contact me. Thanks again for the opportunity to comment. Best regards.

Sincerely,

Jack Ciesielski

jciesielski@accountingobserver.com