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LETTER OF COMMENT NO.

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October 9, 2008

Via email: director@fasb.org

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

Re: File Reference: Proposed FSP FAS 157-d

Dear Mr. Golden,

U.S. Bancorp, the parent company of the sixth largest commercial bank in the United States, with over \$245 billion in total assets, appreciates the opportunity to comment on the Proposed FSP FAS 157-d, an amendment to FASB Statement No. 157, *Fair Value Measurements* (FAS 157), issued October 3, 2008 (the "FSP"). We support the Board's effort to clarify the application of FAS 157 especially to the extent that these clarifications re-emphasize the principles-based nature of the standard and the need to utilize judgment in determining "fair value" in illiquid, inactive or distressed markets.

While we support these clarifications, it is also important for the Board and others to consider that the application of FAS 157 is creating downward pressure on valuations that is separating the longer term economic value of many securities from the accounting value being assigned by applying the Standard. We believe the current market conditions have illustrated a fundamental flaw in the definition of fair value contained in FAS 157.

We have significant concerns with the "exit price" concept embodied in FAS 157's definition of fair value coupled with very broad interpretations that are being applied in practice to both: a) the definition of "orderly transactions" and b) the definition of "market participants". In our view, these concepts create a significant negative and detrimental bias, in an inactive or distressed market. As a result of these biases, a going concern entity must apply the equivalent of liquidation basis accounting to certain of its fair value assets and effectively ignore management's best estimate of the future economic benefits (future inflows) that are expected from holding those assets. We believe this is an unintended consequence of the definition of fair value that was developed in good faith by the Board but has created critical challenges in the unprecedented inactive and distressed market conditions that have occurred for certain assets during the last several months.

We observe that FAS 157 defines "market participants" as "referring to buyers and sellers in the principal (or most advantageous) market for the asset or liability that are independent of the

reporting entity (unrelated), knowledgeable, and both able and willing to transact." Our concern is that in an illiquid or distressed market, holders of assets often are not willing to transact due to the fact that the "exit price" is significantly below the economic value of the assets from the holder's perspective. When limited transactions do occur at significant discounts to the expectations of the holders of the securities, it appears that the bias is that these transactions represent the expectations of "market participants". This practical limitation ignores expectations of the vast majority of other holders of the same or similar securities, who we believe are also market participants as defined in FAS 157, and creates a downward bias driven by "discount buyers" and "distressed sellers" that are transacting due to short-term liquidity requirements. In essence, all market participants are not being considered when undue weight is placed on what a seller could get if required to sell the asset in the illiquid or distressed market and no weight is given to other holders' expectations of what they will get under normal market conditions and in terms of future inflows.

While we acknowledge that it is easy to criticize when looking in the rear-view mirror, we believe it is prudent to reevaluate when the result is contrary to the intended objective. We believe that the Board did not intend for companies to exclude holders of the same or similar securities from the definition of market participants or to use liquidation basis accounting when markets become inactive or distressed.

We believe the following excerpts are worthy of review in understanding the intent and objective of the Board.

The following sentences are from one of the introductory paragraphs to the Standard:

"The transaction to sell the asset or transfer the liability is a hypothetical transaction at the measurement date, considered from the perspective of a market participant that holds the asset or owes the liability. Therefore, the definition focuses on the price that would be received to sell the asset or paid to transfer the liability (an exit price), not the price that would be paid to acquire the asset or received to assume the liability (an entry price)."

## Paragraph C25 of FAS 157 states:

"The definition of fair value in this Statement retains the exchange price notion contained, either explicitly or implicitly, in earlier definitions of fair value. However, this Statement clarifies that the exchange price is the price in an orderly transaction between market participants to sell the asset or transfer the liability in the principal (or most advantageous) market for the asset or liability. The Board affirmed that the transaction to sell the asset or transfer the liability is an orderly transaction, not a forced transaction (for example, if the seller is experiencing financial difficulty), that assumes exposure to the market for a period prior to the measurement date to allow for information dissemination and marketing in order to transact at the most advantageous price for the asset or liability at the measurement date..."

