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Sir David Tweedie
Chairman
International Accounting Standards Board
30 Cannon Street
London
United Kingdom
EC4M 6XH

Email: iasb@iasb.org

20 April 2009

Dear Sir David,

Re: Request for Views on Proposed FASB Staff Position FAS 157-e, *Determining Whether a Market is Not Active and a Transaction is Not Distressed* and Proposed FASB Staff Position FAS 115-a, FAS 124-a, and EITF 99-20-b, *Recognition and Presentation of Other-Than-Temporary Impairments*

Deloitte Touche Tohmatsu is pleased to respond to the IASB's request for views on Proposed FASB Staff Position FAS 157-e, *Determining Whether a Market is Not Active and a Transaction is Not Distressed* (the "proposed FASB Staff Position FAS 157-e") and Proposed FASB Staff Position FAS 115-a, FAS 124-a, and EITF 99-20-b, *Recognition and Presentation of Other-Than-Temporary Impairments* (the "proposed FASB Staff Position FAS 115-a").

We support the Board's efforts to work cooperatively with the US Financial Accounting Standards Board (the "FASB") in dealing with reporting issues arising from the global financial crisis. As noted in the Board's request for views, in response to the financial crisis, FASB issued proposals for two amendments, proposed FASB Staff Position FAS 157-e and proposed FASB Staff Position FAS 115-a. We agree with the IASB that constituent views on these two proposals could be useful to the Board. We have attached as appendices to this letter two comments letters issued by Deloitte & Touche LLP in the United States in response to the proposals and summarize those responses below.

Although the Board has requested views on the proposed FASB Staff Positions it is important to acknowledge that on 9 April 2009, prior to the deadline for this request for views, the FASB issued final standards on these two projects. We recommend the Board instead focus on the guidance in the final FASB Staff Positions as they are significantly different than the proposals. Below, we provide our detailed views on each of the final FASB Staff Positions and comparisons to IFRSs.

We believe that the FASB Staff Position FAS 157-4¹ is broadly consistent with the principles of fair value in IFRSs and the Expert Advisory Panel document² and therefore an amendment to IFRSs is not necessary. However, in light of the IASB's imminent release of an exposure draft on Fair Value Measurements, the IASB should consider whether the words used in the FASB Staff Position FAS 157-4 are consistent with the exposure draft and whether the wording of the exposure draft should be aligned with the FASB Staff Position FAS 157-4. In addition, the IASB should seek the views of the Expert Advisory Panel to establish whether differences in the words of the FASB Staff Position FAS 157-4 and the Expert Advisory Panel report are expected to have any practical effect.

As there are already significant differences in the accounting models under IFRSs and U.S. GAAP for debt securities, changes to the underlying IFRS model to try to incorporate the guidance in FASB Staff Position FAS 115-2³ would create unnecessary complexities and therefore we would not favour a short-term fix to attempt to converge IFRS with the requirements in US GAAP for other-than-temporary impairments ("OTTI") for securities. Instead, we strongly encourage the IASB to work together with the FASB with the common goal of the development of a high quality fair value measurement standard and a high quality financial instrument recognition and measurement standard that is identical for both IFRS and US GAAP. We support the efforts of the Boards to issue an exposure draft of proposals to replace financial instruments recognition and measurement guidance in the near term.

The need for the IASB and FASB to develop identical standards as part of their convergence efforts has been highlighted by the current financial crisis. Indeed, the IASB finding it necessary to issue this request for views further illustrates the importance of having identical accounting standards. Identical standards create a truly level playing field for companies around the globe, eliminate the potential for accounting arbitrage between U.S. GAAP and IFRS, and lessen the potential for political interference in the standard-setting process.

The remainder of this letter is divided into two sections. First, we summarise our comments and views on the proposed FASB Staff Positions, and second we discuss our views on the final FASB Staff Positions and comparisons to IFRSs.

Proposed FASB Staff Positions

Proposed FASB Staff Position FAS 157-e

Please see the comments made by Deloitte & Touche LLP in United States in its comment letter to the FASB on the proposed FASB Staff Position FAS 157-e. That is, we had significant concerns with the guidance in the proposed FASB Staff Position FAS 157-e as it would have resulted in valuations that are inconsistent with the underlying principles of fair value measurements and would significantly reduce the transparency that investors and other users of financial statements seek. The underlying presumption in the proposed FASB Staff Position FAS 157-e that quoted prices in inactive markets reflect distressed transactions in the absence of evidence to the contrary, would have far-reaching, unintended consequences and is inconsistent with the fair value measurement principles in IAS 39⁴ and the views expressed in the Expert Advisory Panel document. Such a presumption would lead to measurements that are inconsistent with the definition of fair value in Statement 157⁵ and IAS 39. That is, the

¹ FSP FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*.

² Measuring and disclosing the fair value of financial instruments in markets that are no longer active.

³ FSP FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*.

⁴ IAS 39, *Financial Instruments: Recognition and Measurement*.

⁵ FASB Statement No. 157, *Fair Value Measurements*.

value obtained from applying the provisions of the proposed FASB Staff Position FAS 157-e is not one that a willing buyer would accept in the current market; rather, it is a selling price in a hypothetically active market that does not exist.

Proposed FASB Staff Position FAS 115-a

As noted in the comments made by Deloitte & Touche LLP in United States in its comment letter to the FASB on the proposed FASB Staff Position FAS 115-a, we believe that the guidance in the proposed FASB Staff Position FAS 115-a makes the OTTI guidance under U.S. GAAP more operational and improves the presentation of OTTI in the financial statements. The proposed FASB Staff Position FAS 115-a also benefits preparers of financial statements by giving them appropriate relief from the impact of the fair value measurements in the current market environment without significantly reducing the transparency that investors and other users of financial statements seek.

