ISDA®

International Swaps and Derivatives Association, Inc.
360 Madison Avenue, 16th Floor
New York, NY 10017
United States of America
Telephone: 1 (212) 901-6000
Facsimile: 1 (212) 901-6001
email: isda@isda.org
website: www.isda.org

February 18, 2008

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

Re: Proposed FASB Staff Position FAS 157-c, *Measuring Liabilities under FASB Statement No. 157*

Dear Mr. Golden:

The International Swaps and Derivatives Association ("ISDA") appreciates the opportunity to comment on the proposed FASB Staff Position FAS 157-c, *Measuring Liabilities under FASB Statement No. 157* (the "Proposed FSP"). ISDA members represent leading participants in the privately negotiated derivatives industry. Collectively, the membership of ISDA has substantial professional expertise and practical experience addressing accounting policy issues with respect to financial instruments.

While we believe the need for clarification of FASB Statement No. 157, *Fair Value Measurements'* ("SFAS 157") principles to be limited, we acknowledge the FASB's efforts to address practice issues pertaining to the application of SFAS 157 to the consideration of creditworthiness when valuing liabilities for which there are no quoted prices.

In the letter that follows, we have made recommendations for improving the usefulness of the Proposed FSP. We hope you find ISDA's comments informative and beneficial. Should you have any questions or desire any clarification concerning the matters addressed in this letter please do not hesitate to contact the undersigned.

Sincerely,

Laurin Smith

Laurin Smith
J.P. Morgan Chase & Co.
Chair, Accounting Policy Committee
International Swaps and Derivatives Association
212.648.0909

1. **<u>Principles: Paragraph 7/Proposed Paragraph 15B</u>**

ISDA continues to support the fair value measurement principles established in SFAS 157 which establish that the fair value measurement of a liability is the price that would be paid to transfer the liability to a market participant in a hypothetical transaction at the measurement date. We further agree with the principles in SFAS 157's paragraph 15 and 16 that this exit price differs conceptually from a settlement amount or an entry price.

ISDA recognizes that consistent with paragraphs 17 and A27 in SFAS 157, there are certain circumstances in which the entry and exit prices for market participants are the same. For these circumstances, ISDA believes that the guidance in paragraphs 7 and A1 (i.e., paragraph 15B of SFAS 157) of the Proposed FSP would be interpreted consistently with the principles in SFAS 157. However, it is our belief that in the absence of clarification, paragraph 7 could also be interpreted to be inconsistent with SFAS 157's principles in circumstances in which entry and exit markets, or market participants in those markets, are different. For example, a reporting entity may issue debt to retail investors but may not be able to support that it could transfer its liabilities in a hypothetical transaction to anyone other than a financial intermediary with a sophisticated method of calculating nonperformance risk. Since the retail investor and the financial intermediary would likely have different principal markets (thus, different exit prices within the bid/offer spread) and perhaps different methods for valuing nonperformance risk, the guidance in paragraph 7 would not always result in a price that would be paid to transfer the liability to the financial intermediary market participant (i.e., an exit price).

We believe that the proposed FSP can be modified to include language that would clarify that the reporting entity should consider the principal market and market participant in order to determine if the guidance in paragraph 7 can be applied in a manner consistent with the principles in SFAS 157. ISDA's suggestions for amending paragraph A1 (paragraph 15B of SFAS 157) of the Proposed FSP are below.

We agree with the sentence in paragraph 7 that states that a reporting entity shall evaluate fair value inputs and prioritize observable inputs over unobservable inputs in determining whether it should use the amount that it would receive as proceeds if it were to issue that liability at the measurement date. We believe that observable inputs are higher priority inputs than a reissuance proceeds amount, and believe that this should be clarified in the Proposed FSP by stating that in certain circumstances, including in the presence of other observable inputs, the use of issuance proceeds may not be an appropriate measure of fair value. We believe that this concept was expressed well (although in reference to a slightly different topic) in paragraph 18 of the November 14, 2007 FASB Board meeting minutes in which the Staff noted that "the reporting entity's data used to develop its assumptions about fair value would need to be adjusted if information is reasonably available without undue cost and effort that indicates that market participants would use different assumptions in pricing the liability."

In addition, ISDA supports the FASB Staff's other recommendation noted in the same paragraph of the Board meeting minutes; that the measurement of a liability as the amount of proceeds received would occur after the consideration of differences in assumptions between the reporting entity and market participants. We recommend the inclusion of all of the above concepts in the proposed paragraph 15B, as noted below.

Added text is underlined and deleted text is ~~struck~~.

> 15B. In the absence of a quoted price for the identical liability in an active market, the reporting entity may measure the fair value of its liability at the amount that it would receive as proceeds if it were to issue that liability at the measurement date. For this measurement to apply, the reporting entity must (1) conclude that the market participants in issuances and transfers of its liability would be the same, (2) prioritize observable inputs over unobservable inputs in determining whether it should use the amount it would receive as proceeds, and (3) consider the need to adjust the proceeds amount to reflect differences in assumptions between the reporting entity and the market participants in the issuance market for its liability.

ISDA has not drafted conforming changes to paragraph 7, but recommends that such changes be incorporated into the final FSP.