

NEW YORK, NY 10004

September 29, 2010

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

Re: File Reference No. 1810-100

By email

Dear Mr. Golden:

The New York State Banking Department (the "Department") has reviewed the Financial Accounting Standards Board's Exposure Draft, "Accounting for Financial Instruments and Revisions to the Accounting for Derivative Instruments and Hedging Activities," and we appreciate the opportunity to provide our overall thoughts and responses to selected questions.

The Department strongly opposes the proposal. Fair values are often not relevant for certain assets held for long term and are rarely relevant for liabilities. Fair value amounts are generally not reliable in illiquid markets and consequently their inclusion damages the credibility of the financial statements. The difficulties of determining many fair values undercut the Board's intent for the proposal to simplify accounting.

While community banks and smaller financial institutions have long disclosed fair values of all financial instruments, this has not provided critical information to preparers or users. The mixed attributes accounting model has been more useful since these institutions do not operate on a fair value basis. Instead, long term customer relationships have been their key attribute and provide their greatest value. At times the proposal seems to be telling institutions how they should manage their businesses rather than having the accounting reflect how these businesses are actually managed.

While we do not fully agree with the Alternative Views, we prefer certain aspects over the proposal. Our observations about the Alternative Views follow:

• The last sentence of paragraph BC244 succinctly describes the

proposal's basic flaws.

- Paragraph BC245 describes a model which would require one of three criteria to be met in order to require that fair values be used. This model would require fair value accounting if the cash flows of the instrument are variable, a quoted market price is readily available, or the entity's business practice is not to hold the instrument to collect its contractual cash flows. We recommend revising this for non-trading assets so that all three criteria must be met in order to require that fair value be used for measurement.
- The last two sentences of paragraph BC247 captures our concerns that the Board's proposal diverges further from IASB while convergence of GAAP and IFRS is a high priority. Convergence should be a crucial element in finalizing the proposal, since these sweeping changes may need to be significantly modified again in the near future via convergence with or adoption of IFRS. Sharp divergences between GAAP and IFRS also endanger convergence.
- We are concerned that paragraph BC252 could suggest eliminating the proposed deferral. We would extend beyond the proposal to allow a four year deferral for the entire proposal for all nonpublic entities and those public entities with less than one billion dollars in total assets.

We note that the significant differences between the proposal and the Alternative Views are separated by a single vote, and we question whether such major modifications should be adopted when views contrast so strongly. The Board detailed project objectives during its June 30th webcast. The Board should explore whether its primary objectives can be met without making such radical changes.

Due to the importance of credit impairment issues, we recommend that the Board's approach be clarified and separately re-exposed on a joint basis with the IASB.

Our responses to selected questions follow.

Question 4: The proposed guidance would require an entity to not only determine if they have significant influence over the investee as described currently in Topic 323 on accounting for equity method investments and joint ventures but also to determine if the operations of the investee are related to the entity's consolidated business to qualify for the equity method of accounting. Do you agree with this proposed change to the criteria for equity method of accounting? If not, why?

We disagree with changing the equity method of accounting as proposed, since we believe current GAAP is simpler and more easily applied and understood.

Question 8: Do you agree with the initial measurement principles for financial instruments? If not, why?

We disagree with recording at fair value certain assets such as debt securities and loans held for long term and all liabilities other than those used in trading or when the entity is in liquidation. See our introductory comments for more details.

Question 13: The Board believes that both fair value information and amortized cost information should be provided for financial instruments an entity intends to hold for collection or payment(s) of contractual cash flows. Most Board members believe that this information should be provided in the totals on the face of the financial statements with changes in fair value recognized in reported stockholders' equity as a net increase (decrease) in net assets. Some Board members believe fair value should be presented parenthetically in the statement of financial position. The basis for conclusions and the alternative views describe the reasons for those views. Do you believe the default measurement attribute for financial instruments should be fair value? If not, why? Do you believe that certain financial instruments should be measured using a different measurement attribute? If so, why?

Fair value should not be the default measurement attribute since as previously discussed it is often irrelevant. Amortized cost should be used for certain assets such as debt securities and loans held long term and all liabilities except those used in trading or when the company is in liquidation.

Question 15: Do you believe that the subsequent measurement principles should be the same for financial assets and financial liabilities? If not, why?

While we understand the Board's desire for matching assets and liabilities, we do not believe they must have the same measurement principles since counterparties expect financial liabilities to be settled at contractual amounts rather than a fair value which is often hypothetical. The attempt at conceptual purity leads to a disconnect from reality.

