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

norm.nelson@theclearinghouse.org



January 15, 2009

Mr. Russell G. Golden Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116)/5

LETTER OF COMMENT NO.

Re: File Reference: Proposed FSP FAS 107-a

Dear Mr. Golden:

The Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks¹, appreciates the opportunity to comment on the Exposure Draft of the proposed FASB FSP FAS 107-a, *Disclosures about Certain Financial Assets: An Amendment of FASB Statement No. 107* (the Proposed FSP).

As noted in our letter to the Board dated December 30, 2008, regarding Proposed FSP EITF 99-20-a, Amendments to the Impairment and Interest Income Measurement Guidance of EITF Issue 99-20 ("December 30th letter"), The Clearing House strongly supports the FASB's efforts to develop a single accounting model for recognizing and measuring other-than-temporary impairment ("OTTI") of debt securities. We also agree, in principle, that it is appropriate for the Board to reevaluate existing disclosure requirements to ensure that they continue to produce meaningful disclosures of investment securities with OTTI in light of the proposed changes to the OTTI accounting model. However, we strongly oppose the Proposed FSP for several reasons. First, we believe that it represents a significant and unnecessary expansion in scope relative to what we believe the objective of the Proposed FSP should be – that is, to improve disclosures about impaired investment securities. Second, and we cannot

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.

overemphasize this point, we believe that it would be impossible for any major commercial bank to implement the Proposed FSP in its current form by the proposed effective date. Finally, we are concerned that significant and possibly fatal conceptual flaws would emerge as entities attempt to apply the guidance in SFAS 114 to certain classes of investment securities.

As fully discussed in our December 30th letter, The Clearing House believes that SFAS 115, with certain suggested revisions intended to make it more conceptually consistent with SFAS 114, is the appropriate model for measuring impairment of investment securities. We continue to believe that the impairment measurement amount should be based upon the incurred loss amount, not the fair value amount. Disclosures about incurred losses are not sufficient since net income is the focus of financial statement users. Therefore, our strong preference is for the Board to rescind the Proposed FSP and reevaluate the need for any additional disclosures once the impairment accounting model is finalized and has been adopted.

If the Board rejects this suggestion then, at a minimum, we believe that it should reduce the scope of the Proposed FSP such that it requires only balance sheet disclosures of impaired investment securities. In this case, the Proposed FSP should be delinked from SFAS 107 and relinked to SFAS 115. Under this scenario, we would continue to be concerned about the proposed effective date because it is not clear how the SFAS 114 impairment measurement model may apply to certain classes of investment securities. In other words, even if the Board were to significantly reduce the scope of the Proposed FSP, which may make it possible for its constituents to implement it in the next several weeks, we are concerned that even the remaining disclosure requirements may prove to be either conceptually or operationally unworkable. This is presently an unknown, simply because this group was unaware of these proposed requirements until very recently, and there has been little time to analyze or test them in a robust and meaningful way.

The remainder of this letter discusses our overriding concerns in more detail. The Appendix to this letter responds to the specific questions posed in the Proposed FSP.

Scope of Proposed FSP

Loans held for investment should be excluded from the scope of the Proposed FSP. With respect to the first table in the Appendix to the Proposed FSP (i.e., the example "Disclosures about Different Measurement Attributes Relating to Certain Financial Assets"), the "Reported Carrying Amount" and the "Incurred Loss Amount" conceptually represent the same data element and will always be reported as the same amount. We believe that it is unnecessary and perhaps confusing to present the same data element twice with two different labels.

Regarding the proposed requirement to present pro forma income from continuing operations as if loans held for investment were carried at fair value, there is no way to comply with this requirement unless an entity maintains two sets of books—one set on a fair value basis and one set on an amortized cost basis. For a static loan portfolio in which loans were never repaid, purchased or transferred to held-for-sale, the pro forma income on a fair value basis could

be derived by calculating the change in fair value between the beginning of the period and the end of the period. However, loan portfolios are not static. Even if an entity never purchases or sells a loan, any loan that matures and/or is repaid during the year would have a fair value at the beginning of the period but no corresponding fair value at the end of the period. This factor alone would systematically and perhaps materially misstate this pro forma income amount. It also demonstrates that it would be impossible to comply with this proposed requirement without maintaining two sets of books, which would be a costly and time-consuming undertaking.

Leases are not presently covered within the scope of either SFAS 107 or SFAS 115; accordingly, they should not be included in the scope of the Proposed FSP. And finally, assuming that loans held for investment and lease receivables are ultimately excluded from the scope of the Proposed FSP, it would be logical to exclude other long-term receivables from the scope as well. Presumably, long-term receivables that are neither loans nor leases are much less common.