## Paragraph C26 of FAS 157 states:

"...The Board concluded that an exit price objective is appropriate because it embodies current expectations about the future inflows associated with the asset and the future outflows associated with the liability from the perspective of market participants. The emphasis on inflows and outflows is consistent with the definitions of assets and liabilities in FASB Concepts Statement No. 6, Elements of Financial

Statements. Paragraph 25 of Concepts Statement 6 defines assets in terms of future economic benefits (future inflows). Paragraph 35 of Concepts Statement 6 defines liabilities in terms of future sacrifices of economic benefits (future outflows)..."

## Paragraph C27 of FAS 157 states:

"...The Board concluded that a most advantageous market approach is reasonable based on the assumption that the goal of most entities is to maximize profits or net assets. The most advantageous market approach embodies both the buying side and the selling side of rational economic behavior and is consistent with normal profit motivations."

Based on our review of these excerpts from FAS 157, we believe the Board contemplated that "market participants" would include not just recent buyers and sellers but also current holders of assets who may not be executing transactions in the market.

We believe the Board's conclusion in Paragraph C26 holds true in a "normal" market environment. However, we believe in an inactive or distressed market that an exit price objective that is based solely on limited recent market activity may not necessarily embody other market participants' current expectations about future inflows associated with the asset. In those unusual markets, the market participants may be very limited and as a result the exit price determined under FAS 157 may reflect only opportunistic or vulture buyer prices rather than embodying both the buying side and selling side of rational economic behavior and/or considering a price based on expected future economic benefits to the holder of the asset.

We believe the Board should reconsider whether the current FAS 157 "exit price" and "market participants" definitions within the determination of "fair value" are appropriate or perhaps are not being applied appropriately; especially when applied in inactive or distressed markets. While the FSP clarifies the application of the "exit price" concept in an inactive market, we believe the practical applications of these concepts that are fundamentally flawed because of the negative valuation bias of these concepts in an illiquid or distressed market and their impacts should be reconsidered given the objectives of the Standard. The Board should consider whether an alternative approach should be used for determining fair value for specific classes of assets where the market for those assets is inactive or distressed.

One such approach could be to require preparers to consider their business model and other judgmental factors in evaluating the estimated timing of cash flows given specific circumstances and their ability and intent with respect to holding or selling the assets. For example, for those assets that are held for trading purposes, an "exit price" concept or liquidation value may be the most appropriate measure of fair value. However, where a company has the intent and ability to hold an asset for the foreseeable future, and the market for that particular asset is illiquid or distressed, the appropriate measure of fair value might be the economic value to a going concern as estimated by the expected future cash flows. Those expected future cash flows would incorporate appropriate credit factors and be discounted at rates that contemplate required liquidity premiums relevant to the anticipated holding period rather than those based solely on observed expectations of the limited number of buyers in the illiquid market. This would eliminate the adverse effects of "exit prices" and "market participants" that exist in illiquid markets. Management would need to provide adequate disclosures so that users could understand the basis for management's fair value estimates and critical assumptions underlying those fair value measurements.

We are concerned that the existing guidance imposes illogical valuations and accounting consequences in inactive or distressed markets and may result in financial statements that are not reflective of the economic value of a company's assets and may be misleading or at best unhelpful to shareholders and other financial statement users. In fact, we are concerned that applying the FAS 157 "exit price" concept in inactive or distressed markets may add more confusion than transparency for financial statement users. Such valuation concepts may also perpetuate current market conditions, as companies that would be buyers of these distressed securities will be reluctant to do so due to the possibility of negative accounting consequences in future periods. We believe these consequences were not intended by the Board.

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We appreciate the opportunity to submit our views and would be pleased to discuss our comments with you at your convenience. Please contact me at (612) 303-4352 with questions or if you need additional information.

Sincerely,

/s/ Terrance R. Dolan

Terrance R. Dolan
Executive Vice President and Controller