

Michael Monahan

Director, Accounting Policy (202) 624-2324 t (202) 572-4746 f mikemonahan@acli.com

April 1, 2009



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

Re: File Reference – Proposed FASB Staff Position No. FAS 115-a, FAS 124-a, and EITF 99-20-b, Recognition and Presentation of Other-Than-Temporary Impairments

Dear Mr. Golden:

The American Council of Life Insurers ("ACLI")¹ appreciates the opportunity to comment on the proposed FASB Staff Position (FSP), Recognition and Presentation of Other-Than-Temporary Impairments ("Proposed FSP").

The ACLI strongly supports the Proposed FSP. The life insurance industry is a major investor in the affected securities, so we appreciate the objectives of the Proposed FSP. Specifically, given the insurance industry's sizable portfolios, we have directly experienced the increase in the volume of securities to evaluate for other-than-temporary impairment ("OTTI"), and accordingly we fully support changes that make the application of OTTI guidance more operational. In the spirit of this objective, within this comment letter we suggest a few other clarifications that would further strengthen the operational ease of this standard without compromising the financial statement users' desire for transparency.

## INTENT TO SELL OR REQUIRED TO SELL

In the Proposed FSP, an OTTI has occurred if the investor "intends to sell the security or it is more likely than not that the investor will be required to sell the security before recovery of its cost basis." We support this change, but request two points of clarification.

First, we note that throughout the Proposed FSP this wording is not always consistently used. The guidance should use the same language in all instances to avoid confusion in application. In particular, the use of "and" versus "or" needs to be checked for consistency and the use of "required to sell" versus "will sell" also needs to be updated. The Proposed FSP should be reviewed to ensure standard language is used throughout.

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<sup>&</sup>lt;sup>1</sup> The American Council of Life Insurers represents 340 member companies operating in the United States, of which 332 are legal reserve life insurance companies, and 8 are fraternal benefit societies. These 340 member companies account for 93% of total life insurance company assets, 94% of the life insurance premiums, and 94% of annuity considerations in the United States.

Second, to strengthen the operational aspects of this requirement, we recommend expanding the language to include the following: OTTI has occurred if the investor "intends within the foreseeable future to sell the security" and "this intent is known as of the reporting date" or it is "more likely than not that the investor will be required to sell the security before recovery of its cost basis. In determining this likelihood, the investor should consider whether its cash or working capital requirements and contractual or regulatory obligations indicate that the investment may need to be sold before the forecasted recovery occurs." This additional language can already be found in the insurance industry's statutory accounting guidance. We have found that these small additions make the guidance clearer to all financial statement preparers and users. Specifically, it helps to provide a better framework by outlining the required timing for intent and the types of considerations applicable when determining when an entity is "required" to sell their securities.

### **EQUITY SECURITIES**

Currently, the Proposed FSP includes equity securities in its scope. We agree with this inclusion and request two additional items. First, it would be helpful to codify that equity securities include the perpetual preferred securities to be treated as debt securities for impairment purposes as outlined by the SEC letter to Robert Herz, dated October 14, 2008. Second, the Proposed FSP should explicitly remove the requirement to use the Staff Accounting Bulletin Topic 5M (formerly SAB 59) ("SAB Topic 5M") criteria related to the severity and duration of unrealized losses in the determination of the ability to hold until full recovery. We have found in practice that these severity and duration concepts are resulting in "brightlines" based on severity and duration of unrealized losses regardless of fundamental economic considerations. We feel the emphasis should be on management judgment in the determination of fundamental economic consideration. We note that financial statement users can review the duration of unrealized losses in the footnotes, as there is a requirement to disclose continuous unrealized loss positions for twelve months or longer; therefore, this change will not result in less transparency. Rather, this change will result in better principles-based guidance. If this removal is not deemed appropriate, we recommend, at a minimum, that the Proposed FSP should explicitly state that the criteria in SAB Topic 5M is not intended to result in "brightlines" and that the number of months a security has been impaired should not be an automatic trigger for recognizing an OTTI.

### EXAMPLE FOR DETERMING CREDIT RELATED IMPAIRMENTS

The Proposed FSP gives an example of one method to determine credit related losses by referring to FAS 114, Accounting by Creditors for Impairment of a Loan (FAS 114). We appreciate the flexibility to determine the appropriate model provided by the Proposed FSP due to the fact that it specifically states "one way of estimating that amount" and refers to FAS 114 paragraphs 12-16. Given the difficulty in applying the FAS 114 model to all securities, it would be helpful to provide more examples, while continuing to maintain that the examples are not meant to be prescriptive and that management judgment should be used. Examples would be helpful for residential mortgage backed securities, commercial mortgage backed securities, and corporate debt.

The FAS 114 example also states that "the reporting entity shall use its best estimate of the amount of the impairment that relates to <u>an increase in the credit risk</u> associated with the specific instrument [emphasis added]." To avoid any confusion as to how "an increase in the credit risk" is defined, we suggest changing this wording to "credit losses" to be consistent with the wording in the FAS 114 reference.

Additionally, the Proposed FSP should include discussion of how to treat the amounts split between other comprehensive income and earnings if in future periods the valuation models are updated. We recommend amounts should move between earnings and other comprehensive income as a change in estimate.

#### SHADOW ADJUSTMENTS

EITF D-41, Adjustments in Assets and Liabilities for Holding Gains and Losses as Related to the Implementation of FASB Statement No. 115 (EITF D-41) and FAS 109, Accounting for Income Taxes (FAS 109) outline the adjustments required in other comprehensive income to "shadow" the effects of unrealized gains/losses on minority interests, certain life insurance policyholder liabilities, deferred acquisition costs, deferred income taxes, etc. This guidance will need to be updated to address the Proposed FSP's treatment of non-credit related losses. Similar to unrealized gains/losses recognized in other comprehensive income, the "shadow" effect of the non-credit related losses recognized in other comprehensive income will need adjusted within other comprehensive income as well. In doing so, the matching of the balance sheet assets and liabilities will continue to be appropriate.

# **EFFECTIVE DATE**

Many preparers may find the proposed effective date of interim and annual periods after March 15, 2009 to be difficult. We offer the following solutions to these concerns: 1) modify the effective date to be for interim and annual periods after April 15, with early adoption permitted, and 2) allow for the practical expedient of the option to not determine non-credit related impairments and to recognize the full impairment in earnings. This:

- Should be determined on a security by security basis.
- Should be disclosed if elected.
- Will help entities with varying capabilities in modeling the expected cash flows to be able to adopt the standard or will help entities who do not wish to spend additional time to determine the split to be more efficient.

The ACLI applauds the FASB's efforts to make the OTTI guidance more operational. We are pleased that the Proposed FSP incorporates concepts that we and others have been voicing during the comment letter process of other fair value standards. We welcome any additional questions or concerns you wish to discuss.

Sincerely,

Michael M. Monahan Director, Accounting Policy