In addition, we recommended that if the FASB proceeds with the issuance of the proposed FASB Staff Position FAS 115-a (as drafted), it should limit the scope to debt securities, as the proposed FASB Staff Position FAS 115-a is unclear on the treatment of equity securities. Further, we believe the term “credit loss” in the proposed FASB Staff Position FAS 115-a is unclear and may result in diversity in practice on how entities determine that amount. Accordingly, the Board should consider requiring an approach for determining credit losses for held-to-maturity (HTM) and available-for-sale (AFS) debt securities that is similar to the model for loans under FASB Statement No. 114, *Accounting by Creditors for Impairment of a Loan*. Our recommendations did not address recoveries. We acknowledge that the FASB is working on a recoveries project and we recommended continued effort on that project. We do not believe that the timeline of the recoveries project needs to be the same as the timeline of the proposed FASB Staff Position FAS 115-a. Any potential guidance regarding recoveries could be postponed until later in the year.

Final FASB Staff Positions

FASB Staff Position FAS 157-4

The FASB Staff Position FAS 157-4 issued by the FASB differs significantly from the proposed FASB Staff Position FAS 157-e as it eliminates the presumption that all quoted prices in an inactive market are distressed unless evidence exists to the contrary. In addition, the FASB emphasised that the objective of a fair value measurement remains unchanged; that is, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions. The FASB Staff Position FAS 157-4 further reasserts that fair value is a market based measurement and not an entity specific measurement. We believe the FASB Staff Position FAS 157-4 provides users with additional application guidance that is consistent with the underlying principles of fair value measurements in Statement 157. We also believe that the principles outlined in the FASB Staff Position FAS 157-4 are consistent with the principles underlying fair value in IFRSs and the Expert Advisory Panel report. We note that the words of the FASB Staff Position and the Expert Advisory Panel report differ and in most cases we do not believe such differences will have a practical effect. However, one area we believe the IASB and the Expert Advisory Panel should focus on is whether differences in the wording of paragraph 16 of the FASB Staff Position FAS 157-4 and paragraph 24 of the Expert Advisory Panel report on what is not an orderly transaction will have any practical effect. This initiative can be undertaken in the short-term and should not detract from the IASB’s objective to continue to develop, in conjunction with FASB, a comprehensive statement on fair value measurements which we fully support.

FASB Staff Position FAS 115-2

The main difference between the FASB Staff Position FAS 115-2 and the proposed FASB Staff Position FAS 115-a is that the FASB Staff Position FAS 115-2 is limited to debt securities only. In addition, the FASB did provide some clarity on the determination of credit losses. The FASB Staff Position FAS 115-2 requires entities to initially apply the provisions to previously other-than-temporarily impaired instruments existing as of the effective date by making a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. The cumulative-effect adjustment reclassifies the noncredit portion of a previously other-than-temporarily impaired instrument held as of the effective date to accumulated other comprehensive income from retained earnings.

As noted in the request for views, the differences between U.S. GAAP and IFRSs with respect to scope, impairment triggers, impairment measurements, and recoveries are numerous and complex. A short term project to fully converge with FASB's amendment would entail substantial changes to IFRSs that would require significant efforts and would create unnecessary complexities (e.g., recognizing impairments of held-to-maturity securities that are not due to credit in other comprehensive income). Instead, we would encourage both Boards to expedite their work on a joint standard that would improve reporting for all financial instruments including impairment issues (e.g., loss recognition triggers, measurement of losses, recognition of recoveries, etc.).

If you have any questions concerning our comments, please contact Ken Wild in London at +44 (0) 207 007 0907, Andrew Spooner in London at +44 (0) 207 007 0204 or Robert Uhl in Wilton, the United States, at +1 (203) 761-3152.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Wild", written in black ink. The signature is positioned above a horizontal line that serves as a separator.

Ken Wild
Global IFRS Leader



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March 31, 2009

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
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File Reference: Proposed FSP FAS 157-e

Dear Mr. Golden:

Deloitte & Touche LLP is pleased to comment on proposed FASB Staff Position No. FAS 157-e, "Determining Whether a Market Is Not Active and a Transaction Is Not Distressed" (the "proposed FSP").

We support the Board's efforts to provide timely additional guidance on measuring the fair value of financial assets in inactive markets. However, we believe that the guidance in the proposed FSP will result in valuations that are inconsistent with the underlying principle of fair value in FASB Statement No. 157, *Fair Value Measurements*. We therefore believe that the proposed FSP will have several negative unintended consequences and will significantly reduce the transparency that investors and other users of financial statements seek. Thus, we do not support issuance of the proposed FSP in its current form.

As discussed in our comment letter on proposed FSP FAS 115-a, FAS 124-a, and EITF 99-20-b, "Recognition and Presentation of Other-Than-Temporary Impairments" ("proposed FSP FAS 115-a"), we believe proposed FSP FAS 115-a (if appropriately modified) is sufficient to achieve the objective of providing preparers appropriate relief from the impact of fair value measurements in the current market environment without significantly reducing the transparency that investors and other users of financial statements seek.

The proposed FSP attempts to address how to determine fair value when markets are inactive. However, as we explain below, the proposed FSP creates a measure that is inconsistent with the definition of fair value. The definition of fair value in Statement 157 indicates that it is a price that a willing buyer would pay in the current market. The value obtained by applying the guidance in the proposed FSP is not one that a willing buyer would accept in the current market; rather, it is a hypothetical fair value in an active market.

We believe that rather than significantly alter Statement 157 and the measurement of fair value, the Board needs to address whether fair value measurements should be used when markets that were normally active reach a certain deep level of inactivity and dysfunction such that most sellers are not willing to sell at prices that buyers are willing to pay and vice versa.

In the following section, we address the potential unintended consequences of the proposed FSP and further reasons why we do not support its issuance. Nevertheless, we believe that if the Board decides to proceed with the proposed FSP, it should address certain issues, which are discussed in detail further below.

Unintended Consequences

We do not support the presumption in the proposed FSP that quoted prices in inactive markets reflect distressed transactions in the absence of evidence to the contrary (namely, that there were multiple bidders and that there was enough time to market the asset). Introducing such a presumption has far-reaching consequences that the Board may not have contemplated or intended.

