



STATE OF NEW YORK  
BANKING DEPARTMENT  
ONE STATE STREET PLAZA  
NEW YORK, NY 10004

March 31, 2009

Mr. Adam Van Eperen  
Financial Accounting Standards Board  
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P.O. Box 5116  
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LETTER OF COMMENT NO. 10

*By email*

Dear Mr. Van Eperen:

The New York State Banking Department (the "Department") has reviewed the Financial Crisis Advisory Group's ("FCAG's") questions and appreciates the opportunity to present the following comments.

1. From your perspective, where has general purpose financial reporting helped identify issues of concern during the financial crisis? Where has it not helped, or even possibly created unnecessary concerns? Please be as specific as possible in your answers.

**Fair value accounting and disclosures for transactions in active markets have been helpful in identifying problems on a more timely basis. For illiquid financial instruments, however, the requirement to create fair values based on assumptions and hypotheses has led to additional concerns. The Department continues to believe that financial instruments with no observable inputs should be recorded at the lower of cost or fair value when inputs were last observable.**

2. If prudential regulators were to require 'through-the-cycle' or 'dynamic' loan provisions that differ from the current IFRS or US GAAP requirements, how should general purpose financial statements best reflect the difference: (1) recognition in profit or loss (earnings); (2) recognition in other comprehensive income; (3) appropriation of equity outside of comprehensive income; (4) footnote disclosure only; (5) some other means; or (6) not at all? Please explain how your answer would promote transparency for investors and other resource providers.

**The Department favors option (3), appropriation of equity outside of comprehensive income. We believe that loan loss allowances are inherently subjective, and difficult judgments must always be applied.**

**While we prefer conservative allowances that consider long historical loss trends, we do not believe that allowances should bear no resemblance to probable losses incurred at the balance sheet date. Regulatory capital requirements should include the cushion needed to provide comfort against future problems rather than forcing this objective through the loan loss allowance.**

3. Some FCAG members have indicated that they believe issues surrounding accounting for off-balance items such as securitizations and other structured entities have been far more contributory to the financial crisis than issues surrounding fair value (including mark-to-market) accounting. Do you agree, and how can we best improve IFRS and US GAAP in that area?

**The desire to record assets off-balance-sheet led to the creation of overly complex, legally-driven transactions which contributed significantly to the financial crisis. We believe the best solution is to prohibit sales accounting if any recourse is retained by the seller. U.S. bank regulators used this basic concept with minimal exceptions until 1997, when regulatory accounting was changed to comply with GAAP. That decision resulted primarily from the Federal Deposit Insurance Corporation Improvement Act of 1991, which required regulatory accounting to be "no less stringent" than GAAP. We believe a no-recourse model worked well for regulatory accounting and would greatly eliminate the complexity and confusion that has surrounded FASB Statement 140.**

**The Department also believes that consolidation of entities should be required by the party in ultimate control, and that corresponding assets and liabilities should be removed from the balance sheet only when such control no longer exists.**

4. Most constituents agree that the current mixed attributes model for accounting and reporting of financial instruments under IFRS and US GAAP is overly complex and otherwise suboptimal. Some constituents (mainly investors) support reporting all financial instruments at fair value. Others support a refined mixed attributes model. Which approach do you support and why? If you support a refined mixed attributes model, what should that look like, and why, and do you view that as an interim step toward full fair value or as an end goal? Whichever approach you support, what improvements, if any, to fair value accounting do you believe are essential prerequisites to your end goal?

**We favor retention of the mixed attributes model, and we do not view full fair value as an appropriate end goal. The "held-to-maturity" category more accurately reflects economic reality for entities which have the positive intent and ability to hold loans and debt securities to maturity. Such holders are unaffected by most fluctuations in fair values. In addition to our aforementioned concerns on illiquid financial instruments, the Department believes that fair valuing liabilities outside of trading or liquidation is severely flawed by recording profits due to deterioration in an entity's own liabilities.**

**To satisfy investors who want fair values provided for all financial instruments, we recommend requiring a separate disclosure containing each entity's fiscal year-end balance sheet with all financial assets/liabilities at fair value and each entity's fiscal year-end income statement reporting the effects of all fair value changes in earnings.**

5. What criteria should accounting standard-setters consider in balancing the need for resolving an 'emergency issue' on a timely basis and the need for active engagement from constituents through due process to help ensure high quality standards that are broadly accepted?

**While we appreciate the desire to be responsive, setting accounting standards in an emergency or crisis mode is not conducive to the development of enduring quality accounting standards. Emergency standards are more likely to require significant revisions when further information becomes known. Short comment periods and immediate or retroactive effective dates also convey the message that comments will not be fully considered.**

6. Are there financial crisis-related issues that the IASB or the FASB have indicated they will be addressing that you believe are better addressed in combination with, or alternatively by, other organizations? If so, which issues and why, and which organizations?

**The IASB and FASB should work together jointly and without formal roles by other organizations to develop high quality accounting standards.**

7. Is there any other input that you'd like to convey to the FCAG?

**When accounting standards setters succumb to political pressures, or even appear to do so, it invites politicization in all areas of accounting and damages the credibility of financial statements. While unanimous agreement with accounting standards will never be reached, all interested parties should seek to preserve the independence and integrity of standards setters. Otherwise, short term benefits won from changing specific standards will be more than lost when the marketplace substantially discounts the overall value of financial information.**

If you would like to discuss our letter, please call me at (212) 709-1532 or email me at [john.mcenerney@banking.state.ny.us](mailto:john.mcenerney@banking.state.ny.us).

Very truly yours,

John McEnerney  
Chief of Regulatory Accounting