CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

RICHARD H. MURRAY
CHAIRMAN

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(212) 317-5339
Richard_Murray@swissre.com

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FSPFAS157D

LETTER OF COMMENT NO. 69

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

Re: File Reference: Proposed FSP FAS 157-d

Dear Mr. Golden:

The United States Chamber of Commerce created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. Accordingly, the CCMC supports the Financial Accounting Standards Boards ("FASB" or "Board") guidance on determining a fair value on assets in an illiquid market (FAS 157-d). However, we believe that this guidance can be improved by providing a better understanding of the use of judgment and clearer definitions of orderly and inactive markets.

While this guidance is an important first step in clarifying fair value standards, we believe that more needs to be done to immediately address the crisis at hand. Accordingly, the CCMC requests that FASB freeze and review all currently pending proposed expanded fair value standards. Furthermore, we request that FASB work with the appropriate financial regulators to conduct a comprehensive review of all fair value standards to determine if there are any improvements needed in light of lessons learned and unintended consequences exposed from their application in the current environment. Finally, we request a similar review, by FASB and appropriate financial regulators, of all other proposed amendments to accounting standards.

CCMC Letter to FASB and IASB Requesting Emergency and Comprehensive Review of Financial Reporting System

On September 26, 2008, the Center for Capital Markets Competitiveness sent a letter to FASB and its international counterpart, the International Accounting Standards Board ("IASB") requesting emergency and comprehensive reviews of the financial reporting system in the wake of the current credit crisis. The letter specifically requested:

1) An emergency review of fair value standards, particularly concentrating on the unintended consequences of the implementation of the current standards;
2) The development and implementation of remedial action necessary to correct problems detected in the emergency review;
3) A broad review of accounting standards and a comprehensive plan of action to address shortcomings in the financial reporting process; and
4) A review of the development of accounting standards and that a feasibility study is made of the testing of proposed standards for economic impact.

Our letter also asked that these reviews be conducted in conjunction with the IASB, in order to assist the goals of convergence of international standards and promoting transparency and accurate reporting globally. We stand by this request and believe that an emergency review of all fair value standards and a broader more comprehensive review of accounting standards are necessary to learn from the current crisis and to develop the financial reporting changes needed to avoid future problems.

FASB Guidance on FAS 157

On September 30, 2008, the Chief Accountant of the Securities and Exchange Commission ("SEC") and FASB staff issued a press release with clarification on valuing assets in an illiquid market under FAS 157. The Board met on October 1st and the FASB staff issued the proposed FAS 157 guidance on October 3rd.

FASB's proposed guidance on FAS 157 is a welcome development in providing management, preparers and investors with clarification on valuing financial assets in an illiquid market. As the credit crisis has progressed, an increasing number of markets for securities and assets have dried up. These illiquid markets have required many financial institutions to struggle in the valuation of assets and take drastic write downs. Anomalies have also been created whereby debt backed securities will be valued at fire sale prices, while the underlying asset retains significant value. This has not only affected the bottom line of these institutions, but in fact may have created a skewed picture of their true financial health.

Our general support for the proposed guidance notwithstanding, we believe it can be easily improved in a few important ways. First, there are apparent and likely unintended inconsistencies between the FASB proposed FAS 157-d guidance and the joint SEC-FASB press release. For example, the press release refers to the need to use judgment several times whereas the draft guidance does not. We believe that judgment is critical in applying the FAS 157-d guidance; for example, auditors and their clients could be expected to reasonably disagree over what constitutes an inactive market and or what are undue burdens and costs of obtaining information. Second, the proposed FAS 157-d guidance appears to unintentionally create a bias towards requiring maximum use of market inputs and minimizing use of internal estimates. We believe this is counter to the clarification included in the joint press release. Therefore, to ensure there is no misunderstanding by all constituents we recommend that the joint SEC-FASB press release be included in the final FAS 157-d guidance so that it may represent official status within U.S. GAAP. Finally, we believe that FASB's guidance may be improved by providing more information on the definition of what constitutes an orderly and inactive market.

These changes will allow the FAS 157-d guidance to give companies an ability to take a more realistic approach in the valuation of assets, provide investors a better grasp of the condition of an institution and assist the financial system in resolving this crisis.

Freeze Current Fair Value Proposals and Review Existing Fair Value Standards

Due to the immediate need to unclog the credit markets, it is better to leave the larger debate on the merits of fair value accounting for another day. While the focus of recent attention has focused on FAS 157, there are many other accounting standards that use fair value, or contain components of fair value. For instance, FAS 159 allows for a fair value option in measuring financial assets and liabilities, while FAS 150 has certain fair value treatments for financial instruments that have both the characteristics of liabilities and equity. This wider scope of fair value treatments should be reviewed, in conjunction with appropriate financial regulators, to determine if those standards have had any adverse unintended consequences. Remedial actions should be taken quickly upon the completion of such a review to correct any flaws.

Similarly, FASB has proposed amendments and projects to expand fair value. For instance, FASB has a proposal out for comment to amend the calculation of earnings per share with FAS 128, which includes a fair value calculation. We would request that any such proposed expansions of fair value be held in abeyance pending a review of the proposals, by FASB and appropriate financial regulators, for their impacts on the markets and the economy.

Conduct a Review of All Existing Proposals and Recently Implemented Standards to Determine Market and Economic Impacts

Additionally, FASB has either recently completed amendments to standards, or has proposals in the various stages of adoption. As brief examples, FASB has recently amended FAS 133 concerning hedge accounting and is engaged in a two step process to increase disclosure, as well as amend, FAS 140 to require entities to bring debt backed securities back onto the balance sheets. While FASB may have adequate rationales for these proposals, it is important to understand their impacts upon our capital markets and overall economic situation. Well intentioned and reasoned proposals that have a deleterious short term impact may create more harm then good. It is imperative that the economic impact of those proposals on markets be understood before they are fully implemented and that a standard of doing no harm be used to avoid potential further damage to the economy. Accordingly, we would respectfully request that FASB, and appropriate financial regulators, review and conduct a risk assessment on all existing non fair value proposals and recently implemented standards, to determine their impact on the markets and economy. Such an assessment should be used to change proposed standards if needed, or delay their promulgation if the implementation of a well crafted rule would result in short term harm.

Conclusion

We believe that the FAS 157 guidance, with the above outlined elaborations, assists companies, preparers and investors in evaluating and placing a value on assets in illiquid markets. This is an important step in removing an impediment that assisted in the credit slowdown. We also recommend that FASB, in conjunction with appropriate financial regulators, freeze any proposed expansions of fair value standards, undertake a review of any such proposed expansions, as well as all fair value standards to detect any flaws that may have adverse consequences on the markets and economy. Finally, we request FASB, and appropriate financial regulators, to review proposed standards and recently implement standards, to determine their impact upon the markets and economy. If the assessment determines economic harm, then the proposed standard should be changed or implementation delayed as deemed appropriate.

The CCMC understands the unique pressures faced by standards setters in a time of crisis and stands prepared to assist FASB in any manner. Thank you for your consideration.

Sincerely,

Richard Murray
Chairman
United States Chamber of Commerce
Center for Capital Markets Competitiveness