

COUNCIL OF INSTITUTIONAL INVESTORS

Suite 500 • 888 17th Street, NW • Washington, DC 20006 • (202) 822-0800 • Fax (202) 822-0801 • www.cii.org

Via Email

October 29, 2008

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number 4-573

Dear Ms. Harmon:

I am writing on behalf of the Council of Institutional Investors (“Council”), an association of more than 140 public, corporate and union pension funds with combined assets of over \$3 trillion.¹ As the leading voice for long-term, patient capital, we appreciate the opportunity to provide comments to the Securities and Exchange Commission (“Commission” or “SEC”) related to the study to be conducted by the Commission under the Emergency Economic Stabilization Act of 2008 of “mark-to-market” accounting applicable to financial institutions, including depository institutions (“Study”).²

At our October 7, 2008 meeting, the Council’s general membership approved an update to our policy on independence of accounting and auditing standard setting [See Attachment I].³ That policy encompasses the following Council views that we believe are relevant to the Study:

- The responsibility to promulgate accounting standards should reside with independent private sector organizations that have a thorough public due process,
- The technical decisions and judgments of the private sector accounting standard setter that have been reached after a thorough public due process should be respected and not be overridden by government officials or bodies,
- High quality accounting standards are those that produce comparable, reliable, timely, transparent and understandable financial information that meets the needs of investors and other consumers of financial reports, and

¹ For more information about the Council of Institutional Investors (“Council”) and its members, visit our website at <http://www.cii.org/>.

² SEC Study of Mark to Market Accounting, Securities Act Release No. 8975, Exchange Act Release No. 58,747 (Oct. 8, 2008), <http://www.sec.gov/rules/other/2008/33-8975.pdf>.

³ The Council of Institutional Investors, Policies on Other Governance Issues, 1. Independence of Accounting and Auditing Standard Setting 1 (Updated Oct. 7, 2008), <http://www.cii.org/UserFiles/file/council%20policies/CII%20Policies%20on%20Accounting%20and%20Auditing%2010-7-08.pdf> [hereinafter Independence Policy] [See Attachment I]. For more information about the Council’s policies, visit our website at <http://www.cii.org/policies>.

- The goal of financial accounting and reporting and accounting standard setters should be to satisfy, in a timely manner, the information needs of investors and other consumers of financial reports.⁴

Consistent with the Council's policy, we do not support the self-serving views of the bank lobby and some other special interest groups that the Commission or the U.S. Congress should suspend, replace, or otherwise modify the requirements of Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* ("Statement 157").⁵ As indicated in our recent joint letter to the Commission with the Center for Audit Quality, the CFA Institute, and the Consumer Federation of America [See Attachment II], we believe that such a move "would be a disservice to the capital markets, would be inconsistent with the views of investors, and would harm the credibility and independence of the standards setting process"⁶

We note that Statement 157 was the result of an extensive public due process that occurred over a period of more than three years.⁷ That process involved the issuance of two documents for public comment, the receipt and consideration of the views expressed in approximately 125 comment letters, public board meetings and roundtable meetings with respondents to address issues raised in the comment letters, and input from the Valuation Resource Group, the Financial Accounting Standards Advisory Council, the User Advisory Council, members of the Investor Task Forces, and other interested parties.⁸

We believe the Financial Accounting Standards Board's ("FASB") public due process with respect to Statement 157 should be respected and supported. We, therefore, would generally oppose any further changes to Statement 157 without the FASB first conducting a thorough public due process in which the views of investors are actively solicited and carefully considered.

⁴ See Independence Policy, *supra* note 3, at 1. We note that our policy's focus on the needs of investors is generally consistent with Recommendation 2.1 of the United States Securities and Exchange Commission's ("Commission") Advisory Committee on Improvements to Financial Reporting ("Advisory Committee") 10 (Aug. 1, 2008), <http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf> ("investor perspectives should be given pre-eminence by all parties involved in standards-setting (footnote omitted)"). We also note that our policy's support for keeping the responsibility for promulgating accounting standard setting with independent private sector organizations rather than with the federal government is generally consistent with Recommendation 2.4 of the Advisory Committee. *Id.* at 11 ("the SEC should only issue broadly applicable interpretive implementation guidance in limited situations"). We are hopeful that the Commission, including the Office of the Chief Accountant, will soon adopt those elements of Recommendations 2.1 & 2.4 that are consistent with our policy.

⁵ Fair Value Measurements, Statement of Fin. Accounting Standards No. 157 (Fin. Accounting Standards Bd. Sept. 2006), http://www.fasb.org/pdf/aop_FAS157.pdf [hereinafter Statement 157].

