

May 15, 2013

Technical Director File Reference No. 2013-220 Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: Financial Instruments - Overall - Exposure Draft

Assured Guaranty Ltd. ("Assured" or the "Company") appreciates the opportunity to comment on the *Financial Instruments – Overall Exposure Draft* ("Exposure Draft") issued by the Financial Accounting Standards Board ("FASB").

Assured, is a public company traded on the New York Stock Exchange that provides, through its operating subsidiaries, credit protection products to the United States ("US") and international public finance, infrastructure and structured finance markets. The Company applies its credit underwriting expertise, risk management skills and capital markets experience to develop insurance, reinsurance and financial guarantees written in credit derivative form. The Company's primary product is a guaranty of principal and interest payment on debt securities. These securities include municipal finance obligations issued by US state or municipal governmental authorities, utility districts or facilities; notes or bonds issued for international infrastructure projects; and asset-backed securities.

The accounting for financial guarantees is presently included within the FASB's proposed guidance on insurance contracts, for which an exposure draft is expected to be issued shortly. The Company, its investors, and analysts view the financial guaranty contracts that the Company issues, which currently follow ASC 944 guidance, as insurance contracts. The Company will comment on the insurance contracts exposure draft in this light. If the scope of the proposed insurance contracts guidance were to be changed in the future so that the Company's financial guarantees were not subject to the insurance contracts guidance, but instead were scoped into financial instruments guidance, the Company's comments on this Exposure Draft would be significantly different.

Comments / Issues with FASB's Discussion Paper

The proposed scope of the Exposure Draft principally pertains to the Company's investment portfolio that includes fixed maturity securities classified as available to sale and its consolidated financial guaranty variable interest entities, for which it has selected to account for using the fair value option. The Company has also issued surplus notes between its subsidiaries, which under ASC 825-10-15-8(d)(4) are scoped in under debt subject to ASC 944-470, and which impact the stand-alone GAAP financial statements of certain of the Company's subsidiaries. The

Company's responses primarily address the impact that the Exposure Draft is anticipated to have on these items.

The following are our comments and discussion of issues based upon the proposed guidance outlined by the FASB in its Exposure Draft. Our thoughts are outlined in response to selected questions that were included in the document and are limited to the proposed guidance's impact on the Company.

Questions for All Respondents

**Question 1:** Do you agree with the scope of financial instruments included in this proposed Update? If not, which other financial instruments should be included or excluded from the guidance in this proposed Update and why?

**Response 1:** Assured agrees with the scope of the proposed Update. Specifically, we agree that insurance contracts under ASC 944 and derivative contracts under ASC 815 should be scoped out of this Update.

Questions for All Respondents

**Question 4:** Do the proposed amendments appropriately convey the principle associated with the contractual cash flow characteristics assessment? If not, why? What would you propose instead?

**Response 4:** Assured believes that the proposed amendments appropriately convey the principle associated with the contractual cash flow characteristics assessments for non-credit impaired securities, but has reservations regarding the guidance for credit-impaired securities that are acquired by an entity.

Assured, as part of its loss mitigation strategies, sometimes acquires securities for which it has provided a financial guaranty. These securities that are typically credit impaired at the time Assured purchases them at a significant discount to the contractual cash flows due to the credit risk associated with the securities. Assured feels that it would be useful to clarify via an illustrative example that any changes in anticipated cash flows related credit risk should clearly be considered payments of principal and interest.

**Question 5:** The proposed amendments define principal as the amount transferred by the holder at initial recognition. Should the definition of principal be expanded to include repayment of the principal amount at maturity or other settlement? If so, what instruments would fail (or pass) the contractual cash flow characteristics criterion as a result of this change?

**Response 5:** Assured recommends expanding the definition of principal to address the accounting for securities that are acquired with credit impairment.

**Question 6:** Do the proposed amendments contain sufficient application guidance and illustrations on implementing the cash flow characteristics assessment? If not, why?

**Response 6:** Assured does not believe that the proposed amendments contain sufficient application guidance and illustrations on implementing the cash flow characteristics assessment around "insignificant leverage" as discussed in ASC 825-10-55-17 of the Exposure Draft. The term "insignificant" as used here and in the *Financial Instruments – Credit Losses Exposure Draft* discussion of the "practical expedient" concerns the Company in terms of assessing the potential materiality both on an instrument by instrument level as well as on an aggregate basis. We believe additional guidance is warranted in this area.

Question 7: Should a financial asset with a contractual term that modifies the economic relationship (see paragraphs 825-10-55-17 through 55-20) between principal and interest be considered to contain cash flows that are solely payments of principal and interest? Should this be the case if, and only if, the contractual cash flows could or could not be more than insignificantly different from the benchmark cash flows as discussed in paragraph 825-10-55-19? If not, why? What would you propose instead?