First, this presumption is unrealistic. Under normal market conditions, it would be illogical to presume that all transactions in inactive markets are distressed in the absence of evidence to the contrary. Even under today's market conditions, many transactions in inactive markets are not distressed. For example, the current collateralized debt obligation (CDO) market is inactive, but certain transactions occurring in this market are not distressed. In many cases, observable transaction prices in inactive markets are depressed not because transactions involved a distressed party, but because of uncertainty in the markets, the increased risk premiums for illiquidity, and the significant excess of supply over demand.

Second, introducing this presumption will create operational challenges and system costs for many companies. Currently, many companies use quotes from brokers or pricing services in determining fair value in inactive markets. Under the proposed FSP, such quoted prices are presumed to represent distressed transactions in the absence of evidence to the contrary. Companies that are unable to obtain evidence to overcome the presumption will be forced to develop their own potentially costly and complex models to estimate fair value. We expect that many companies will prefer using prices obtained from brokers or pricing services to incurring the cost and effort to develop their own models to estimate fair value. Forcing companies to develop sophisticated models to determine fair value as opposed to using observable transactions in inactive markets is likely to result not only in increased costs, but also in less reliable information because of the subjectivity and complexity in determining fair value in accordance with the proposed FSP. Indeed, the proposed guidance appears to imply that an entity would be precluded from calibrating its model to observable transactions in inactive markets that are presumed to be distressed, thereby further complicating the task of determining fair value.

Furthermore, this presumption would force many entities to use a valuation technique other than one that relies principally on quoted prices for observable transactions in inactive markets in circumstances in which such observable transactions are the best evidence of fair value. For example, under the presumption that all transactions in inactive markets are distressed, quoted prices for off-the-run treasury securities and other government securities that do not trade in active markets would be presumed to be distressed; in such cases, companies would be forced to depart from the quoted prices or to use alternative valuation techniques in valuing such investments. Similarly, companies that use an index (e.g., ABX) as an input in determining the fair value of financial assets (e.g., asset-backed securities) might conclude that the markets for transactions underlying the index are inactive. In this case, would companies be required to presume that the index represents distressed transactions?

In addition, this approach would create challenges in valuing investments in mutual funds and alternative investments that do not trade in active markets, since market transactions occurring at net asset values would be presumed to represent distressed transactions in the absence of evidence to override the presumption. Similarly, this approach would make the task of determining the fair value of investments in equity securities that are not traded in active markets challenging. In the absence of evidence that observable transactions were not distressed, an entity would be required to use a valuation technique other than one that uses the quoted price without significant adjustment. This is contrary to the cornerstone principle in Statement 157 that an entity should maximize the use of observable inputs and minimize the use of unobservable inputs.

Further, the presumption that transactions in inactive markets are distressed may lead to recognition of significant inception gains. Paragraph 17(b) of Statement 157 describes a distressed or forced transaction as a situation in which the transaction price might not represent fair value at initial recognition. Therefore, some may argue that if the transaction is presumed distressed under the proposed model, an entity is required to use a valuation technique other than one that uses the transaction price without **significant adjustment** to value the asset, resulting in recognition of potentially significant inception gains for the acquirer of an asset.

With respect to inception gains, this presumption may result in the deferral of losses that a company expects to incur. For example, assume a company intends to sell a security shortly after the reporting date. As of the reporting date, the fair value determined under the proposed FSP may significantly exceed the price that would be received to sell the asset. Accordingly, if the security is reported at fair value in the financial statements, the full extent of the estimated loss would not be reflected in the financial statements. A similar phenomenon may arise if the market for the security changes from being inactive to active and a company needs to mark down an investment from the measurement determined under the proposed FSP to the “true” exit price when the presumption that observable transactions are distressed can no longer be supported.

In addition, the potential under the proposed FSP for significant inception gains and deferral of losses expected to be incurred on disposal (as described above) may incentivize companies to hold on to investments that they might otherwise have intended to sell. This in turn may cause markets to become less liquid and may have a negative impact on government programs intended to revive markets for troubled assets.

There may be other unintended consequences that have not been duly considered and deliberated by the Board. For instance, the proposed changes may affect goodwill impairment assessments.

If the Board decides to proceed with the proposed FSP, we recommend that instead of presuming that transactions in inactive markets are distressed, the Board should provide application guidance and lay out clear principles to help entities determine when transactions are distressed. In addition, such guidance should address the transition from inactive to active markets, when the market for such transactions becomes active.

Issues to Be Addressed If the Board Proceeds With the Proposed FSP

Scope

If the Board proceeds with the proposed FSP, we recommend the Board limit the proposed FSP’s scope to illiquid debt securities that have been the focus of write-downs and impairments at

financial institutions in the current market environment (e.g., mortgage-backed securities, CDOs, and commercial mortgage-backed securities). As noted above, applying the proposed FSP to other types of financial instruments has far-reaching consequences that the Board may not have contemplated or intended.

Measurement Objective

The proposed FSP does not articulate a clear measurement objective. We recommend that the Board clarify whether the objective of measuring fair value when an entity is unable to overcome the presumption that available quoted prices in an inactive market are distressed is consistent with the “exit price” objective described in paragraph 7 of Statement 157 (i.e., fair value is the price that would be received to sell the asset as of the measurement date). Paragraph 15 of the proposed FSP states, in part:

If the reporting entity does not have evidence that both factors in paragraph 13 are present for a given quoted price, . . . the reporting entity must use a valuation technique other than one that uses that quoted price without significant adjustment. . . . The inputs to the present value technique should reflect an orderly transaction between market participants at the measurement date. An orderly transaction would reflect all risks inherent in the asset, including a reasonable risk premium for bearing uncertainty that would be considered by willing buyers and willing sellers in pricing the asset in a nondistressed transaction at the measurement date.

