SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 109]

Staff Accounting Bulletin No. 109

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin ("SAB") expresses the views of the staff regarding written loan commitments that are accounted for at fair value through earnings under generally accepted accounting principles. SAB No. 105, Application of Accounting Principles to Loan Commitments ("SAB 105"), provided the views of the staff regarding derivative loan commitments that are accounted for at fair value through earnings pursuant to Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities. SAB 105 stated that in measuring the fair value of a derivative loan commitment, the staff believed it would be inappropriate to incorporate the expected net future cash flows related to the associated servicing of the loan. This SAB supersedes SAB 105 and expresses the current view of the staff that, consistent with the guidance in Statement of Financial Accounting Standards No. 156, Accounting for Servicing of Financial Assets, and Statement of Financial Accounting Standards No. 159, The Fair Value Option for Financial Assets and Financial Liabilities, the expected net future cash flows related to the associated servicing of the loan should be included in the measurement of all written loan commitments that are accounted for at fair value through earnings. SAB 105 also indicated that the staff believed that internally-developed intangible assets (such as customer relationship intangible assets)

should not be recorded as part of the fair value of a derivative loan commitment. This SAB retains that staff view and broadens its application to all written loan commitments that are accounted for at fair value through earnings.

The staff expects registrants to apply the views in Question 1 of SAB 109 on a prospective basis to derivative loan commitments issued or modified in fiscal quarters beginning after December 15, 2007.

DATE: November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Ashley W. Carpenter, Office of the Chief Accountant (202) 551-5300 or Craig C. Olinger, Division of Corporation Finance (202) 551-3400, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Florence E. Harmon
Deputy Secretary

Date: November 5, 2007

Part 211 – [AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 109 to the table found in Subpart B.

STAFF ACCOUNTING BULLETIN NO. 109

The staff hereby amends and replaces Section DD of Topic 5, Miscellaneous Accounting, of the Staff Accounting Bulletin Series. Topic 5: DD (as amended) expresses the views of the staff regarding written loan commitments that are accounted for at fair value through earnings under generally accepted accounting principles.

Note: The text of SAB 109 will not appear in the Code of Federal Regulations.

TOPIC 5: MISCELLANEOUS ACCOUNTING

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DD. Written Loan Commitments Recorded at Fair Value Through Earnings

Facts: Bank A enters into a loan commitment with a customer to originate a mortgage loan at a specified rate. As part of this written loan commitment, Bank A expects to receive future net cash flows related to servicing rights from servicing fees (included in the loan's interest rate or otherwise), late charges, and other ancillary sources, or from selling the servicing rights to a third party. If Bank A intends to sell the mortgage loan after it is funded, pursuant to paragraph 6 of FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended by FASB Statement No. 149, Amendment of Statement 133 on Derivative Instruments and Hedging Activities ("Statement 133"), the written loan commitment is accounted for as a derivative instrument and recorded at fair value through earnings (referred to hereafter as a "derivative loan commitment"). If Bank A does not intend to sell the mortgage loan after it is funded, the written loan commitment is not accounted for as a derivative under Statement 133. However, paragraph 7(c) of FASB Statement No. 159, The Fair Value Option for Financial Assets and Financial Liabilities ("Statement 159"), permits Bank A

to record the written loan commitment at fair value through earnings (referred to hereafter as a "written loan commitment"). Pursuant to Statement 159, the fair value measurement for a written loan commitment would include the expected net future cash flows related to the associated servicing of the loan.

Question 1: In measuring the fair value of a derivative loan commitment accounted for under Statement 133, should Bank A include the expected net future cash flows related to the associated servicing of the loan?

Interpretive Response: Yes. The staff believes that, consistent with the recently issued guidance in FASB Statement No. 156, Accounting for Servicing of Financial Assets ("Statement 156")[69], and Statement 159, the expected net future cash flows related to the associated servicing of the loan should be included in the fair value measurement of a derivative loan commitment. The expected net future cash flows related to the associated servicing of the loan that are included in the fair value measurement of a derivative loan commitment or a written loan commitment should be determined in the same manner that the fair value of a recognized servicing asset or liability is measured under FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, as amended by Statement 156 ("Statement 140"). However, as discussed in paragraphs 61 and 62 of Statement 140, a separate and distinct servicing asset or liability is not recognized for accounting purposes until the servicing rights have been contractually separated from the underlying loan by sale or securitization of the loan with servicing retained.

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[69] Statement 156 permits an entity to subsequently measure recognized servicing assets and servicing liabilities (which are nonfinancial instruments) at fair value through earnings.

The views in Question 1 apply to all loan commitments that are accounted for at fair value through earnings. However, for purposes of electing fair value accounting pursuant to Statement 159, the views in Question 1 are not intended to be applied by analogy to any other instrument that contains a nonfinancial element.

Question 2: In measuring the fair value of a derivative loan commitment accounted for under Statement 133 or a written loan commitment accounted for under Statement 159, should Bank A include the expected net future cash flows related to internally-developed intangible assets?

Interpretive Response: No. The staff does not believe that internally-developed intangible assets (such as customer relationship intangible assets) should be recorded as part of the fair value of a derivative loan commitment or a written loan commitment. Such nonfinancial elements of value should not be considered a component of the related instrument. Recognition of such assets would only be appropriate in a third-party transaction. For example, in the purchase of a portfolio of derivative loan commitments in a business combination, a customer relationship intangible asset is recorded separately from the fair value of such loan commitments. Similarly, when an entity purchases a credit card portfolio, EITF Issue No. 88-20, Difference between Initial Investment and Principal Amount of Loans in a Purchased Credit Card Portfolio, requires an allocation of the purchase price to a separately recorded cardholder relationship intangible asset.

The view in Question 2 applies to all loan commitments that are accounted for at fair value through earnings.