



THE BANK OF NEW YORK MELLON

March 27, 2009

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



LETTER OF COMMENT NO.

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LETTER OF COMMENT NO.

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RE: File References: Proposed FSP FAS 157-e, FAS 124-a, and EITF 99-20-b

Dear Mr. Golden:

The Bank of New York Mellon, Inc. ("The Company"), a global financial institution with over \$230 billion of assets, appreciates the opportunity to provide comments expressing our support for the Exposure Drafts of the two proposed FASB FSP's; FAS No. 157-e, *Determining Whether a Market Is Not Active and a Transaction Is Not Distressed* ("FSP FAS 157-e") and FAS No. 115-a, FAS 124-a, and EITF 99-20-b, *Recognition and Presentation of Other-Than-Temporary Impairments* ("FSP FAS 115-a").

We have been intently monitoring the FASB's consideration of the financial crisis through its various activities over the past six months or more, including the FASB Board meetings, the Roundtables, the meetings of the Financial Crisis Advisory Group (FCAG) and the FASB's Valuation Resource Group. The Group of 30 recommendations, along with those of the Securities and Exchange Commission towards the end of 2008 clearly encouraged the accounting standards setters to carefully reconsider the existing accounting guidance in light of the severe illiquidity conditions experienced in these financial markets and the unfortunate outcomes being reflected in the income statements and statements of financial position of most financial institutions around the world, but particularly in the United States.

FSP FAS 115-a

We are pleased that measurement of Other Than Temporary Impairment is finally being addressed head-on.

We agree with the model proposed that would change the total amount recognized in earnings when there are credit losses associated with an impaired debt security for which management asserts that it does not have the intent to sell the security and it is more likely than not that it will not have to sell the security before recovery of its cost basis. In those situations, we agree with the proposal that the impairment be separated into (a) the amount of the total impairment related

to credit losses which would be recognized in earnings and (b) the amount of the total impairment related to all other factors and that the amount of impairment related to these other factors not be recognized in earnings, but in other comprehensive income within stockholders' equity.

We have written letters to the FASB on the topic of Other Than Temporary Impairment since soon after the financial crisis deepened late in the third quarter and maintain our views as we expressed in our letters to the FASB dated September 19, 2008 (Reducing Complexity in Reporting Financial Instruments), November 25, 2008 (Global Financial Crisis Roundtable), December 30, 2008 (Proposed FSP EITF 99-20-a) and January 5, 2009 (OTTI – SEC Recommendation – Study on Mark to Market Accounting). As you are aware, we have also provided written comment letters to the Securities and Exchange Commission on this subject.

We have been consistent in our view and agree with the SEC's recommendation in its December Study on Mark to Market Accounting for a model that "would require recognizing impairments through income related only to credit losses (calculated on an incurred loss basis consistent with impairments on loans), while the remaining decline in fair value of an investment (the portion that is not related to incurred losses) would be recognized in OCI."

Our Year End Earnings Release

In our December 31, 2008 earnings press release we provided supplemental non-GAAP disclosures regarding our impaired debt securities that indicated that, because the impairment write-downs were required to be taken down to the quoted prices in these illiquid markets, a very significant charge that does not reflect the economics of these securities was recognized in the income statement.

The users of financial information have been expressing their concerns with the way the other than temporary impairments are required to be measured under US GAAP. Richard X. Bove wrote an analyst's note on The Company on January 22, 2009 entitled "Making the Best of a Tough Time" in which he observed:

"It should be understood that the company has no intention of selling these securities at the marked down values. Moreover, given the sharp inflows in its deposits and the fact that it has \$56 billion in cash deposited at the Federal Reserve there would seem to be no series of factors that could force a sale. ... And... "To me its tragic, that this type of fantasy land accounting is being forced on this industry. It has no relation to the cash flows going through Bank of New York Mellon. Yet cash flows are what allow a bank to live or die. And... "The financial markets are unsettled and the economy is weak. However, accounting techniques like the one explained here have so obscured the reality of what is happening in banking companies that investors are left adrift and prone to panic in these stocks."

While we would prefer that the proposed FSP 115-a would permit a retroactive restatement to restore the impairment write-downs we had recorded in the fourth quarter of 2008, we understand the short time frame in which the FASB has to issue FSP 115-a in time for first quarter financial reporting. The existing FASB agenda project Recoveries of Other Than

Temporary Impairments (Reversals) should be given the highest priority to ensure that U.S. financial institutions are not penalized competitively in the global financial markets simply by the unfortunate timing of FSP 115-a.

In light of the material impact of this FSP, we encourage the FASB to consider permitting a one-time election to rebalance corporations' investment portfolios between Held to Maturity, Available for Sale and Trading categories that would be made at the date of adoption of FSP FAS 115-a.

FAS 157-e

We are very supportive of the proposed changes and clarifications contained in FSP FAS 157-e, which helps allay much of the uncertainty experienced by preparers and auditors with respect to the fair value of investment securities during the global financial crisis.

We believe that the fair value guidance in FSP FAS 157-e is operational and that the criteria for determining whether a market is not active and a transaction is not distressed can be effectively implemented using the two-step model that has been proposed. The factors listed in paragraph 11 of the FSP that indicate that a market is not active are appropriate.

As a point of clarification, paragraph 13 of the FSP, which describes the step 2 test that the reporting entity must presume that "a quoted price is associated with a distressed transaction unless the reporting entity has evidence that (a) there was sufficient time before measurement date to allow for usual and customary marketing activities for the asset and (b) there were multiple bidders for the asset"; we would suggest that the term "multiple bidders" would refer to those who would normally make a market in the security when markets are active (the multiple bidders would not be the "bottom feeders" who are trying to purchase the securities at a distressed price).

In our industry there have been some concerns expressed that the daily Net Asset Values ("NAVs") of certain investment funds that source their daily pricing from pricing services could face operational difficulties in implementing this FSP. We are of the view that the investment funds do not present their financial statements on the same fundamental basis as would a corporation and that the NAVs are intended to be representative of current liquidation value. Based on the probable asset disposal scenario, current liquidation may represent an acceptable measure of fair value and basing values on orderly market, expected non-distressed trades may not reflect how those funds operate. Therefore we believe it is in fact acceptable for the daily NAVs of investment funds to reflect the prices provided by independent pricing services and not to base their prices on modeled prices. Disclosures to that effect could be provided in the financial statements of the investment funds, however we would encourage the FASB to consider a scope exception or some other form of guidance specifically as it relates to investment funds.

Conclusion

We fully support the two proposed FSPs without significant reservations and encourage the FASB to issue them in final form without delay to be effective for first quarter (March 31, 2009) financial reporting.

If you have any questions or are in need of any further information, please contact me at (212) 635-7080.

Sincerely,

A handwritten signature in cursive script that reads "John Park".

John Park, Managing Director
Controller