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LETTER OF COMMENT NO. 262

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

Via e-mail: director@fasb.org

Re: File Reference: Proposed FAS 157-e (Determining Whether a Market is Not Active and a Transaction is Not Distressed)

To the Technical Director:

In response to the request for comments issued by the Board on Proposed FASB Staff Position FAS 157-e, the New York Bankers Association is submitting these comments supporting the staff position on determining whether a market is not active and a transaction is not distressed, but only as an interim step to a more complete review of Fair Value accounting. Our Association believes that this interpretation will address several areas of confusion with regard to fair value measurements of debt securities and other assets classified as available-for-sale or held-to-maturity. However, we are concerned that the phrasing of the proposed staff position is sufficiently imprecise as to allow conservative accounting entities, in view of the litigation risk in the current market, to continue to resist classifying markets as inactive and transactions as distressed. We also strongly urge that the interpretation be made final and applicable no later than to reporting periods ending after December 15, 2008. Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. Our members have almost 300,000 New York employees and aggregate assets in excess of \$9 trillion.

Proposed FAS 157-e would modify the guidance provided in Financial Accounting Statement No. 157 by establishing a new two-step process for determining whether a market is not active and a transaction is not distressed. Step one provides reporters with a list of non-exclusive factors that indicate that a

market is not active. Instead of providing guidance based on these factors, however, the proposal states that a "reporting entity shall use its judgment in determining whether the market is active." Accounting entities auditing the reporter are then free to use their judgment to second-guess the judgments of the reporting entity.

If the reporting entity concludes that a market is not active, it must proceed to the second step, which is to presume that a quoted price is associated with a distressed transaction unless it has certain required evidence to the contrary. If it does have this evidence, it must use the quoted price unless certain other conditions apply. If it does not have the evidence, then it must use another valuation technique, other than the quoted price, such as present value.

This two-step approach is a significant improvement on current Fair Value valuation techniques in distressed markets. However, it seems to us still to fail to take into consideration the truly woeful state of certain financial markets and the contribution that Fair Value accounting has made to the state of those markets. We therefore support proposed FSP 157-e as an interim step in a total review of Financial Accounting Statement No. 157. We urge that such a review be undertaken immediately.

In addition, the proposal states that it would be effective for interim and annual periods ending after March 15, 2009. This effective date fails to take into account the damage done to financial markets by the misinterpretation of Financial Accounting Statement No. 157, particularly in the 3rd and 4th quarters of 2008. We therefore urge that proposed FAS 157-e be adopted effective no later than for accounting periods ending after December 15, 2008 (the date when the Board recognized the need to begin issuing additional Fair Value guidance), if not earlier.

We also support the recommendations made in the American Bankers Association's comment letter dated March 30, 2009.

Sincerely,

Michael P. Smith