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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-f, *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-f, *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.

ISDA supports the FASB’s efforts to address practice issues pertaining to the application of SFAS 157, *Fair Value Measurements* (“SFAS 157”), to fair value measurements of liabilities when there is a lack of observable market data for the transfer of such liabilities. We believe that the Proposed FSP represents an improvement to the proposed guidance exposed in FSP FAS 157-c and acknowledge the FASB’s efforts to ensure that the guidance in the Proposed FSP is consistent with the principles of SFAS 157. When considered in conjunction with the guidance in FSP FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*, the Proposed FSP provides preparers with useful guidance that will lead to an improvement in the consistency of reporting fair value measurements. ISDA does, however, observe that certain provisions within the Proposed FSP require further clarification in order to maximize the usefulness of the guidance and thus we encourage the FASB to consider the following recommendations in the final guidance that is issued.

Restrictions on Liabilities

Paragraph 11 of the Proposed FSP provides that when an entity estimates the fair value of a liability that carries a contractual transfer restriction, that restriction should not be reflected as a separate adjustment to the fair value measurement since the transaction price already reflects the contractual restriction. However, the terms of contractual transfer restrictions may differ among liabilities. If an entity is estimating fair value using an observable price for a similar liability that does not have the same restriction on transfer, we believe it would be necessary to consider an adjustment to the fair value measurement input to reflect the actual transfer restrictions within the liability being measured. Thus we recommend the FASB make the following clarifications to paragraph 11 (with conforming changes to paragraphs 15A, 15C, 15D, A32L, and A32R) within the final FSP. [Text inserted is underlined and text deleted is ~~struck~~]

11. When estimating the fair value of a liability, an entity shall not include a separate input or adjustment to other inputs relating to the existence of a contractual restriction that prevents the transfer of the liability by the obligor if the input used to estimate fair value reflects a transfer restriction that is the same as the restriction contained in the liability being measured (see paragraph A1(e) of the appendix). The effect of a contractual restriction that prevents the transfer of an identical liability is either implicitly or explicitly included in the other inputs to the fair value measurement. For example, at the transaction date, both the creditor and the obligor are willing to accept the transaction price for the liability with full knowledge that the obligation includes a contractual restriction that prevents its transfer from one obligor to another obligor. As a result of the restriction already being included in the transaction price between the obligor and the creditor at the transaction date, a separate input or adjustment to an existing input into the fair value measurement of a liability is not necessary ~~at the transaction date to reflect the effect of the contractual restriction on transfer~~. Additionally, a separate input or adjustment to other inputs into the fair value measurement of ~~at the~~ liability is not necessary at subsequent measurement dates to reflect the effect of the contractual restriction on transfer. However, in situations in which the input to the fair value measurement reflects a different transfer restriction than the restriction contained in the actual liability being measured, the entity should consider whether market participants would adjust the input to reflect the incremental difference in the contractual restrictions in the liability being measured at both the transaction date and at subsequent measurement dates.

Principal Market for a Liability with No Quoted Price

Paragraphs 9 (paragraph 15A in the Appendix) of the Proposed FSP advise that for fair value measurements of liabilities for which quoted prices in an active market for the identical liability are not available, an entity may utilize other relevant inputs to estimate fair value including the prices of the liabilities when traded as assets. Given the principles

of SFAS 157 require that the fair value measurement of a liability reflect a hypothetical transfer in the principal market for transfers of liabilities between obligors, ISDA believes that questions could be raised in practice about whether the asset market or the liability market is the principal market and about which market participant assumptions should be considered and prioritized when measuring fair value. Thus in order to minimize confusion in practice we recommend that the FASB clarify in the final guidance that the fair value estimated in accordance with paragraphs 9 (paragraph 15A in the Appendix) is intended to estimate an exit price in the principal liability transfer market that is consistent with SFAS 157 and does not introduce a new principal market into the definition of fair value of a liability. For example, the final guidance could clarify that when using the quoted price of the identical liability when traded as an asset in its estimate of fair value, the reporting entity may need to adjust the observed price to reflect differences between the principal market for the asset and the principal market of the liability being measured. The FASB may also consider noting differences in the principal market as one circumstance requiring adjustment in paragraph 10. Consistent with the IASB's recent Exposure Draft on Fair Value Measurements, if it is not the FASB's intent for an adjustment to be made for differences between the principal market of the asset and the principal market of the liability being measured, we request that the FASB provide its basis for the decision. Moreover, if it is not the FASB's intention to retain the hypothetical market assumptions for liability transfers we believe that additional guidance is necessary for practitioners to determine the principal market that an entity must consider when measuring a liability.

Illustrative Examples: Liabilities with no Quoted Price

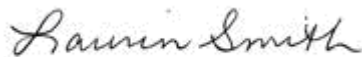
Example 14 of the Proposed FSP illustrates application of SFAS 157 to the measurement of a liability using a present value technique. This example lists the various inputs considered in the measurement of the liability's fair value including the discount rate and a credit risk factor. However, paragraph A32R cites that the entity does not include any additional inputs for risk or profit that a market participant might require for assuming the liability because the entity believes the interest rate captures this risk. However, we feel that it is important for the FASB to clarify that if there are instances in which the compensation required by the transferee to assume the liability is not included in the market interest rate, the inputs to the fair value measurement should be adjusted to reflect such market participant assumptions. Furthermore, we find the reference in the second sentence within paragraph A32R struck below to be a potential source of confusion as any liability, not just financial liabilities, measured at fair value must reflect assumptions about risk market participants would consider when estimating fair value. Thus we recommend the FASB make the following clarifications to paragraph A32R within the final FSP. [Text inserted is underlined and text deleted is ~~struck~~]

A32R. On the basis of its present value technique, Entity C concludes that the fair value of its liability at December 31, 20X1, is \$1,968,641. ~~Because Entity C's obligation is a financial liability,~~ For the purposes of this example, Entity C does not include any additional input into its present value technique for risk or profit that a market participant might require for compensation for assuming the liability,

because Entity C believes that market participants would consider that the interest rate already captures these considerations. However, if market participants would require a profit or other compensation for risk associated with assuming the liability, Entity C should consider making adjustments to the inputs to its present value calculation when estimating fair value. Furthermore, Entity C does not adjust its present value technique for the existence of a contractual restriction preventing it from transferring the liability.

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
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