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LETTER OF COMMENT NO.

203

March 30, 2009

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference Proposed FSP FAS 157-e

Dear Technical Director:

Nationwide Insurance Group appreciates the opportunity to comment on the Exposure Draft of the Proposed FASB Staff Position No. FAS 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed* (Proposed FSP). Nationwide Insurance Group (Nationwide) is comprised of three affiliated mutual insurance companies and their subsidiaries under common management. Nationwide is one of the largest diversified insurance and financial services organizations in the world, with more than \$135 billion in assets and annual revenues of \$20 billion.

FAS 157, *Fair Value Measurements*, is a principals based standard; however, interpretation by audit firms has resulted in the gravitation towards a rules based approach. As such, we agree with the Board's objective of providing additional guidance on determining whether a market for a financial asset is not active and a transaction is not distressed. Our comments are directed toward enhancing the effectiveness of the Proposed FSP. We believe the recommendations discussed below will provide clarity and promote appropriate determination of fair value within an inactive market. Our main recommendations are summarized as follows:

- We believe that the reasonable risk premium utilized to determine fair value for an asset in an inactive market should only consider relevant information. Information, such as distressed quoted prices, should not be considered relevant and should be excluded in the determination of fair value. In cases where limited or no market participants exist, preparers should utilize a hypothetical transaction at the measurement date, considered from the perspective of a market participant in an active market.
- The example is not consistent with the guidance and should be removed in its entirety from the Proposed FSP to avoid undue confusion.
- There should be a presumption that a market is active unless indicators of an inactive market are known to exist.
- We recommend some additional items to improve the clarity of the Proposed FSP.

The Board has proposed a two-step approach to determine whether a market is not active and a quoted price for a transaction is distressed. Step one provides factors that indicate whether a market is not active. Step two evaluates whether a quoted price is distressed. Our concerns with the two-step approach and recommended changes are discussed in more detail below.

The overall concept under FAS 157 is an exit price valuation. In an active market, a preparer should value its assets at the price a market participant would exit in an "orderly transaction." However, FAS 157 did not fully contemplate the severity of the inactive and distressed marketplace that we are currently experiencing. For instance, in an inactive and distressed market, an exit price cannot be estimated as there are limited or no market participants to drive the exit price in an "orderly transaction". The Proposed FSP states that a valuation model should be used to value an asset and the inputs into that model should include all risks inherent in the asset, including a reasonable risk premium based on a market participant's point-of-view at the measurement date. As it has been determined that there are limited or no market participants in an inactive and distressed market, we believe that preparers should utilize a hypothetical transaction at the measurement date, considered from the perspective of a market participant in an active market. An example of this approach would be using a similar asset class that is actively trading and adjusting as deemed appropriate. This would allow a preparer to value an asset at a fair value more representative of an orderly transaction in an active market. We believe this treatment is consistent with the intent of FAS 157. In addition, we believe that the inputs that are used in the valuation model should be based on management's best estimates using relevant information and judgment. As noted in step one, we believe emphasis should be added that judgment is also required for the valuation determination.

The use of relevant information in the determination of inputs that are used in the valuation model should be clarified in the Proposed FSP, as quoted prices and reports issued by analyst and rating agencies in an inactive and distressed market should not be considered relevant. In inactive markets, the pricing levels included within these reports are based upon information from distressed transactions. As a result, we believe judgment is required to determine the relevance of information in analyst and rating agency reports similar to how distressed pricing information should be evaluated. This evaluation may result in excluding all information derived from distressed transactions from the applicable valuation technique used.

Further, after it is determined that there is an inactive market and that the quoted price is distressed, the Proposed FSP states that a preparer should use a valuation technique that does not use the quoted price without significant adjustment. We believe that if the quoted price is determined to be distressed, the quoted price should not be considered as it is determined not to represent fair value. If the Proposed FSP is issued as it is currently written, we believe that auditors will require preparers to "reconcile" or "calibrate" back to the distressed quoted price as currently required. Since this quoted price is determined to not be relevant, it should not be considered.

