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March 31, 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. 222

File Reference: Proposed FSP FAS 157-e

Re: Proposed FASB Staff Position No. 157-e, Determining Whether a Market is Not Active and a Transaction Is Not Distressed

Thank you for the opportunity to comment on the Proposed FASB Staff Position No. 157-e, Determining Whether a Market is Not Active and a Transaction Is Not Distressed (Proposed FSP). State Street Corporation (State Street) has been monitoring closely the recent deliberations over fair value and supports FASB efforts to provide additional guidance in this area given recent unprecedented market events. We favor the effort by the FASB to provide greater clarity and assistance with the application of the Fair Value Standards. Although we support the issuance of the Proposed FSP, we have some comments on the Proposed FSP that we believe are critical to achieving the FASB's presumed intent with the standard.

With \$12 trillion in assets under custody and \$1.4 trillion under management, State Street is the world's leading provider of financial services to institutional investors. This comment letter is written from the perspective of State Street as preparer of its own corporate financial statements as well as from our perspective of an asset manager and custodian of assets that have been significantly affected by the illiquidity in worldwide markets.

Consideration of the Intent and Ability of the Investor

As written, it appears that if step 1 and 2 are met, companies will be forced to an alternative valuation technique other than a quoted price. We believe that it is critically important that the FASB consider providing guidance that permits a financial statement preparer to optionally consider preparing its financial statements using valuation techniques that reflect the value it would receive if it were to execute into inactive markets at prices the reflect distressed transactions. For example, entities that are required to report on asset valuations more frequently than once per quarter, (e.g. registered mutual funds, bank collective funds or other entities that

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are accounted for in accordance with AAG-INV, AICPA Audit and Accounting Guide for Investment Companies) and even daily in certain circumstances, may find it impractical and even misleading to report to investors a Net Asset Value that does not reflect the price at which the fund would be able to execute in the event of liquidation of interests by unitholders of the fund. Thus we believe that it is critical that a preparer of financial statements be able to consider the likelihood and/or possibility that it would need to execute into an inactive market at prices that reflect other distressed transactions and use those values as the basis of presentation rather than reporting the value of its assets at prices expected in an orderly sale into a hypothetical active market.

Therefore, since certain entities may be required to transact in inactive markets and the reporting of liquidation value is a more relevant measure to the users of those financial statements, we believe that it is critical that a preparer of financial statements have the <u>option</u> to report its financial positions at prices that reflect the price it believes it would receive if it were forced to immediately liquidate into an inactive market. In these circumstances, we would support periodic disclosures of the effect of this alternative measure.

## Assessment of a Distressed Transaction

We strongly agree with the change proposed by the FSP whereby the rebuttable presumption is that quoted prices in an inactive market generally reflect distressed transactions. However, we believe that the conditions described in paragraph 13 of the proposed FSP are too narrowly prescriptive to be helpful in determining whether the observed quoted prices reflect distressed transactions. We recommend that step 2 be clarified to emphasize other factors that may influence an otherwise non-distressed seller to sell at prices that reflect distressed pricing. Therefore, in these circumstances such sales also should be discounted in the determination of whether the observed prices for an asset generally reflect distressed transactions. For example, in many cases we have observed that because the markets have become so inactive the few participating buyers are not willing to transact at any level other than those that reflect distressed transactions. As such we do not believe that if a non-distressed seller chooses to sell small lots of a security into this market, in an "orderly" sale, as described by the FSP, such a sale would be sufficient evidence to rebut the presumption that observed pricing generally reflect distressed transactions.

In addition, we recommend the FASB consider amending the Proposed FSP to indicate the information required to evaluate step 2 should be information an entity may have in its normal course of business and entities would not be required to obtain if such information would require undue cost and effort.

## Determination of an Active Market

As a consequence of the recent unprecedented market events, we have witnessed significant government intervention into capital markets activities with a broad market stabilization objective. We do not believe that the near-term effects of this government intervention result in

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active markets. Therefore, we recommend that the FASB include a factor within paragraph 11 that near-term effects of government intervention should not be used in the determination of whether a market is active.

## FASB Statement No. 115 Designation

During 2008, numerous companies re-designated significant portions of their investment portfolios to a held-to-maturity classification in order to align their accounting with their intent in the current market. This has severely limited flexibility to sell when markets improve. Given that this Proposed FSP may result in a material change to the fair values of securities that reside in currently distressed markets, we request that the FASB provide for a one-time opportunity for companies to re-classify securities among FASB Statement No. 115 accounting designations (Trading, Available for Sale, Held to Maturity upon their assessment of the Proposed FSP and the related impact. We note that the precedent for such a "taint free" reclassification was established upon the issuance of Statement 133 Implementation Issue No. B36.

## Effective Date

This Proposed FSP will require significant cost and effort to implement. The Proposed FSP will enable State Street to provide more relevant fair value information to its financial statement users. However, we highlight that the time remaining to implement the Proposed FSP for our period ended March 31, 2009 will be extremely difficult. Therefore, we recommend that the FASB change the effective date to periods ending after June 15, 2009, but allow for an early adoption election for periods ending after March 15, 2009 for those entities that may be able to implement within the currently proposed timeframe.

We appreciate your consideration of these comments and welcome the opportunity to discuss them with you.

Sincerely,

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Executive Vice President and Corporate Controller