⁶ Letter from Center for Audit Quality, CFA Institute, Consumer Federation of America, & Council of Institutional Investors, to Mr. Christopher Cox, Chairman, U.S. Securities and Exchange Commission 1 (Oct. 15, 2008), <http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/10-10-08%20SEC%20joint%20letter-FINAL.pdf> [See Attachment II].

⁷ Statement 157, *supra* note 5, ¶ C5.

⁸ *Id.* ¶¶ C6-C7.

In addition, we would again⁹ like to bring to the attention of the Commission our July 2008 white paper entitled “Fair Value Accounting: Understanding the Issues Raised by the Credit Crunch” [See Attachment III].¹⁰ The white paper, prepared by Stephen G. Ryan, Professor of Accounting and Peat Marwick Faculty Fellow, Stern School of Business, New York University, analyzes a number of issues that are pertinent to the Study.¹¹ For example, the following three conclusions contained in Professor Ryan’s white paper are especially noteworthy and should be reflected in the final report that results from the Study:

1. There is no “convincing empirical evidence” that Statement 157 or fair value accounting contributed to the current credit crisis. The crisis is primarily the result of bad operating, investing, and financing decisions, poor risk management, and in some instances fraud.¹²
2. Fair value accounting for all of financial institutions’ financial instruments provides investors with more informative reporting, particularly during a credit crisis, than other alternative accounting approaches.¹³
3. Fair value accounting for financial instruments, accompanied by robust disclosures, reduces uncertainty and information asymmetry faster over time than other alternative accounting approaches and, thereby, mitigates the duration of a credit crisis.¹⁴

We also note that Professor Ryan recommended that the FASB provide additional guidance for Statement 157 clarifying when firms may “report level 3 model-based fair values rather than level 2 valuations”¹⁵ In our view, the FASB Staff Position issued on October 10, 2008, is largely responsive to that recommendation.¹⁶

⁹ See, e.g., Letter from Paul Simenauer, Analyst, Council of Institutional Investors, to The Honorable Christopher Cox, Chairman, United States Securities and Exchange Commission 1 (Sept. 25, 2008), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/Fair%20Value%20Accounting%20Letter%20to%20SEC%20doc%20\(final\)\(1\).pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/Fair%20Value%20Accounting%20Letter%20to%20SEC%20doc%20(final)(1).pdf).

¹⁰ Stephen G. Ryan, *Fair Value Accounting: Understanding the Issues Raised by the Credit Crunch* (July 2008), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/CII%20Fair%20Value%20Paper%20\(final\)%2020071108.pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/CII%20Fair%20Value%20Paper%20(final)%2020071108.pdf) [hereinafter Professor Ryan] [See Attachment III].

¹¹ *Id.*

¹² See *id.* at 16.

¹³ *Id.* at 8; 14.

¹⁴ *Id.* at 16; see also Editorial, *All’s Fair, The Crisis and Fair Value Accounting*, *Economist*, Sept. 18, 2008, at 1-2, http://www.economist.com/finance/displaystory.cfm?story_id=12274096 (Referring to Japan’s failure to embrace fair value accounting for financial instruments during the 1990’s, Yoshimi Watanabe, Japan’s minister for financial services, commented that “Japanese banks exacerbated their country’s economic woes by ‘avoiding ever facing up to losses’”).

¹⁵ Professor Ryan, *supra* note 10, at 15.

¹⁶ Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active, FASB Staff Position No. FAS 157-3 (Fin. Accounting Standards Bd. Oct. 10, 2008), http://www.fasb.org/pdf/fsp_fas157-3.pdf.

October 29, 2008

Page 4 of 4

Finally, we strongly support and agree with the following statement of SEC Chairman Cox appearing recently in an op-ed in the New York Times:

Transparency is a powerful antidote for what ails our capital markets. When investors have clear and accurate information, and when they can make informed decisions about where to put their resources, money and credit will begin to flow again.¹⁷

We believe that fair value accounting for financial instruments, complemented by robust disclosures, is superior to other accounting alternatives in (1) providing investors clear and accurate information, and (2) restoring the free flow of money and credit to the U.S. and global capital markets.

We again would like to thank the Commission for granting investors the opportunity to provide input on this important matter. Please feel free to contact me at 202.261.7081 or jeff@cii.org with any comments or questions regarding this letter or the related attached materials.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive, flowing style.

Jeff Mahoney
General Counsel

Attachments

¹⁷ Christopher Cox, Op-Ed., *Swapping Secrecy for Transparency*, N.Y. Times, Oct. 19, 2008, at 12.