



December 13, 2010

Ms. Leslie Seidman
File Reference No. 1880-100
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1880-100, Proposed Accounting Standards Update, Receivables (Topic 310), Clarification to Accounting for Troubled Debt Restructurings by Creditors

Dear Ms. Seidman:

The Clearing House Association L.L.C. (“The Clearing House”),¹ an association of major commercial banks, appreciates the opportunity to comment on the above-referenced Proposed Accounting Standards Update (“Proposed ASU”).

Executive Summary

The Clearing House supports the Financial Accounting Standard Board’s (the “Board” or the “FASB”) efforts to improve comparability, transparency and consistency in financial statements with respect to the accounting for Troubled Debt Restructurings (“TDRs”) by creditors. However, we believe the Proposed ASU does not accomplish these objectives. The Proposed expansion of the definition of a TDR (specifically to include those modifications for which the debtor does not otherwise have access to a market rate, if there is a temporary or permanent increase in the contractual interest rate, or if there is an insignificant delay in payment) would cause a change to industry practice by including many routine modifications of loans that are not impaired or that have only insignificant impairment. The addition of TDRs with little or no impairment increases the number of TDR loans without adding to the allowance, making the disclosure irrelevant and confusing to investors. This problem is further

¹ Established in 1853, The Clearing House is the nation’s oldest banking association and payments company. It is owned by the world’s largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House Association is a nonpartisan advocacy organization representing – through regulatory comment letters, amicus briefs and white papers – the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer and check-image payments made in the U.S. See The Clearing House’s web page at www.theclearinghouse.org.

exacerbated by the fact that under current guidance, once a loan is classified as a TDR, it must always be disclosed that way, regardless of whether it subsequently improves in credit quality. Accordingly, we strongly recommend that the FASB not proceed with the finalization of this Proposed ASU.

If the FASB does proceed with the Proposed ASU, The Clearing House:

- *recommends* that FASB clarify the impairment measurement guidance to explicitly state that loans that are considered TDRs under the Proposed ASU do not have to be measured for impairment under FAS 114 if there is no impairment;
- *recommends* that the FASB add a scope exception from the definition of TDRs for loans with a modification period of three months or less;
- *recommends* that the FASB eliminate the presumption that a restructuring would be considered a TDR if the debtor does not have access to funds at a market rate, and revise the Proposed ASU to state that, while this would be a factor in determining if the borrower was experiencing financial difficulty it would not be determinative; and
- *recommends* that the FASB change the transition method to provide for prospective application of the Proposed ASU, as the limited benefits of retrospective application do not justify the significant costs.

We provide further detail on each of the above points below.

A. The FASB should postpone the finalization of the Proposed ASU.

We recommend that the Board postpone the finalization of the Proposed ASU and reconsider these issues as part of the Board's redeliberations of the Financial Instruments Exposure Draft. Since the concept of what constitutes a TDR is closely linked to the measurement of its impairment, we believe that it would be better to deliberate these two issues at the same time, in order to produce consistent results with regard to the classification and measurement of TDRs.

We are also concerned that the Proposed ASU would in many respects produce less meaningful results with regard to the measurement of impairment, as well as less meaningful financial statement disclosures. In addition, we are not convinced that the Proposed ASU would result in greater consistency among reporting entities. More specifically, we have the following concerns:

1. The Proposed ASU would expand the population of TDRs to include non-impaired loans.

The Proposed ASU would formalize a definition of TDRs such that it would now include many routine modifications of loans that are not impaired. This would occur in the case of loans that are modified with a higher rate of interest than the loan's effective interest rate and where the lender continues to estimate that it will collect all principal and interest payments due under the original and the modified loan agreements. The Proposed ASU provides that "[i]f a debtor does not otherwise have access to funds at a market rate for debt with similar risk characteristics as the restructured debt, the restructuring would be considered to be at below a market rate and therefore should be considered a TDR".² The Proposed ASU provides further that a restructuring that results in a temporary or permanent increase in the contractual interest rate may be considered a TDR "because the new contractual interest rate on the restructured receivable could still be below market interest rates for new debt with similar terms."³ Thus, many loan modifications that result in an increase in the contractual interest rate would be classified and disclosed as TDRs and then measured for impairment under FAS 114.⁴ Since there has been no deterioration (and in fact an improvement) in estimated cash flows, there would be no impairment and no requirement to record a FAS 114 allowance. Under the Proposed ASU, there would be many instances where a loan would be classified and disclosed as a TDR, but the loan would have no impairment associated with it. Further, excluding the loan from the impairment evaluation under FAS 5⁵ could produce the counterintuitive result of having more loans that are classified and disclosed as TDRs but a lower loan loss allowance overall.

