November 13, 2008

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

Re: File Number 4-573

Dear Ms. Harmon:

The Independent Community Bankers of America (ICBA)[1] welcomes the opportunity to provide its views to the Securities and Exchange Commission (SEC) on mark-to-market accounting as the agency conducts the study called for by the recently passed Emergency Economic Stabilization Act of 2008.

ICBA has long held concerns about the use of fair value accounting for community banks, which are in the business of creating and holding non-traded, illiquid assets. While they must hold some readily marketable securities for liquidity purposes, they are not generally in the business of creating or purchasing assets or liabilities for quick resale. They fund their operations primarily by deposits and hold loans that are not readily marketable, including small business, agricultural and even certain residential mortgage loans. Thus, we continue to hold the view that full fair accounting should not be applied to institutions such as community banks as it is more likely to mislead regulators, investors and other financial statement users than provide them a clearer picture of financial condition.

We agree with the concerns expressed by the federal banking regulators in a letter dated October 17, 2008 to the Financial Accounting Standards Board regarding an expansion of the use of fair value accounting for financial instruments held by medium and smaller financial institutions. Measurement should be more closely tied to the way financial instruments

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

INDEPENDENT COMMUNITY BANKERS of AMERICA *The Nation's Voice for Community Banks®*
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generate earnings and cash flows, regardless of whether active markets for the instruments typically exist.

Fair Value Accounting in the Current Environment

It is important that companies follow sound financial reporting policies and provide transparent disclosures to ensure that their true financial condition is evident. However, we have had serious concerns about whether fair value accounting is enhancing information or providing misleading information. Over the last few months as the financial and credit markets have faced extreme stress, ICBA members have raised strong concerns about the role fair value accounting has played in exacerbating the problems. Fair value is to reflect the price that would be received in an orderly transaction for the asset at the time of measurement, yet it appears that too often investment and credit analysts and others have been inappropriately applying "fire sale" values in their financial evaluations and calling them "fair values." Clearly, in many cases markets have not been orderly, yet values have been determined based on their activity or more likely, inactivity. Fair values of financial instruments have been determined assuming forced liquidations and where no buyers are in the market. It is particularly troubling for financial institutions whose capital position—and continued survival—is dependent on these valuations. The SEC and FASB have recently issued additional guidance, but, unfortunately, we do not see the guidance as providing any significant new information. Nor do we see any significant change in the financial markets indicating that the guidance has provided more clarity and help alleviate bad results. In fact, the FASB Staff Position 157-3 uses as an example an AA-rated security with an implied rate of return of 22 percent, which clearly indicates a market that is not functioning properly.

Also, community banks have complained to ICBA about needing write down to "fair value" assets based collateral values where a cash flow analysis provides a very different picture. In such cases, collateral values have fallen significantly, yet the asset performs and is expected to continue to perform according to agreements. Many community banks believe that auditors and examiners are being overly cautious in recommending aggressive "fair value" write downs, exacerbating the current credit crisis.

In our view, more needs to be done to ensure a proper understanding of what fair value is and is not, and to ensure that it is being properly applied so that there is less likelihood for different interpretations among statement preparers, auditing firms, analysts, examiners and ultimately the markets.

Need to Ensure Consistent Application

ICBA sees a need for more implementation guidance from the SEC to help financial statement preparers, auditors and examiners better understand the intent of accounting statements and guidelines and to foster more consistent application. In the last several years, there have been misinterpretations, or unexpected interpretations of accounting guidance that caused problems for both standards users and standards setters. The treatment of other-than-temporary impairments is an example of this and it has significantly impacted community banks recently, particularly those holding collateralized debt obligations backed by trust preferred securities. Although it has been years since the application of other-than-temporary impairment has become an accounting standard, community banks report that auditors still differ in their interpretations of what constitutes "temporary," "impaired," "ability" and "intent to hold" and for what types of securities the guidance applies.

We believe that the SEC should provide guidance more often and use greater transparency in communicating the guidance so it is disbursed broadly to the accounting and auditing industry and the public. This should be accomplished through timely public releases of guidance with prompt postings on the SEC website. We believe that a more transparent, broader disbursement of guidance will greatly help eliminate confusion as institutions and their auditors work to properly apply new accounting treatment.

Allowance Guidance Needs to Be Revisited

We believe a study should be conducted to determine whether some current accounting standards, including those using fair values, are truly effective and are not pro-cyclical. Community bankers have long been concerned that accounting standards are set in isolation with no regard for their economic implications. One important example of this is the setting of the allowance for loan and lease losses in financial institutions. Accounting standards and guidance have given financial institutions little ability to set aside reserves in good times to prepare for bad times due to concerns about the management of earnings. Yet, conservative community bankers (and often their examiners) see the need for more flexibility in this regard, as they are well aware of economic cycles and the difficulties of absorbing losses and raising capital during times of economic difficulties, such as the current environment, when it is needed the most.

ICBA believes that the inability of financial institutions to properly prepare for the current economic downturn has done far more damage to investors and the economy than the potential management of earnings that the SEC and FASB have been seeking to avoid by means of the current accounting guidance on allowances. In light of the current environment, we urge the SEC and FASB to work with banking regulators in revisiting whether current allowance guidance is truly appropriate for the long term health of financial institutions and our country over economic cycles.

Convergence of Accounting Standards

We are also very concerned that in converging to international standards, smaller financial institutions and smaller businesses will be disadvantaged as standards will be set to meet the needs of international investors and companies that operate internationally. Users of the financial statements of smaller businesses and financial institutions generally will not need the level of complexity in standards for transparency as will the users of statements created for large international companies. Further, complex standards are often much more difficult and burdensome for smaller institutions to implement, with implementation costs far outweighing the benefits. United States accounting standards should not be converged with international standards, just for the sake of convergence, but when it truly is appropriate for institutions operating on an international basis. Provisions must be made for companies, such as small financial institutions and small businesses, to potentially have domestic standards that differ from international standards when it is the most appropriate approach.

Summary

Fair value accounting does not reflect the reality of community banking, a business based on the creation and holding of illiquid assets, where cash flow is generally a better measure of value. However, ICBA's concerns about fair value accounting go beyond community banking as we view it as exacerbating the current financial crisis as financial instruments are being priced, not at "fair value" but inappropriately at forced liquidation values, despite current accounting guidance. We urge the SEC, FASB and the banking regulators to revisit current guidance on setting the allowance for loan losses as current accounting guidance does not permit financial institutions to properly prepare for economic downturns.

We appreciate the opportunity to share our views. If you have any questions about our concerns, please contact me by phone at 202-659-8111 or by email at ann.grochala@icba.org.

Regards,

/s/

Ann M. Grochala
Vice President
Lending and Accounting Policy

cc:
Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System
Chairman Sheila C. Bair, Federal Deposit Insurance Corporation
Comptroller John C. Dugan, Office of the Comptroller of the Currency
Director John M. Reich, Office of Thrift Supervision
Chairman Robert H. Herz, Financial Accounting Standards Board
Chairman Barney Frank, Committee on Financial Services
Chairman Christopher J. Dodd, Committee on Banking, Housing and Urban Affairs