Response 7: Assured believes that a financial asset with a contractual term that modifies the economic relationship between principal and interest should be considered to contain cash flows that are solely payments of principal and interest so long as the Company's business model views these payments as such at acquisition and throughout the term of the holding period of the financial asset. On the other hand, if it is the intent of an entity to acquire securities whose cash flows could be significantly different from benchmarked cash flows due to the contractual term and realize a profit on such those securities, those securities should be marked to market with changes in net income.

**Question 8:** Do the proposed amendments contain sufficient application guidance in paragraphs 825-10-55-17 through 55-20 on assessing a modified economic relationship? If not, why?

**Response 8:** We do not believe the proposed amendments contain sufficient application guidance in paragraphs in 825-10-55-17 through 55-20 on assessing a modified economic relationship. Specifically, as mentioned in our Response 6, we believe additional guidance to assess the meaning of the term "insignificant leverage" is warranted.

**Question 9:** For beneficial interests in securitized financial assets, the proposed amendments would require an entity to look through to the underlying pool of instruments in determining whether the tranche contains payments of solely principal and interest. Do you agree with this look-through approach? If not, why? What would you propose instead?

**Response 9:** Assured generally agrees with the look-through approach. However, we suggest that term "under all circumstances" in paragraph 825-10-55-26be modified to read "under reasonably possible scenarios" to align with the threshold of "reasonably possible scenarios" used in 825-10-55-20.

**Question 10:** Do the proposed amendments appropriately convey the principle associated with the business model assessment? If not, why? What would you propose instead?

**Response 10:** Assured believes that the amendments do appropriately convey the principle associated with the business model assessment.

**Question 11:** Do the proposed amendments provide sufficient application guidance and illustrations on how to distinguish among the three business models, including determining whether the business model is to manage assets both to collect contractual cash flows and to sell? Do you agree with the proposed guidance provided to describe those business models? If not, why?

**Response 11:** Assured believes that the proposed amendments do provide sufficient application guidance and illustrations.

**Question 12:** Should the classification and measurement model for financial instruments contain an explicit tainting notion or should it rely on the principle and exercise of professional judgment? Why?

**Response 12:** Assured believes that the classification and measurement model for financial instruments should rely on the principle and exercise of professional judgment. We believe that relying on principle and exercise of judgment will provide an accounting result more aligned to actual business models employed by entities. Under FAS 115, entities, especially insurance companies, often defaulted to categorizing their investment portfolio as available for sale due to the notion of tainting.

Question 13: The proposed amendments would require loan commitments, a revolving line of credit, or a commercial letter of credit (the potential creditor) to be measured on the basis of the likelihood of exercise of the commitment and the classification of the underlying loan that would be made upon exercise of the commitment. Do you agree with the proposed classification of loan commitments? If not, why? What would you propose instead?

Response 13: Assured, from time to time, issues commitments to insured proposed debt offerings for which the Company would guarantee the timely repayment of principal and interest, particularly related to municipal and health care entity debt issuances, for which the Company receives a non-refundable commitment. This type of commitment fee arrangement is not specifically addressed in ASC 944. The commitment fees the Company receives are non-refundable. If the insurance policy is subsequently issued, the Company recognizes the non-refundable fee over the life of the insured risk. If the insurance policy is subsequently not issued, the Company recognizes the fee as income at that time. We would suggest that this Update either specifically exclude these types of fees related to insurance contracts from its guidance or clarify the accounting for such.

Initial Measurement

Questions for All Respondents

**Question 14**: Do you agree with the initial measurement principles for financial instruments? If not, why?

**Response 14:** Assured does not object to initial measurement principles for financial instruments.

Subsequent Measurement

Questions for Users

**Question 15:** The proposed amendments would eliminate the unconditional fair value option (for financial instruments within the scope of this proposed guidance) in existing U.S. GAAP and, instead, permit an entity to elect to measure at fair value, with all changes in fair value recognized in net income, all of the following:

- a. A group of financial assets and financial liabilities if the entity both:
  - 1. Manages the net exposure relating to those financial assets and financial liabilities (which may be derivative instruments) on a fair value basis
  - 2. Provides information on that basis to the reporting entity's management.
- b. Hybrid financial liabilities that meet certain prescribed criteria.
- c. Financial assets that meet the contractual cash flow characteristics criterion and are managed within a business model that has the objective of both holding financial assets to collect contractual cash flows and selling financial assets (in accordance with paragraph 825-10-25-25(b)).

Do these options provide decision-useful information? If not, why?