From the above paragraph, it is unclear whether entities determining fair value are required to assume that the market for the asset being measured is active (even though it is not, and thus liquidity factors are ignored). Alternatively, may entities assume that there is a “normalized” balance between supply and demand (even if the market does not reflect current supply and demand conditions)? In the current economic environment, prices for certain assets are lower than in previous years because of a shift in supply and demand. There is more supply than demand in the market for such assets, which does not necessarily mean that the transactions occurring in the market are distressed. Assuming that a market is active (when it is not) or that there is a “normal” balance between supply and demand (when there is not) would be inconsistent with the exit price objective in Statement 157, because the resulting measurement would not reflect the price that would be received to sell the asset as of the measurement date. We believe that if the Board’s intent is to create an exception from the exit price objective in inactive markets, the Board should clearly indicate that if the conditions are met, the preparer is no longer required to measure the assets at fair value and should use terminology other than “fair value” to describe those measurements.

Further, we believe that if the Board’s intended measurement objective under the proposed FSP is indeed different from the exit price, the Board should require supplemental footnote disclosure (this disclosure should be consistent with paragraph 32 of Statement 157) of fair values determined by using an exit price assumption, as defined in Statement 157, to provide investors with the transparency they need to make informed decisions. Finally, we would also recommend making application of the proposed FSP optional so that an entity would not be precluded from using quotes from observable transactions or third-party broker or pricing services that management believes represent an exit price but for which evidence cannot be obtained to overcome the presumption that they are distressed.

The proposed amendments to Statement 157 give an example of how to apply the guidance in paragraphs A32A to A32G. We believe that the Board needs to significantly revise this example to clarify its intended principles. Proposed paragraph A32F specifies that in determining the discount rate to use in a fair value measurement of an investment in a CDO, an entity would use the midpoint between what willing buyers would accept and what willing sellers would accept. In that example, the rate that willing sellers would accept is based on “a rate of return in a hypothetical active market at the measurement date” and the rate that willing buyers would accept is based on “bid-level yields implied by the difference between the contractual cash flow amount and the most likely cash flow estimate adjusted for a reasonable risk premium.” This example implies that the measurement objective in an inactive market is not the exit price on the measurement date but some other amount. Is the measurement objective the midpoint between a “reasonable” entry price and the hypothetical exit price in a market that is assumed to be active even though the market is not active?

Further, the proposed FSP requires the use of significant judgment in evaluating whether a market is inactive and how to determine fair value when the quoted price is presumed to reflect a distressed transaction. Although we agree that the use of judgment is essential under Statement 157, the proposed FSP introduces uncertainty about the measurement objective (as discussed above) and does not provide clear implementation guidance (e.g., how to determine the discount rate). In the absence of a clearly defined measurement objective and clear implementation guidance, companies and auditors will have difficulty in applying the proposed FSP.

We also recommend the Board discuss these issues with the SEC and the PCAOB so that necessary guidance to address the audit concerns presented by the proposed FSP can be issued in a timely manner.

International Convergence

In October 2008, the IASB issued a statement indicating that FASB Staff Position No. FAS 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active,” is consistent with IFRSs (IAS 39, *Financial Instruments: Recognition and Measurement*). This statement helped alleviate concerns that the definition of fair value and its application to financial assets are different in U.S. GAAP and IFRSs. The proposed FSP, however, changes the application of fair value. As stated in paragraph 10 of the IASB’s recently issued Request for Views, the IASB has not participated in the development of the proposed FSP and the conclusions represent views of the FASB only. Because U.S. GAAP and IFRSs were previously aligned, we are concerned that the proposed FSP would create divergence at a time when both boards simultaneously have pledged to accelerate their convergence efforts, as indicated in their March 24, 2009, joint statement.

Effective Date

We are concerned that because of the timing of a potential final FSP and the work entities will need to perform to comply with it, most entities will find it difficult to fully and accurately implement the proposed FSP’s requirements by the proposed effective date. In addition, we are concerned that entities will not have enough time to develop the necessary systems infrastructure and sufficient internal controls and will lack the necessary expertise (such as valuation specialists) to appropriately apply the provisions of the final FSP. Consequently, we believe that if the Board decides to issue the proposed FSP as a final standard, the effective date should at

least be deferred to interim and annual periods ending after June 15, 2009, with early application permitted to interim and annual periods ending after March 15, 2009. Further, we believe the final FSP should not permit retrospective application to prior periods.

This letter includes two appendixes. Appendix A contains our specific comments and suggestions for the proposed FSP, and Appendix B contains our responses to the questions posed by the FASB in the proposed FSP's Notice to Recipients.

Deloitte & Touche LLP appreciates the opportunity to comment on the proposed FSP. If you have any questions concerning our comments, please contact Magnus Orrell at (203) 761-3402 or Robert Uhl at (203) 761-3152.

Yours truly,

Deloitte & Touche LLP

cc: Robert Uhl

APPENDIX A
Deloitte & Touche LLP
Specific Comments and Suggestions

This appendix discusses our comments on the specific paragraphs of the proposed FSP. These comments complement our views discussed in the body of the letter.

Paragraph 8

- Paragraph 8 of the proposed FSP limits its application to **financial assets**; however, this is inconsistent with the amendments proposed to Statement 157. As proposed, paragraphs 28 and 29A of the amended Statement 157 would apply to **all** assets and liabilities, not just to financial assets. The Board should address this apparent conflict. Furthermore, the Board should consider whether excluding financial liabilities from the scope will result in inconsistencies in the application of the principles of the proposed FSP to financial instruments that could be either a financial asset or a financial liability (e.g., derivative instruments).

Paragraph 11

- The proposed FSP lists certain qualitative characteristics of an inactive market that an entity is required to consider in its assessment of inactive markets. However, some of those characteristics do not appear to represent indicators of inactive markets. In addition, some of the terms are not clearly defined, which may result in diversity in practice. For example:
 - The characteristic in paragraph 11(c) implies that the market for a security may be deemed inactive just because price quotations vary substantially over time; however, the security may be traded in significant volume on a daily basis. Although many equity securities issued by large financial institutions have experienced significant declines in price, they continue to be traded in significant volumes on a daily basis.
 - The characteristic in paragraph 11(d) suggests that the market for a security is inactive if indexes that were previously highly correlated are demonstrably uncorrelated with recent fair values. However, this is not necessarily indicative of an inactive market. For example, a publicly traded stock that was previously correlated to an index (e.g., S&P 500) may no longer be correlated but may still be traded in significant volume.
 - Paragraphs 11(e) and (f) refer to “abnormal” liquidity risk premiums or implied yields and “abnormally wide” bid-ask spreads. The Board should clarify what is meant by “abnormal” to ensure consistent application. Is it based on historical averages?

