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LETTER OF COMMENT NO. 267

committee on corporate reporting

April 1, 2009

Mr. Russell Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P. O. Box 5116
Norwalk, CT 06856-5116
Sent by email to director@fasb.org

File Reference: Proposed FSP FAS 157-e

Dear Mr. Golden:

The Committee on Corporate Reporting ("CCR") of Financial Executives International ("FEI") appreciates the opportunity to share its views on the proposed FASB Staff Position No. 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed* ("the proposed FSP"). FEI is a leading international organization of senior financial executives. CCR is a technical committee of FEI, which reviews and responds to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. This document represents the views of CCR and not necessarily the views of FEI or its members individually.

We appreciate that FASB has released the proposed FSP with the intent of improving current financial reporting, specifically by recognizing that there is significant pressure to use market prices, even in what many view as 'inactive markets' or 'distressed sales.' This is due in part to the wording of FAS 157, *Fair Value Measurement*, the wording of 'white papers' issued by the AICPA's Center for Audit Quality on implementing FAS 157, and the wording of FSP 157-3 *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*, issued by FASB in October 2008. With the significant recent focus on the need to 'not ignore' market prices, even in distressed markets, confirmed by FSP 157-3 last fall, we believe that companies have been precluded from applying judgment to come up with reasonable fair value estimates, when weighted against using transaction prices, even in distressed markets.

Although we are encouraged by release of the current FSP (proposed FSP 157-e) and thus support it as an improvement from the current situation, we believe some of the wording will still inhibit the guidance from fully realizing FASB's intent of facilitating the use of judgment for estimating fair values for distressed transactions in inactive markets. Our specific comments follow.

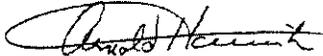
1. We encourage FASB to consider removing the words "all" and "each" from the Step 1 requirement in paragraph 12 of the proposed FSP, since the use of such words can be overly prescriptive. We believe their inclusion would result in the audit requirement for each Step 1 factor to be weighted and evaluated relative to each other whereas the list appears akin to a 'professional judgment framework'. We believe that views among various constituencies are still diverse and there will be unintended consequences from too prescriptive of a framework which requires 'all factors' and 'each factor' to be evaluated. Further since the proposed FSP indicates the list is not all inclusive, the requirement to

evaluate 'all' and 'each' factor we believe will lead to a frequently unnecessary search for additional factors. Alternatively, a list of indicators can be provided without requiring 'all' or 'each' to be evaluated. Preparers and their auditors can then use professional judgment to determine which factors are the most relevant in the circumstances.

2. We recommend Step 2 be deleted from the proposed FSP. Once a company has determined it is an inactive market, it is helpful to presume transactions in that market are distressed. However we see no reason to have to provide a Step 2 test to disprove a distress level in an inactive market. We view that as excessively burdensome, in addition to being vague (which could put companies and auditors at risk of unintended consequences). For example:
 - Paragraph 13 speaks of "unless the reporting entity has evidence"- some may interpret this as requiring companies to search for evidence, others will not. What if an auditor presents the company with some evidence, but the company had no evidence corresponding to the two factors in paragraph 13?
 - Are 'usual and customary' marketing activities those that used to take place 5 years ago in typical markets, or those taking place in today's inactive markets? We note that the example of 'regulator's forced sale' has been moved from the standards section to the detailed amendments of the standard, (see paragraph 2 on page 8 of the proposed FSP) but we don't believe that point is clear, and it is too narrow (i.e., many entities, including financial institutions, can have distressed sales without the sale being 'forced' by a regulator, and that language can be narrowly interpreted as being asked to sell assets by a regulator vs. feeling pressured to meet regulatory capital levels or debt equity levels, etc., which make the sale a distressed sale).
 - Paragraph 15 and paragraph 32F in the amended standard state that, in an orderly transaction, the entity needs to consider the reasonable risk premium that willing buyers and willing sellers would consider for bearing uncertainty. While the prices offered by willing buyers will be evident, the entity will not be able to determine what price willing sellers other than itself would be willing to accept. Therefore, we recommend that "sellers" be made singular, rather than plural
 - The word 'multiple' in Step 2 does not substantively overcome the issue of distressed sales. If for example there are, two dealer quotes, or two market quotes, or even three, while that would qualify as 'multiple' we do not believe that two or three quotes are evidence that a market is not distressed. What does one do if the only quotes available are from so called 'bottom fishers' who otherwise would not normally be bidding on such assets? We do not believe this particular factor can be improved in terms of wording and we recommend it be deleted, moreover as noted above we recommend Step 2 in its entirety be deleted, and transactions meeting Step 1 be deemed distressed, as well as inactive.
 - Rather than rely on Step 2 in the process as outlined, we recommend that the final FSP clearly indicate that transactions in inactive markets should be deemed to be at distressed values. However in establishing this principle the Board is not prohibiting management from judgmentally concluding that a transaction price in an inactive market may not be distressed, such determinations may be made either on an asset by asset basis or on the basis of pools of similar assets.
3. With respect to Effective Date and Transition, considering that any final FSP will be issued in April, we recommend that it should be optional for companies to adopt for the period ending after March 15, 2009 and required by the subsequent quarter end. We believe that for any company which this subject is critical will be able to adopt it on a timely basis; however for companies for which this subject is not a significant issue should be allowed the time to properly evaluate the FSP's requirements should they prefer not to adopt in the first quarter of 2009.

Thank you for considering our comments. If you have any questions or wish to discuss this issue please feel free to contact Lorraine Malonza at 973/765-1047 (lmalonza@financialexecutives.org), Gary Kabureck at 203-849-2630 (Gary.Kabureck@xerox.com) or myself.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Hanish". The signature is fluid and cursive, with a large initial "A" and a long horizontal stroke extending to the right.

Arnold Hanish
Chair, Committee on Corporate Reporting
Financial Executives International