We also recommend excluding loans held-for-sale that are accounted for at the lower of cost or market from the scope of the Proposed FSP. We expect that in many cases, these loans would be sold in the near-term, so we do not believe that this disclosure is particularly meaningful. We also note that it would create inconsistent disclosures between entities that have elected the fair value option for loans held-for-sale and those that have not. Only the latter would be required to comply with the disclosure requirement, even though any of these loans may, at times, be carried at fair value.

Finally, we believe that unimpaired investment securities should be excluded from the scope of the Proposed FSP for the operational reasons outlined below, and because we do not believe that additional disclosure for securities that are not other than temporarily impaired passes an analysis of costs versus benefits. If a security has not suffered an OTTI, we do not believe that a loss has been incurred. Therefore, to calculate a different "incurred loss amount" separate from the carrying value seems to add little to no value for securities that have not been written down.

Operational Considerations

The requirements of the Proposed FSP are not just operationally burdensome—in many cases it would be impossible for large financial institutions to comply by the effective date (the current reporting period). For example, there is simply no way to present the proposed pro forma income statement without maintaining two sets of books. Any attempt to short-cut the process would come with a significant risk of material misstatement.

With respect to investment securities, there is even a more fundamental problem in that developing pro forma income statement disclosures would first require entities to determine incurred loss amounts. Similar to the difficulties involved in creating two sets of books, we also believe that it would be physically impossible to calculate incurred loss amounts for every security held in the investment portfolios of a major commercial bank in the near term. It is not

necessary to track the initial effective yield of investment securities for current reporting purposes, and therefore that information is not easily available. In addition, it is not necessary to calculate expected cash flows for investment securities not within the scope of EITF 99-20 or SOP 03-3, and cash flow information is therefore not readily available for a significant number of the thousands of investment securities that a large bank might have. Even if the data that would be required to calculate this amount were readily available, the systems are not presently in place to perform the necessary calculations. Even today, for many financial institutions, measuring loan impairment under SFAS 114 is a somewhat manual, labor-intensive process that does not lend itself to a high level of systemization.

We also note that, because the Proposed FSP is so broad in scope, it is likely to impact a significant number of commercial companies other than financial institutions. These types of entities may not have extensive financial instrument valuation expertise in-house and therefore may require the assistance of a third-party service provider to achieve compliance. With so little time remaining before the proposed effective date, it is unclear whether these entities would be able to achieve compliance.

All of the operational difficulties must be viewed against the backdrop of time constraints, deadlines and legal requirements. To summarize, large accelerated SEC filers only have until March 2, 2009 to file their 2008 Form 10-K. Assuming that the Proposed FSP were finalized in its present form and assuming that entities start the implementation process now, in mid-January, before the Proposed FSP is even finalized, they will have approximately six weeks to: 1) obtain and process all of the information in the manner described above; 2) fully document and test the internal controls over newly-developed processes used to develop the disclosures in accordance with Sarbanes-Oxley Section 404; and, 3) arrange for their independent accountants to review these newly-created processes and controls and audit the resulting disclosures. Clearly, such an expectation is neither reasonable nor possible.

Application of SFAS 114 to Certain Classes Debt Securities

One example of a situation where it may be difficult to apply SFAS 114 to investment securities relates to debt instruments with prepayment risk. SFAS 114 requires impairment to be measured based on the present value of expected cash flows discounted at the loan's effective interest rate, which it defines as, "the rate of return implicit in the loan (that is, the contractual interest rate adjusted for any net deferred loan fees or costs, premium, or discount existing at the origination or acquisition of the loan)." Accordingly, it is unclear how an entity would comply with the SFAS 114 impairment measurement method for investment securities that incorporate prepayment risk such as agency pass-through securities, which constitute a significant proportion of large banks' investment portfolios.

* * * * * *

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,

Morman R. Melson

Appendix

1. Do you believe that requiring disclosure of different reporting measurement attributes (that is, as reported in the statement of financial position, at fair value, and at the incurred loss amount) for certain financial assets within the scope of this proposed FSP would (a) improve the quality of information provided to users of financial statements and (b) increase the comparability of financial statements under U.S. generally accepted accounting principles (GAAP) and IFRS? Why or why not?

