

Jeffrey P. Neubert  
Chief Executive Officer

100 Broad Street  
New York, NY 10004  
Tele 212.613.0103  
FAX 212.613.9811



Jeffrey.neubert@theclearinghouse.org

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Mr. Lawrence Smith  
Director – Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
Norwalk, CT 06856

**Re: Request to Permit Early Adopters of Statement of Financial Accounting Standards No. 159 to Make Additional Fair Value Option Elections as a Result of the Later Issuance of AICPA Statement of Position 07-1**

Dear Mr. Smith:

The Clearing House Association L.L.C. (“The Clearing House”), an association of major commercial banks,<sup>1</sup> is writing this letter to request that the Financial Accounting Standards Board (“FASB” or the “Board”) urgently consider issuing a FASB Staff Position (an “FSP”) regarding the application of Statement of Financial Accounting Standards No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (“SFAS 159”). Such guidance is necessary due to the recent issuance of AICPA Statement of Position (SOP) 07-1, *Clarification of the Scope of the Audit and Accounting Guide Investment Companies and Accounting by Parent Companies and Equity Method Investors for Investments in Investment Companies*, and is explained below.

Certain of our member banks have analyzed the SOP in detail and are working through issues required to implement the SOP, which is effective for fiscal years beginning on or after December 15, 2007.

Of particular concern are the requirements of paragraph 30(b) of the SOP. That paragraph prohibits a consolidated group from retaining investment company accounting in the consolidated financial statements of the group unless “similar” investments within an investment company subsidiary and a noninvestment company subsidiary are all accounted for on the same

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<sup>1</sup>The members of the Clearing House Association L.L.C. are Bank of America, National Association; The Bank of New York; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; LaSalle Bank, National Association; UBS AG; U.S. Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association.

basis (i.e., at fair value through earnings). Furthermore, if the paragraph 30(b) requirements are violated for one investment company subsidiary after a decision was made that investment company accounting could be retained for that investment company in consolidation, then a tainting event occurs resulting in the loss of investment company accounting for all investment company subsidiaries.

In practice, our members have expressed their concerns that the paragraph 30(b) requirements are extremely difficult to implement and monitor given the large volume of equity investments and the fact that such investments occur frequently and on a worldwide basis. Our members have generally concluded that the most effective and viable policy to avoid tainting is to require that certain equity investments held outside investment companies be accounted for at fair value through earnings. Fortunately, SFAS 159 permits companies to elect the fair value option (FVO) for financial instruments accounted for under the equity and cost methods and thus SFAS 159 facilitates compliance with the SOP.

However, a number of our members chose to early adopt SFAS 159 as of January 1, 2007, at which time the SOP was only in draft form. In working through complex implementation issues and performing the extensive analyses required by the SOP, these banks have uncovered situations whereby electing FVO for investments held outside investment companies would greatly reduce the risk of tainting and the ongoing monitoring that will be required to comply with the SOP.

Paragraph 9 of SFAS 159 states that an entity may only choose to elect FVO for an eligible item at the election date or on certain other specified dates. Paragraph 9(c) in particular states that FVO can be elected if financial assets that have been reported at fair value with unrealized gains and losses included in earnings because of specialized accounting principles cease to qualify for that specialized accounting. (An example is a transfer of assets from a subsidiary subject to the AICPA Audit and Accounting Guide, *Investment Companies* [the "Guide"], to another entity within the consolidated reporting entity not subject to the Guide). Thus, we believe that the FASB's intention is to allow election of FVO when there is a change in circumstances. However, there is no specific exception currently in SFAS 159 to help early adopters of the Statement who have been impacted by the later issuance of SOP 07-1 mitigate the effects of implementing the SOP. In addition, the AICPA did not include a transition provision in the SOP that would permit a one-time election of the FVO for early adopters of SFAS 159 to assist in compliance with the SOP's provisions.

Accordingly, this letter requests that the FASB provide an additional one-time election to permit early adopters of SFAS 159 to elect FVO for eligible assets outside of an investment company as a result of the issuance of SOP 07-1. This one-time election should be allowed to be exercised only on the same date that a company is required to implement the SOP (which is January 1, 2008 for most companies). We recommend that an FSP be issued as soon as possible

so as to facilitate implementation of the SOP and significantly relieve the burden on early adopters working to comply with the SOP's requirements.

Thank you for your consideration. If you have any questions or would like further information, please contact Norman R. Nelson, general counsel of The Clearing House, at (212) 612-9205.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Heath", with a horizontal line underneath the name.