Paragraph 13

- We strongly encourage the Board to define what is meant by a distressed transaction rather than to introduce a rebuttable presumption that all transactions in inactive markets are distressed. Please refer to the discussion in the body of this letter.
- It is not clear whether equity securities for which the market is deemed inactive or quoted prices are presumed to be distressed would be considered “nonmarketable equity securities” under FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. The proposed FSP may significantly narrow the scope of Statement 115.

Paragraph 14

- Paragraph 14 states, in part, “For example, if a quoted price that is not associated with a distressed transaction is not current or is a consequence of a trade with an **insignificant volume relative to the total market for that asset**, the reporting entity should consider whether that quoted price is a relevant observable input” (emphasis added). It is unclear whether the phrase “total market for that asset” is intended to refer to the volume of market transactions in a given period or the total value of the asset in existence. We recommend that the Board reconcile paragraph 14 to the factors listed in paragraph 11 of the proposed FSP, since a company would have concluded under paragraph 11 that the market for that particular asset is inactive, which would imply that there are few, if any, transactions occurring in the market.

Paragraph 15

- The Board should clarify what is meant by “a **reasonable risk premium** for bearing uncertainty that would be considered by willing buyers and willing sellers in a nondistressed transaction at the measurement date” (emphasis added). Could an entity assume a normal “supply and demand” over the long term in determining the fair value measurement? Could an entity ignore liquidity factors in determining fair value? Such assumptions would be inconsistent with the exit price notion under Statement 157.
- We believe that the requirement for a reporting entity to use a valuation technique other than one that uses that quoted price without significant adjustment is not operational. For example, what if the entity cannot obtain the evidence necessary to overcome the presumption that the transaction is distressed but believes that the transaction price is representative of fair value? Would such entities be precluded from calibrating their models to the transaction price, which they believe is representative of fair value?

Paragraph 28 (Added by the Proposed FSP)

- As noted in an earlier comment, this proposed paragraph refers to “assets and liabilities,” which contradicts the scope of the proposed FSP as defined in paragraph 8.

- The proposed amendments to paragraph 28(b) seem to suggest that all quoted prices in inactive markets are Level 2 measurements. We recommend that the Board consider changing the parenthetical reference to state, “provided the transaction is not a distressed transaction as described in paragraph 29A.”

Paragraph 29A (Added by the Proposed FSP)

- The first paragraph and step 2(a) include a reference to “asset or liabilities,” which seems to indicate that the proposed FSP applies to all assets and liabilities (including nonfinancial assets and liabilities). This seems to contradict the scope of the proposed FSP as defined in paragraph 8.
- Step 2(a) states, in part, “[F]or example, there was not a regulatory requirement to sell.” We believe that this example may have unintended consequences since an entity may have a regulatory requirement to sell the financial asset but may still have enough time to allow for usual and customary marketing activities. The IASB Expert Advisory Panel paper, “Measuring and Disclosing the Fair Value of Financial Instruments in Markets That Are No Longer Active,” states, in part, “[I]f an entity sells assets to market participants to meet regulatory requirements, the regulator does not establish the transaction price and the entity has a reasonable amount of time to market the assets, the transaction price provides evidence of fair value.”
- As currently drafted, the proposed FSP is not clear on whether an entity is required to look for evidence that would overcome the presumption that a transaction is distressed (e.g., evidence that could be obtained without undue cost and effort) or could elect not to obtain or consider available evidence and thus could choose to treat a quoted price as representing a distressed transaction. We recommend that the Board clarify this requirement if it elects to issue the proposed FSP as a final standard.

Paragraph A32D (Example 11, as Amended by the Proposed FSP)

- The proposed example illustrates that an entity uses its best estimate of the most likely cash flows in estimating the fair value of a CDO security. Further, in paragraph A32E, an entity determines the discount rate, which considers credit spreads for similar securities. We recommend that the Board revise the example to clarify that an entity should not use a credit spread in the discount rate that would double count the expected losses. If the entity is already assuming some level of credit losses in its best estimate of most likely cash flows, discounting those cash flows at a credit-adjusted discount rate would result in a measurement that is less than fair value.

Similarly, the proposed example also requires an entity to consider the performance history of the mortgages in determining the discount rate. However, the performance history may already be factored into the estimate of the most likely cash flow. We recommend that the Board revise the proposed example to prevent inconsistent application and interpretation.

Paragraph A32F (Example 11, as Amended by the Proposed FSP)

- It is not clear from the proposed example how the entity determined the discount rate of 7 percent in a “hypothetical active market” and the discount rate of 15 percent. Further, the paragraph implies that the fair value measurement (based on the midpoint of 7 percent and 15 percent) is not based on a sale in a hypothetical active market, whereas the body of the proposed FSP implies that if the two criteria in step 2 are not met, the resulting fair value measurement should not be based on a sale in an inactive market. This seems to imply that there is a “third” category in between the two (i.e., a more active than totally inactive market that is still not an active market). We recommend that the Board clarify this conceptual anomaly if it decides to issue the proposed FSP as a final standard.
- The Board should clarify the criteria or justification for using a mid-price based on modeled inputs, which seems inconsistent with the bid-ask spread guidance in paragraph 31 of Statement 157. If the Board has other objectives in picking the midpoint, it should clearly explain such objectives in the final standard.
- There is inconsistency between the description of the discount rate of 15 percent (i.e., a discount rate based on the “most likely cash flow estimate adjusted for a reasonable risk premium due to uncertainty”) and the guidance in paragraph 29A, which states, “An orderly transaction would reflect all risks inherent in the asset, including a reasonable risk premium for bearing uncertainty that would be considered by market participants (i.e., willing buyers and sellers) in pricing the asset in a nondistressed transaction.” The Board should reconcile this conflict between the two paragraphs.

