November 13, 2008

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

Re: SEC study on Mark to Market Accounting
File number 4 – 573

Members of the Commission:

We are students of the Graduate Program in Banking and Financial Law at Boston University School of Law. We thank the Commission for the opportunity to comment on this matter.

In the discussions on fair value accounting, we should keep in mind that fair value is by no means a new concept and neither is its role in determining write-downs in periods of down markets. Although this principle has its disadvantages, it is still the preferred method of reporting for many investors.

The collapse of companies such as Enron and WorldCom as a result of false accounting statements demonstrated the central role of accounting in good corporate governance. We should welcome standards that will focus on investors' needs unaffected by management or regulators.

While we believe that no fundamental change should be made in the requirement for fair value reporting, we think that some modifications should be considered in regard to the valuation method used when fixing the values of held to maturity mortgage backed securities in the current market.

In current practice, the impaired value of assets must be marked to market through earnings when market value is lower than cost. In extreme down markets the losses created by the write downs might be viewed as unjustified. Some claim that market prices, when available, are influenced by illiquidity and dysfunctionality. Others claim that appreciation is expected during the holding period. Hence, the question is: Is it still possible to come up with a current exchange price based on market performance in extreme down markets?

We believe that in down markets, like today, the real economic value of certain assets cannot be set either by market prices or by historical cost. In the following discussion,

we will focus on mortgage backed securities which are held to maturity, and will suggest an alternative method for valuing such securities.

Assuming that the market value is lower than the cost of acquisition, when valuing held to maturity mortgage backed securities two methods are available:

1. quoted prices, when available; or

2. model pricing using observable or unobservable input (currently available respectively, for level 2 and 3 assets as defined in SFAS 157).

In a dysfunctional market such as this, market-quoted prices do not reflect the economic value of the security since they mirror the lack of liquidity and dysfunctionallity of the market. Factors like future appreciation, cash flow or the quality of collateral do not receive the weight they would normally get in stable markets. However, the result of marking down certain securities to market prices may cause damage to many reporting entities and make them facing insolvency.

Instead of marking to market we suggest the use of a pricing mechanism based on financial models, a method commonly referred to as mark to model.

By mark to model we mean the incorporation of all available information, both outside and inside the company (including assumptions and analysis made by the company itself), with market information into a financial formula.

The concept and practices of mark to model in valuing illiquid and unmarketable assets are, and have been, widely used in valuing many complex derivatives, private equity investment and other illiquid securities. However, unobservable inputs which are based mostly on the company's own assumptions are currently ranked last in the hierarchy of Statement No. 157, mostly because of its subjective approach.

The valuation method has to negate factors such as illiquidity and dysfunctionality in the market price, while at the same time avoiding subjectivity in pricing which was described by Warren Buffett as "marking to myth."

Compliance with these somewhat conflicting goals might be achieved by implementing well defined criteria for model pricing.

We suggest that, for a limited time, we should allow mark to model to determine the fair value of held to maturity mortgage backed securities provide that, they meet some guidelines, such as:

1. To avoid subjective pricing that might cause securities with similar characteristics to be priced differently, the outlines of the model, and the criteria for using it, should be defined and should reflect :

    - The capability of the entity to hold the security to maturity;

- The absence of liquid and orderly secondary markets, which influence both the availability of an exchange price and the ability to liquidate the assets;

- The quality of the collateral, specifically the value and the chance for foreclosure of the underlying assets;

- The net present value of expected cash flow from the underlying assets; and

- The risk factors to which the security is exposed such as expected defaults, undiversified portfolio, interest rates, market factors (housing prices) and risk that is inherent in the pricing model.

2. Credit losses should be written down vis-a-vis earnings while market discounts should be accumulated and depreciated during the lifetime of the mortgage backed security until either maturity or realization. One option for such a separation could be done by creating a new asset that will reflect the difference between cost and market value, much like goodwill, that will be depreciated over the life time of the security.

3. Liquidity discounts should go under the "Temporarily Impaired" exception for a period of 2 years.

4. With regard to securities which are classified as Other-Than-Temporarily-Impaired (OTTI) and which are held to maturity, the political landscape and the likelihood of a sharp permanent decline in the housing prices in the United States should be taken into account in classifying a security as OTTI. However, since it is reasonable to expect improvement in the economic outlook due to governmental actions in the near future, we suggest the suspension of classifying any security as OTTI for one to two years.

In times like these, we should be concentrating on efforts to rescue the financial system. Ensuring transparency in financial statements is a step in the right direction and is a task towards which we should devote our time and energy.

We look forward to the Commission's new rules and thank it for its time.

Best regards.

Sharon Raz

Isabel Gutierrez

Lukas Huesler

Roy Dias