If the Board believes that all financial assets and liabilities must be consistently measured, it is preferable to use amortized cost for the primary financial statements and disclose separate financial statements at fair value. Such disclosures would provide a clearer view of fair values than the proposal, which includes numerous exceptions and alternatives. The latter will result in a lack of comparability between financial statements.

Question 17: The proposed guidance would require an entity to measure its core deposit liabilities at the present value of the average core deposit amount discounted at the difference between the alternative funds rate and the all-in-cost-to-service rate over the implied maturity of the deposits. Do you believe

that this remeasurement approach is appropriate? If not, why? Do you believe that the remeasurement amount should be disclosed in the notes to the financial statements rather than presented on the face of the financial statements? Why or why not?

The remeasurement approach for core deposit liabilities is not appropriate, and its shortcomings are well described in Alternative Views paragraph BC248. The complex new calculation should not be disclosed in the notes to the financial statements. Instead, the fair values should be disclosed within a comprehensive footnote showing the complete balance sheet at fair value.

Question 18: Do you agree that a financial liability should be permitted to be measured at amortized cost if it meets the criteria for recognizing qualifying changes in fair value in other comprehensive income and if measuring the liability at fair value would create or exacerbate a measurement attribute mismatch? If not, why?

This overly conceptual approach does not reflect the economic substance. All liabilities should be recorded at amortized cost unless they are in trading or the entity is in liquidation.

Additionally, the optional classification criteria for FV-OCI are overly complex and rules-based.

Question 24: The proposed guidance would provide amortized cost and fair value information on the face of the financial statements. The Board believes that this would increase the likelihood that both measures are available to users of public entity financial statements on a timely basis and that both measures are given equal attention by preparers and auditors. Do you believe that this approach will provide decision-useful information? If yes, how will the information provided be used in the analysis of an entity? If not, would you recommend another approach (for example, supplemental fair value financial statements in the notes to the financial statements or dual financial statements)?

We question whether both amortized cost and fair value would receive "equal attention" when fair value is the bottom line amount. Supplemental fair value financial statements in the notes to the financial statements are the preferable approach.

Question 35: For financial instruments measured at fair value with qualifying changes in fair value recognized in other comprehensive income, do you believe that the presentation of amortized cost, the allowance for credit losses (for financial assets), the amount needed to reconcile amortized cost less the allowance for credit losses to fair value, and fair value on the face of the statement of financial position will provide decision-useful information? If yes, how will the information provided be used in your analysis of an entity? If not,

why?

Multiple amounts shown for various balance sheet accounts may create "information overload" and be more confusing than enlightening.

Questions 48: The proposed guidance would require interest income to be calculated for financial assets measured at fair value with qualifying changes in fair value recognized in other comprehensive income by applying the effective interest rate to the amortized cost balance net of any allowance for credit losses. Do you believe that the recognition of interest income should be affected by the recognition or reversal of credit impairments? If not, why?

We agree with Alternative Views paragraph BC250 in opposing this approach and expect that the proposed approach will be overly complex for preparers and add confusion to analysis.

Question 53: The method of recognizing interest income will result in the allowance for credit impairments presented in the statement of financial position not equaling cumulative credit impairments recognized in net income because a portion of the allowance will reflect the excess of the amount of interest contractually due over interest income recognized. Do you believe that this is understandable and will provide decision-useful information? If yes, how will the information provided be used? If not, why?

We believe this will not provide decision-useful information; see response to Question 48.

Question 57: Should no effectiveness evaluation be required under any circumstances after inception of a hedging relationship if it was determined at inception that the hedging relationship was expected to be reasonably effective over the expected hedge term? Why or why not?

At minimum an annual effectiveness evaluation should be performed.

Question 58: Do you believe that requiring an effectiveness evaluation after inception only if circumstances suggest that the hedging relationship may no longer be reasonably effective would result in a reduction in the number of times hedging relationships would be discontinued? Why or why not?

We believe the proposal would significantly reduce the number of discontinued hedging relationships since there would be an incentive to not evaluate effectiveness. As proposed, the validity of hedge accounting is in question.

Question 69: Do you agree with the proposed delayed effective date for certain aspects of the proposed guidance for nonpublic entities with less than \$1 billion in total consolidated assets? If not, why?

In order to alleviate burdens and enhance compliance with this significant change, we recommend that the full proposal be deferred for four years for all nonpublic entities and those public entities with less than \$1 billion in total consolidated assets.

If you would like to discuss our letter, please call me at (212) 709-1532 or email me at john.mcenerney@banking.state.ny.us.

Very truly yours,

John McEnerney Chief of Regulatory Accounting