No, as discussed more fully in both the accompanying letter and the December 30th letter, The Clearing House believes that the measurement of an impaired security should be based upon the incurred loss amount, not the fair value amount. Disclosures about incurred losses are not sufficient since net income is the focus of financial statement users. For investment securities that are not impaired, it is important to note that this population of securities is substantially larger than the population of investment securities with OTTI. The timing of this Proposed FSP would make it virtually impossible for most major commercial banks to quantify the incurred loss amount under SFAS 114 for every security in their portfolios by the proposed effective date. Further, we do not believe that the benefit of reporting such securities under a different measurement attribute would exceed the cost incurred to obtain this information. Also as discussed in the accompanying letter, we believe that fundamental conceptual inconsistencies may arise in attempting to apply SFAS 114 to debt securities.

For loans, entities are already required to disclose both the incurred loss amount (i.e., this is the carrying amount of the loans as defined under SFAS 114) and the fair value amount under SFAS 107. Leases are accounted for under a completely different model and are presently excluded from the scope of SFAS 107.

2. Do you agree that the proposed disclosures should not include financial assets measured at fair value in the statement of financial position with changes in fair value recognized through earnings? If not, would you propose including such financial assets within the scope of this proposed FSP? Should financial assets measured at the lower of cost or fair value (such as mortgage loans) be included within the scope of this proposed FSP? Why or why not?

Yes, in many cases, financial assets measured at fair value with changes recognized through earnings turn over within a very short timeframe (e.g., trading assets). For these assets, fair value is clearly the appropriate measurement attribute and it would not be cost-beneficial to attempt to provide alternative measurement attributes. For the same reasons, we do not believe that financial assets measured at the lower of cost or fair value should be included within the scope of the Proposed FSP. Also, as noted in the accompanying letter, we are concerned that including such instruments in the scope creates disclosure inconsistencies between entities that have elected the fair value option and those that have not.

3. Do you believe that requiring disclosures of the pro forma income from continuing operations (before taxes) for financial assets within the scope of this proposed FSP as if those financial assets were carried (a) at fair value with changes in fair value recognized through earnings and (b) at the incurred loss amount with changes recognized through earnings would improve financial reporting? Why or why not? Should the disclosure requirements described in the preceding sentence also be required for net income and shareholders' equity? Why or why not?

We strongly disagree with the proposed requirement for entities to disclose pro forma income from continuing operations as if certain financial assets were accounted for under different accounting models. As fully discussed in the accompanying letter, it would not be possible for an entity to comply with this requirement without maintaining two sets of books throughout the year. Additionally, income from continuing operations is an extremely important financial data element for financial statement users. Preparers (and their auditors) would justifiably be very concerned about disclosing this information, even if it were labeled pro forma, unless they had a high degree of certainty that it was correct. As fully discussed in the accompanying letter, any attempts to shortcut the calculation of this amount could easily lead to a material misstatement. We believe that the most important information for users of financial statements is the difference between other than temporarily impaired securities' fair values and incurred loss amounts. This difference is most transparent and easily understood in a balance sheet focused disclosure.

4. Would including separate reconciliations of reported income from continuing operations (before taxes) to the proposed pro forma adjusted income from continuing operations (before taxes) under both a fair value basis and an incurred loss basis for financial assets within the scope of this proposed FSP be useful? Why or why not?

Refer to The Clearing House's response to Question 3. We strongly disagree with the requirement to report any pro forma income amounts, so the question of a reconciliation is irrelevant to us.

5. Do you believe that the provisions of this proposed FSP should be effective for interim and annual reporting periods ending after December 15, 2008? Why or why not? Do you believe that the disclosures in this proposed FSP should be provided on a comparative basis for subsequent periods after initial application of the proposed FSP? Why or why not?

Our strong preference is for the Board to rescind the Proposed FSP and reevaluate the need for any additional disclosures once the impairment accounting model is finalized and has been adopted. If the Board rejects this suggestion then, at a minimum, we believe that it should reduce the scope of the Proposed FSP such that it requires only balance sheet disclosures of impaired investment securities. Under this scenario, we would continue to be concerned about the proposed effective date based on concerns about applying the SFAS 114 impairment measurement model to certain classes of investment securities. To address this issue, the Board should consider issuing a reduced-scope FSP with an extended effective date that would allow all

parties to more fully consider and address the implications of applying the SFAS 114 measurement guidance to investment securities.

6. Are all of the disclosures in this proposed FSP operational based on the proposed effective date? Why or why not? Please be specific in your response.

No, as fully discussed in the accompanying letter, it would not be possible for major commercial banks to materially comply with much of the Proposed FSP by the proposed effective date.