APPENDIX B
Deloitte & Touche LLP
Responses to Notice for Recipients

Question 1: Is the proposed effective date of interim and annual periods ending after March 15, 2009, operational?

We do not believe that the proposed effective date is operational. As discussed in the body of our letter, we believe that entities will find it difficult to fully and accurately implement the proposed FSP's requirements by the proposed effective date.

Question 2: Will this proposed FSP meet the project's objective to improve financial reporting by addressing fair value measurement application issues identified by constituents related to determining whether a market is not active and a transaction is not distressed? Do you believe the amendments to Statement 157 in this proposed FSP are necessary, or do you believe the current requirements in Statement 157 should be retained?

We do not believe the proposed FSP, as currently drafted, meets the objective of improving financial reporting. As discussed earlier in this letter and in our comment letter on proposed FSP FAS 115-a, we believe the proposed FSP FAS 115-a (if appropriately modified) addresses most of the issues related to the impact of fair value measurement in the current economic environment. We believe that the proposed FSP does not address the appropriate issues, will have several negative unintended consequences, and will significantly reduce the transparency that investors and other users of financial statements seek. Thus, we do not support the issuance of the proposed FSP as a final standard unless the Board addresses the issues highlighted in this letter.

Question 3: Do you believe the proposed two-step model for determining whether a market is not active and a transaction is not distressed is understandable and operational? If not, please suggest alternative ways of identifying inactive markets and distressed transactions.

As noted in the body of our letter, we believe that the two-step model is not operational. Without adequate implementation guidance, the proposed model would lead to inconsistent application. If the Board decides to issue the proposed FSP as a final standard, it should clarify whether an entity is required to evaluate both of the requirements in step 2 or whether it can elect not to obtain or consider available evidence and thus can choose to treat all observable transactions in inactive markets as distressed.

Question 4: Are factors listed in paragraph 11 of the FSP that indicate that a market is not active appropriate? Please provide any other factors that indicate that a market is not active.

We do not believe that the factors listed in paragraph 11 of the proposed FSP, as currently drafted, are appropriate. Please refer to our specific comments in Appendix A. We believe that additional application guidance is necessary to enable entities to make sound judgments in determining when a market is inactive and to ensure consistent application.

Question 5: What costs do you expect to incur if the Board were to issue this proposed FSP in its current form as a final FSP? How could the Board further reduce the costs of applying the requirements of the FSP without reducing the benefits?

As noted in the body of our comment letter, the proposed FSP, as currently drafted, would pose significant implementation challenges. Under the proposed FSP, entities would no longer be able to rely on observable transactions in inactive markets, and thus would need to use modeling techniques. In addition, the proposed FSP may make it more difficult to audit management judgments and estimates used in determining fair value.

March 31, 2009

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

File Reference: Proposed FSP FAS 115-a, FAS 124-a, and EITF 99-20-b

Dear Mr. Golden:

Deloitte & Touche LLP is pleased to comment on proposed FASB Staff Position (FSP) No. FAS 115-a, FAS 124-a, and EITF 99-20-b, "Recognition and Presentation of Other-Than-Temporary Impairments" (the "proposed FSP").

We support the Board's efforts to simplify and improve the accounting standards for the reporting of investments in debt and equity securities. We believe the proposed FSP makes the other-than-temporary guidance more operational and improves the presentation of other-than-temporary impairment (OTTI) in the financial statements. The proposed FSP also benefits preparers of financial statements by giving them appropriate relief from the impact of the fair value measurements in the current market environment without significantly reducing the transparency that investors and other users of financial statements seek. However, while we support the issuance of the proposed FSP as a final standard, we recommend that the FASB make certain changes to it to address concerns relating to (1) the application of the proposed FSP to equity securities, (2) the determination of credit losses, (3) implications resulting from an entity's intent to sell a security, and (4) the effective date and transition.

Application of the Proposed FSP to Equity Securities

The proposed FSP is unclear on how an entity is required to assess and measure an OTTI for equity securities when an entity does not intend to sell, or when it is not more likely than not it will be required to sell, the securities. One area of uncertainty is whether the determination of the period to estimated recovery is affected by the change in focus from management's having the intent and ability to hold equity securities until forecasted recovery to management's having an intent to sell before forecasted recovery. Further, it is unclear how the proposed FSP interacts with other related guidance (e.g., SEC Staff Accounting Bulletin (SAB) Topic 5.M, "Other Than Temporary Impairment of Certain Investments in Debt and Equity Securities"). In addition, the proposed FSP creates uncertainty about how to measure OTTI for equity securities when an entity does not intend to sell, or it is not more likely than not that it will be required to sell, the securities. That is, the proposed FSP does not address how to measure OTTI for such equity securities and deletes the existing OTTI measurement guidance in FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, and FASB Staff Position (FSP) FAS 115-1 and FAS 124-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments." Lastly, we note that the issues that have arisen in practice generally do not relate to equity securities, but rather to debt securities. Accordingly, we believe the scope of the proposed FSP could be limited to debt securities.

Nevertheless, if the Board proceeds with the existing scope of the proposed FSP, we recommend that the Board (1) incorporate the related guidance in SAB Topic 5.M into the final standard, as appropriate, and (2) illustrate the interaction of the new guidance with the guidance in SAB Topic 5.M. We believe that by incorporating the related guidance into the FSP, the Board will clarify its intent regarding when to recognize OTTI for both debt and equity securities. Further, the Board should clarify how to measure OTTI for equity securities when an entity does not intend to sell, or it is not more likely than not that it will be required to sell, the securities.

Determination of Credit Losses

The proposed FSP requires entities to separate the amount of the OTTI related to “credit losses” and recognize those losses in earnings for debt securities that the entity does not intend to sell or for which it is more likely than not that the entity will not be required to sell. We believe the term “credit loss” is unclear and may result in diversity in practice on how entities determine that amount. Accordingly, we encourage the Board to consider requiring an approach for determining credit losses for held-to-maturity (HTM) and available-for-sale (AFS) debt securities that is similar to the model for loans under FASB Statement No. 114, *Accounting by Creditors for Impairment of a Loan*. Such approach would also improve consistency in the accounting models applicable to debt securities and loan assets under U.S. GAAP. Under this approach, the final standard would specify that the amount to be recognized in earnings would be the difference between the security’s amortized cost and the present value of expected future cash flows discounted at the debt security’s effective interest rate.