Response 15: The Company has elected the fair value option to account for certain variable interest entities ("FG VIEs") for which it is has concluded that it is the control party due to its rights under its financial guaranty insurance contract that allow it to unilaterally both terminate and replace the servicer, which is the party deemed to control the VIEs most significant activity (i.e., servicing of loans). The Company has limited contractual rights to obtain the financial records of its consolidated FG VIEs. The FG VIEs do not prepare separate GAAP financial statements; therefore, the Company compiles GAAP financial information for them based on trustee reports prepared by and received from third parties. The Company has elected the fair value option to account for the financial assets and financial liabilities classified as FG VIE assets and liabilities because the carrying amount transition method was not practical.

We believe that the fair value option should remain open to preparers of GAAP financial statements in such instances.

Questions for All Respondents

**Question 16:** Should financial liabilities subsequently be measured at amortized cost, unless certain exceptions are met? If not, why?

**Response 16:** Assured believes that entities should be able to subsequently measure financial liabilities at fair value if they are supported by financial assets that are also measured at fair value. While Assured's investment in variable interest entities that it consolidates, and for which

it measures both its assets and liabilities at fair value, is scoped out of this guidance, it does not believe that setting this type of limiting precedent for the measurement of financial liabilities is warranted. We believe that entities should be able to avail themselves of the fair value option, as permitted in IFRS 9, to significantly reduce accounting mismatches between assets and liabilities.

**Question 17:** The proposed amendments would require a nonrecourse financial liability that is settled with only the cash flows from the related financial assets (see paragraph 825-10-35-11) to be measured on the same basis as those assets. Do you agree with the proposed amendments? If not, why? What would you propose instead?

**Response 17:** See our Response 16.

Question 18: The proposed amendments would require financial assets measured at amortized cost that are subsequently identified for sale to continue to be classified and measured at amortized cost less impairment and would prohibit recognition of the gain, until the sale is complete. Do you agree with the proposed classification and measurement requirements? If not, why?

**Response 18:** Assured does not object to the proposed classification and measurement requirements.

**Question 20:** Should an entity evaluate the need for a valuation allowance on a deferred tax asset related to a debt instrument measured at fair value with qualifying changes in fair value recognized in other comprehensive income separately from the other deferred tax assets of the entity (rather than combined and analyzed together)? If not, why?

**Response 20:** Assured believes that an entity should evaluate the need for a valuation allowance on a deferred tax asset related to a debt instrument measured at fair value with qualifying changes in fair value recognized in other comprehensive income separately from the other deferred tax assets of the entity.

Question 22: The proposed amendments would require reclassification of financial assets when a change in business model occurs and prescribes how those changes should be subsequently accounted for. Do you agree with the proposed amendment on reclassifications? If not, why?

**Response 22:** Assured does not object to the prescribed guidance dealing with reclassification of financial assets and their subsequent account in response to a change in business model.

Presentation

Questions for Preparers and Auditors

Question 26: The proposed amendments would require an entity to separately recognize in net income changes in fair value attributable to foreign currency gain or loss on foreign-currency-denominated debt securities measured at fair value through other comprehensive income (see

paragraphs 825-10-45-14 through 45-15). Is the proposed fair-value-based method provided for computing the foreign currency gain or loss component operable? If not, why? What would you propose instead?

**Response 26:** Assured believes the proposed fair-value based method provided for computing the foreign currency gain or loss component is operable.

Disclosures

Questions for All Respondents

**Question 29:** Do you agree with the proposed disclosure requirements? If not, which disclosure requirement would you change and why?

Response 29: Assured agrees with the proposed disclosure requirements.

Transition and Open Effective Date Information

Questions for Preparers and Auditors

Question 32: How much time is needed to implement the proposed guidance?

Response 32: Assured estimates that as currently drafted it would take us 18-24 months to implement the proposed guidance. The most time consuming portion of this would be implementing the cash flow characteristics assessment around "insignificant leverage" as discussed in ASC 825-10-55-17 of the Exposure Draft. We would need to perform an analysis for our extensive investment portfolio to determine if any investment would require being marked to market with changes included in net income and set up processes in conjunction with all of our third-party investment advisors to evaluate any new investment purchases to determine proper classification. Additionally, these process changes would need to be implemented, we assume, in conjunction with any process changes related to the adoption of the final *Financial Instruments – Credit Losses* update.

Question 33: Are the transition provisions in this proposed Update operable? If not, why?

**Response 33:** Assured believes that the transition provisions in this proposed Update are operable.

Summary

We appreciate the opportunity to submit our views and would be pleased to discuss our comments with you at your convenience. If you have any questions, you can contact me at (212) 261-5508.

Sincerely yours,

William J. Findlay Managing Director, Accounting Policy Assured Guaranty