



[Via Email: Rule-comments@sec.gov](mailto:Rule-comments@sec.gov)

13 November 2008

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
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File Reference: No. 4-573, Release Nos. 33-8975, 34-58747:
SEC Study of Mark-to-Market Accounting under the Emergency Economic Stabilization Act of 2008

Dear Ms. Harmon and Commissioners:

We are writing on behalf of the International Corporate Governance Network (ICGN). As you know, the ICGN is a global membership organisation, with over 500 members which are institutional and private investors, corporations and advisors from 40 countries with capital under management in excess of U.S. \$15 trillion. The aim of the ICGN is to contribute to raising standards of corporate governance through the exchange of ideas and information across borders and development of best practices. Information about the ICGN, its members and its activities is available on our website: www.icgn.org.

The purpose of the ICGN's Accounting and Auditing Practices Committee is to address and comment on accounting and auditing practices from an investors' and shareowners' perspective. The Committee through collective comment and engagement strives to ensure the quality and integrity of financial reporting around the world.

http://www.icgn.org/organisation/committee_membership.php?name=AAP

Thank you for the opportunity to provide comment on the SEC's study being conducted under the Emergency Economic Stabilization Act of 2008 on mark-to-market accounting standards as provided in Statement Financial Accounting Standards (SFAS) 157, Fair Value Measurements, of the Financial Accounting Standards Board (FASB).

As investors and providers of long-term capital, ICGN Members have a great interest in ensuring the integrity and confidence in both financial reporting and the companies in which we are invested. In turn, as you know, investor confidence and stability are essential to the success and effective functioning of the capital markets.

ICGN supports the mission of the FASB which is serving the investing public through transparent information resulting from high-quality financial reporting standards, developed in an independent private-sector, open process. SFAS 157 was the result of an extensive public process that occurred over a period of more than three years. This process supports the mission of the FASB and the guidelines of Section 108(d) of the Sarbanes-Oxley Act of 2002 which provides greater independence for the accounting standards setter. ICGN believes the FASB's process with respect to SFAS 157 should be respected and supported. Investors should have the benefit of a reasonable public comment period via FASB with a transparent deliberative process before any new accounting standards are approved, modified or revoked.

We offer you the following on the questions posed in your request for comment:

1. Effects of such accounting standards on a financial institution's balance sheet: SFAS 157 defines “fair value” for accounting purposes as “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.” The ICGN believes the effects of such accounting standards on a financial institution’s balance sheet reflect economic reality. Investors would prefer that financial statements reflect real economic volatility rather than a false sense of stability. Mark-to-market accounting provides investors with more information when accompanied by extensive note disclosures which provide investors the ability to base decisions on facts.
2. The impacts of such accounting on bank failures in 2008: There is no “convincing empirical evidence” that SFAS 157 was the primary cause of the current credit crisis or the current bank failures in 2008. We believe the primary causes are overexposure to poor quality assets, poor risk management and misunderstanding of mis-priced risks (borrowing short and lending or investing long) and lots of leverage. ICGN does not believe that fair value accounting should be suspended because SFAS 157 requires companies to disclose more information about the reliability of their fair value measurements.

That said, we do believe that there is some merit in looking not merely at the traded value of a financial asset, but the underlying quality of what is traded, and having this result audited and disclosed. With the old accounting test of the lower of cost or net realizable value, this test itself required a degree of fundamental due diligence, as it contains an implicit assumption that assets may be overvalued. We believe that this test may highlight assets of poor quality (especially those with high levels of underlying default), which for whatever reason, are trading at what may be mispriced levels, in the event that markets are misled, or if there are supply and demand imbalances leading to unusual market pricing. Further, we observe that if a bank is warehousing mortgage backed securities, and valuing all of its holding on the basis of the most recent marginal market price for some, then there may be occasions when a discount may need to be applied to the whole holding if this whole holding could not be sold at the marginal market price.

3. The impact of such standards on the quality of financial information available to investors: The impact of SFAS 157 and other accounting standards promote improved transparency and disclosure of information to ensure present and potential investors, shareowners, creditors, management and other users have the most accurate information to make investment, credit and resource allocation decision. We support the transparency that has been given by fair value, but feel that fair value reporting is still an evolving target and much more work is required to find the most appropriate language to communicate information about financial position and performance. There may be serious questions with respect to the application of fair value when markets are not functioning properly. The role of the auditor in the process of reporting the quality of financial instruments should be addressed. Financial reporting must meet the needs of investors and other users of financial reporting.
4. The process used by the Financial Accounting Standards Board in developing accounting standards: ICGN supports the process used by the FASB in developing accounting standards and notes one of the key recommendations in the final report of the Advisory Committee on Improvements to Financial Reporting (CIFiR) which recognizes that the FASB’s processes work well and that further refinements could enhance the effectiveness and efficiency of standards-

setting.¹ The report noted that the financial reporting system would be best served by “recognizing the pre-eminence of the perspective of investors because they are the primary users of financial reports. To promote this perspective, we support increased investor representation on the FASB and the Financial Accounting Foundation (FAF).”

5. The advisability and feasibility of modifications to such standards: ICGN does not believe the modifications of SFAS 157 and other standards should occur without a thorough public process in which the views of investors are actively solicited and considered. We do not believe the SEC should suspend fair value accounting as this would harm the credibility and independence of the standard setting process, violate the spirit of the three year process recently undertaken and is inconsistent with the views of investors and the providers of capital.
6. Alternative accounting standards to those provided in Statement Number 157: Despite the challenges of marking values to market, fair value provides investors with meaningful information to assess a company’s future cash flows and management’s performance. ICGN does not believe use of alternative accounting standards would improve the current credit crisis.

The ICGN recently issued a press release and Statement on the Global Financial Crisis² that corporate governance failings were not the only cause but they were significant, above all because boards failed to understand and manage risk and tolerated perverse incentives. The ICGN believes enhanced governance practices should therefore be integral to an overall solution aimed at restoring confidence to markets and protecting us from future crises.

Globally, we need a regulatory framework that ensures fair and transparent markets which inspire confidence in financial reporting. We believe there must be no political interference in setting accounting standards. Investors generally support fair value that delivers a picture of what is actually happening. There are some challenges to address, but abandoning this approach would damage confidence in financial reporting. Accounting standards also need to be clearer about when off-balance sheet business should be reported.

http://www.icgn.org/news/releases/fcrisis_statement_10nov2008.php

We appreciate the opportunity to comment. If you would like to discuss any of these points, please do not hesitate to contact Anne Simpson our Executive Director at +44-207-612-7098 or execdirector@icgn.org. Thank you for your attention and we look forward to your response on the points above.

Yours Sincerely,



Christianna Wood
Co-Chair, ICGN Accounting and
Auditing Practices Committee



George Diehr
Co-Chair, ICGN Accounting and
Auditing Practices Committee

¹ Final Report of the Advisory Committee on Improvements to Financial Reporting, III.B. Enhancing the Accounting Standards-Setting Process, August 1, 2008.

² International Corporate Governance Network Statement on the Global Financial Crisis, 10 November, 2008.

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ICGN Accounting & Auditing Practices Committee Response
Securities and Exchange Commission - SFAS 157

Cc: ICGN Board Members
ICGN Accounting & Auditing Practices Committee