In addition, HTM debt securities that an entity does not intend to sell, or for which it is more likely than not that the entity will not be required to sell, should not be recorded at fair value on the balance sheet when an incurred loss has occurred. In these situations, the entity should be required to record the incurred loss amount in earnings and should record no other amounts associated with fair value in other comprehensive income. This approach would converge the measurement of impairment for HTM debt securities in U.S. GAAP with the model in IAS 39, *Financial Instruments: Recognition and Measurement*. Furthermore, it avoids the unnecessary complexity of separating incurred losses and other fair value losses and creating a new accounting model for recording and amortizing the nonincurred loss component of an HTM debt security in other comprehensive income. If the purpose of requiring recognition of the “noncredit” component of the impairment for HTM securities in other comprehensive income is to achieve transparency, this objective could be accomplished with disclosure. If the purpose is to provide a disincentive for transferring impaired AFS securities to the HTM classification, the classification as an HTM security and an entity’s potential tainting of that classification upon selling those securities before maturity provides sufficient disincentive for not transferring securities to the HTM classification. HTM securities would only be recorded on the balance sheet at fair value when an entity intends to sell them or it is more likely than not that the entity will be required to sell the HTM securities.

Our recommendations do not address recoveries. We acknowledge that the FASB is working on a recoveries project and we recommend continued effort on that project. We do not believe that the timeline of the recoveries project needs to be the same as the timeline of the proposed FSP. Any potential guidance regarding recoveries could be postponed until later in the year.

Intent to Sell

Without further clarification in the final FSP, the “intent to sell” notion in the proposed FSP may raise significant implementation questions. For instance, if an entity does not plan to sell a particular security as

of the measurement date but will manage its portfolio and expects to sell securities not yet specifically identified in the future, is the security other than temporarily impaired (assuming fair value is below carrying value)? In addition, the proposed FSP is not clear about how the “intent to sell” notion would apply to entities that have outsourced their investment portfolio activity to a third-party investment manager (i.e., decisions to buy and sell securities are made by a third-party investment manager and not by the entity). Since an entity could always assert that it does not plan to sell a security, would the entity ever record an OTTI unless it had an incurred loss? In contrast, is it the Board’s intent to require ongoing OTTIs for these securities based on the fact that management does not control the investment (and disposition) decisions?

In addition, the proposed FSP is unclear on whether an entity’s assertion that it does not intend to sell is called into question if shortly after the measurement date the entity sells the particular security. That is, does the sale of the security call into question the entity’s assertion regarding other securities it does not intend to sell?

Lastly, we do not believe the language in paragraphs 12 and 13 of the proposed FSP is consistent with the Board’s intent to change the focus of the requirements for triggering an OTTI such that an OTTI has not occurred (assuming no credit losses) if management asserts “that (a) it does not have the intent to sell the security and (b) **it is more likely than not that it will not have to sell the security before its recovery**” (emphasis added). In describing “more likely than not that an entity will not sell,” paragraphs 12 and 13 do not use the words “will be required to sell” or “will have to sell.” Thus, these paragraphs leave the impression that the assessment is based on a probability of whether the entity will ever sell; they do not address whether factors outside the entity’s control will force it to sell such securities, as intended by the Board. This is similar to other existing OTTI guidance in which OTTI is triggered when an action is “probable” and not “more likely than not.” Accordingly, we believe the Board should consider using a “probable” model under the proposed FSP.

Effective Date and Transition

We are concerned that because of the timing of a potential final FSP, some entities may find it difficult to implement the proposed FSP’s requirements by the proposed effective date (i.e., interim and annual periods ending after March 15, 2009). Accordingly, we suggest that the FASB extend the effective date to interim and annual periods ending after June 15, 2009, with early adoption permitted. We believe this effective date approach has the flexibility of allowing entities that are (1) capable of early adopting the proposed FSP to do so for periods ending after March 15, 2009, and (2) not capable of early adopting the proposed FSP to delay their implementation to periods ending after June 15, 2009.

In addition, the FASB should consider allowing entities to initially apply the provisions of the final standard to instruments existing as of the effective date by recording the remeasurement of those instruments as a cumulative-effect adjustment to the opening balance of retained earnings.

The Appendix below contains our responses to the questions posed by the FASB in the proposed FSP’s Notice for Recipients.

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March 31, 2009

File Reference: Proposed FSP FAS 115-a, FAS 124-a, and EITF 99-20-b

Deloitte & Touche LLP appreciates the opportunity to comment on the proposed FSP. If you have any questions concerning our comments, please contact John Sarno at (203) 761-3433.

Yours truly,

Deloitte & Touche LLP

cc: Robert Uhl

APPENDIX
Deloitte & Touche LLP
Responses to Notice for Recipients

Issue 1: This proposed FSP would require entities to separate (and present separately on the statement of earnings or “performance indicator”) an other-than-temporary impairment of a debt security into two components 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. The two components would be (a) the credit component and (b) the noncredit component (residual related to other factors). Does this separate presentation provide decision-useful information?

As we noted in the cover letter, while we agree that the separation of the “credit” and “noncredit” component of an OTTI provides decision-useful information, we do not believe that an entity should recognize the “noncredit” component of OTTI for a HTM debt security. That is, an entity should only record the “credit” component in earnings. Consequently, HTM debt securities that an entity does not intend to sell, or for which it is more likely than not that the entity will not be required to sell, should not be recorded at fair value on the balance sheet when a credit loss has occurred. In addition, we believe the term “credit loss” is unclear and may result in diversity in practice on how entities determine that amount. Accordingly, we encourage the Board to consider requiring an incurred loss approach for HTM and AFS debt securities that is similar to the impairment model for loans under Statement 114. Under this approach, the final standard would specify that the amount to be recognized in earnings would be the difference between the security’s amortized cost and the present value of expected future cash flows discounted at the debt security’s effective interest rate.