Normally we would agree that providing an example is helpful for implementation. However, the example provided is inconsistent with the guidance presented in the Proposed FSP. For example, in determining fair value of an asset in an inactive market, distressed pricing information was utilized to

determine the reasonable risk premium. This contradicts paragraph 14 of the proposed FSP which states that the reporting entity should consider whether a quoted prices for distressed transactions are relevant. The example implies that distressed pricing information should always be considered relevant for fair value determination. We are also concerned with the approach demonstrated within the example of taking a midpoint rate to calculate the reasonable risk premium. This method implies that rates should be calibrated to distressed market information which we believe contradicts the intent of the Proposed FSP. Further, it is only an example of one set of circumstances. Based on current practice with regard to valuations under FSP FAS 157-3, auditors gravitate towards the example as the only authoritative guidance and that all situations should follow these exact steps and do not allow for any deviations. As such, to remove the inconsistencies with the guidance and to reemphasize the importance of management's judgment, we believe the example should be removed in its entirety. If the Board determines that an example needs to be included in the Proposed FSP, the example should be reconciled to the guidance and it should remove all items and considerations that are not specifically addressed in the Proposed FSP. Also, we believe that a comment should be made in the example to emphasize that the example is not to be followed in all instances as it only contemplates one transaction and set of circumstances. This will help to eliminate confusion for the preparer and auditors and to allow for management's judgment to be applied.

While we agree that the indicators included in step one should be considered when determining whether a market is inactive, we believe that there should be a comment added to the Proposed FSP making it a presumption that a market is active unless indicators of an inactive market are known to exist. We believe that as currently written, auditors may force preparers to document all indicators for each asset class, whether or not management believes a particular asset class' market is active or inactive. This will establish a precedent that a preparer needs to consider and document the entire population, rather than an exception based model (i.e. just the inactive markets), as we believe the guidance is intending. This could place an undue operational burden on the preparer to document indicators of certain asset classes that are clearly in an active market.

Further, we believe that the Proposed FSP contains enough examples of indicators that may be present in an inactive market in step one, noting that they are not all inclusive; however, we believe that all of these indicators do not need to exist simultaneously and are rather just examples of what indicators could be present in an inactive market. One or a few of these indicators, given the facts or circumstances, could indicate that a market is inactive without need to consider all additional indicators. Consideration and documentation of all the factors will present an undue operational burden on the preparer, as all these indicators do not need to be considered in all circumstances. As such, the Proposed FSP should be clarified to allow for a more limited consideration of these indicators, if the facts and circumstances warrant it.

Although step one emphasizes the significant judgments that are to be used by management, there is no equal emphasis placed on these significant judgments in step two. We believe that this should be added to the Proposed FSP to re-emphasize that there are no "bright-line" tests to dictate whether a quoted price is distressed or not. Further, the Proposed FSP emphasizes the concept of evidence. We believe that there should be a comment added to the proposed FSP that the evidence is based on a preparer's best available information without undue cost or effort.

We believe that criterion B under step two is too vague. As currently written, there could be multiple bidders, whether a quoted price is distressed or not. The main difference is that when a quoted price is distressed, the bidders (e.g. hedge funds) would not represent a market participant in an orderly transaction in an active market. We believe that there should be added clarification to the Proposed FSP that the multiple bidders should represent bona fide market participants of the related asset when there is an active market. Further, we do not believe bid prices are necessarily indicative of the fair value of the related assets, because many preparers would not consider selling the asset for these prices as they represent distressed market values. As such, we believe this criterion should be based off of actual transactions and the volume.

Finally, for certain asset classes, preparers may determine that there is an inactive market and that the quoted price is distressed. However, based on circumstances outside the control of the preparer, certain valuation techniques or information, such as the expected cash flows, may not be available or able to be easily estimated. As such, a preparer's estimate may be no better than a quoted price in the inactive and distressed market. As a practical expedient, we believe that a preparer should be able to use the best available information including a quoted price as the fair value, if no other valuation technique or information is available. This change would dramatically enhance the operational practicality of the Proposed FSP.

CONCLUSION

Overall, we applaud the efforts of the Board to emphasize the need for judgment to determine fair value in inactive markets. Utilizing more relevant information to determine fair value is consistent with the concepts established within FAS 157. To ensure the Proposed FSP is applied appropriately, we believe that the recommended changes to utilize only relevant information with reliance on management judgment are critical.

We hope these comments assist you during your redeliberations of the Proposed FSP. In the event that any Board or FASB staff member would like any further clarification of our positions we are happy to explain them in greater detail.

Respectfully,



Martha L. Frye
Senior Vice President and Chief Accounting Officer
Nationwide Insurance