Issue 2: This proposed FSP would require that the credit component of the other-than-temporary impairment of a debt security be determined by the reporting entity using its best estimate of the amount of the impairment that relates to an increase in the credit risk associated with the specific instrument. One way of estimating that amount would be to consider the measurement methodology described in paragraphs 12–16 of FASB Statement No. 114, Accounting by Creditors for Impairment of a Loan. For debt securities that are beneficial interests in securitized financial assets within the scope of Issue 99-20, the amount of the total impairment related to credit losses would be determined considering the guidance in paragraph 12(b) of Issue 99-20. Do you believe this guidance is clear and operational? Do you agree with the requirement to recognize the credit component of an other-than-temporary impairment in income and the remaining portion in other comprehensive income? Under what circumstances should the remaining portion be recognized in earnings?

We agree with the requirement to recognize the “credit” component of an OTTI in earnings and the remaining portion in other comprehensive income for AFS debt securities. However, we do not believe that an entity should recognize the “noncredit” component of an OTTI for a HTM debt security in other comprehensive income. That is, an entity should only record the “credit” component in earnings. We believe that recording the “noncredit” component of an OTTI for an HTM debt security in other comprehensive income causes undue complexity and creates an unnecessary new accounting model for recording and amortizing the “noncredit” component of an HTM debt security in other comprehensive income.

In addition, we encourage the Board to consider requiring a loss approach for HTM and AFS debt securities that is similar to the impairment model for loans under Statement 114. Such an approach would also improve consistency in the accounting models applicable to debt securities and loan assets under

U.S. GAAP and advance convergence with International Financial Reporting Standards (IFRSs). Under this approach, the final standard would specify that the amount to be recognized in earnings would be the difference between the security's amortized cost and the present value of expected future cash flows discounted at the debt security's effective interest rate (i.e., the incurred loss amount).

Issue 3: This proposed FSP modifies the current indicator that, to avoid considering an impairment to be other than temporary, management must assert that it has both the intent and the ability to hold an impaired security for a period of time sufficient to allow for any anticipated recovery in fair value. The Board believes that, compared to current requirements, it is more operational for management to assert that (a) it does not have the intent to sell the security and (b) it is more likely than not that it will not have to sell the security before its recovery. Does this modification make this aspect of the other-than-temporary impairment assessment more operational (the remaining factors discussed in FSP FAS 115-1/FAS 124-1, The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments, would remain unchanged)? Should this modification apply to both debt and equity securities? Will this change result in a significant change to the assessment of whether an equity security is other-than-temporarily impaired?

The proposed FSP is unclear on how an entity is required to assess and measure an OTTI for equity securities when an entity does not intend to sell, or when it is not more likely than not it will be required to sell, the securities. One area of uncertainty is whether the determination of the period to estimated recovery is affected by the change in focus from management's having the intent and ability to hold equity securities until forecasted recovery to management's having an intent to sell before forecasted recovery. Further, it is unclear how the proposed FSP interacts with other related guidance (e.g., SAB Topic 5M). Lastly, the proposed FSP creates uncertainty about how to measure OTTI for equity securities when an entity does not intend to sell, or it is not more likely than not that it will be required to sell, the securities.

In addition, we are concerned that without further clarification in the final FSP, the "intent to sell" notion in the proposed FSP may raise significant implementation questions. For instance, if an entity does not intend to sell a particular security as of the measurement date, and its policies and procedures include periodic reassessments of its portfolio in the future (which may lead the entity to change its intent with respect to selling the security), is the security other than temporarily impaired (assuming fair value is below carrying value)? The FSP is also unclear about how the "intent to sell" notion would apply to entities that have outsourced their investment portfolio activity to a third-party investment manager (i.e., decisions to buy and sell securities are made by the investment manager and not by the entity). Since an entity could always assert that it does not plan to sell a security, would the entity ever record an OTTI unless it had a "credit" loss? Lastly, the proposed FSP is unclear on whether an entity's assertion that it does not intend to sell is called into question if shortly after the measurement date the entity sells the particular security. That is, does the sale of the security call into question the entity's assertion regarding other securities it does not intend to sell?

Further, we do not believe the language in paragraphs 12 and 13 of the proposed FSP is consistent with the Board's intent to change the focus of the requirements for triggering an OTTI such that an OTTI has not occurred (assuming no credit losses) if management asserts "that (a) it does not have the intent to sell the security and (b) **it is more likely than not that it will not have to sell the security before its recovery**" (emphasis added). In describing "more likely than not that an entity will not sell," paragraphs 12 and 13 do not use the words "will be required to sell" or "will have to sell." Thus, these paragraphs leave the impression that the assessment is based on a probability of whether the entity will ever sell; they

do not address whether factors outside the entity's control will force it to sell such securities as intended by the Board.

Issue 4: This proposed FSP would require that the portion of an impairment recognized in other comprehensive income for held-to-maturity securities be amortized (through other comprehensive income) over the remaining life of the debt security in a prospective manner based on the amount and timing of future estimated cash flows by offsetting the recorded value of the asset (that is, an entity would not be permitted to adjust the fair value of a held-to-maturity security for subsequent recoveries in the fair value of the security similar to the accounting for available-for-sale securities). Do you agree with this requirement?

As noted in the cover letter, we do not agree with this requirement.

Issue 5: Is the proposed effective date of interim and annual periods after March 15, 2009, operational?

We are concerned that some entities may find it difficult to implement the proposed FSP's requirements by the proposed effective date. Accordingly, we suggest that the FASB extend the effective date to interim and annual periods ending after June 15, 2009, with early adoption permitted. We believe this effective date approach has the flexibility of allowing entities that are (1) capable of early adopting the proposed FSP to do so for periods ending after March 15, 2009, and (2) not capable of early adopting the proposed FSP to delay their implementation to periods ending after June 15, 2009.