2. Disclosing TDRs that are not impaired is not relevant and may create confusion for investors.

Treating additional loans as TDRs without any incremental impairment reserves raises questions as to the ultimate goal of TDR disclosures. The purpose of the TDR disclosure is to disclose "the financial effects of the modifications."⁶ If the purpose of such disclosures is primarily to indicate the credit quality of a financial institution's loan portfolio, disclosure of loan modifications that are not impaired and have no associated allowance (i.e., zero financial effects) would not seem meaningful.

Furthermore, we note that existing guidance already requires reporting of both impaired loans and nonaccrual loans. TDRs are yet a third metric, and it is the experience of our members that this metric is often confusing to investors. Based on conversations with

² ASU 310-40-15-8A.

³ ASU 310-40-15-8B.

⁴ ASC 310-10-35.

⁵ ASC 450-20-25.

⁶ FAS 15, paragraph 165.

analysts, our members are of the view that many analysts believe that TDRs are a subset of impaired loans or nonaccrual loans. This interpretation by the analysts is not always correct. As a result, this third metric may unnecessarily cause confusion regarding the information provided by reporting impaired loans and nonaccrual loans.

3. The Proposed ASU does not converge with IFRS.

Unless the FASB adopts the recommendation (included below in this letter) regarding the delinking of TDR classification with impairment measurement, we are concerned that the Proposed ASU will not be convergent with the more principles-based IFRS standard, which does not include guidance on troubled debt restructurings. Accordingly, we believe that it would be operationally burdensome for financial institutions to develop new TDR reporting systems and procedures to implement the proposed ASU, when they probably will have to change these systems significantly in the near future in order to converge with IFRS.

B. Specific Comments on the Proposed ASU.

For all the reasons listed above, we strongly encourage the FASB to postpone this project and consider these issues in the broader context of its Financial Instrument Accounting project. However, assuming that the Board decides to move ahead and finalize the Proposed ASU at this time, we have the following specific recommendations to improve the Proposed ASU:

1. The impairment measurement guidance should be clarified.

We strongly recommend that the FASB delink the classification of a loan as a TDR from the requirement to measure all TDRs for impairment under FAS 114. Not all loans classified as TDRs are impaired. Therefore, we believe that the FASB should clarify that only TDRs that are impaired should fall into the scope of FAS 114 and be measured for impairment under that standard. This would avoid the counterintuitive result described above of a financial institution having to classify more loans as TDRs but ending up with a lower allowance for loan losses. As long as there is no current doubt as to the future collection of all principal and interest payments contractually due under the original loan contract, and the modified loan is earning a modified rate equal to or greater than the loan's effective interest rate, the loan should be measured for impairment under the methodology in FAS 5.

2. A scope exception for insignificant delays should be permitted.

According to current industry practice, many banks have adopted a policy that any modification shorter than three months not be deemed a TDR. We believe that a scope exception for insignificant delays (defined as three months or less) would avoid having additional loans treated as TDRs with only insignificant loan impairment charges associated with them, while easing some of the operational burden of the Proposed ASU for preparers.

3. The market rate presumption should be eliminated.

We recommend that the FASB eliminate the presumption that the restructuring would be considered a TDR if the debtor does not have access to funds at a market rate. What constitutes a “market rate” is inherently difficult to determine, especially in the case of large commercial loans for which there is little publicly available information. Accordingly, we suggest that, while this should be a factor in determining if the borrower was experiencing financial difficulty, it should not be determinative.

4. The Proposed ASU should provide for prospective application.

The Proposed ASU would be operationally burdensome for our members to apply the new criteria for as many as two prior years of reported information (for SEC registrants), including the identification of loans which experienced only insignificant delays, and the determination of what constituted a market rate at the time. Furthermore, we believe that the disclosure of prior year information is not particularly relevant to investors if there is little financial impact. Accordingly, we do not believe the significant costs associated with retrospective application justify the benefits.

Conclusion

We believe the Board should consider any potential changes to TDR classification and measurement as part of its broader reconsideration of its Financial Instrument Accounting project. This would ensure consistency with the FASB’s eventual guidance on impairment, would be a more effective use of the FASB’s resources and would result in a more conceptually coherent approach.

Thank you for considering the comments provided in this letter. If you have any questions or are in need of any further information, please contact me at (212) 613-9883 (email: David.Wagner@theclearinghouse.org) or Gail Haas at (212) 612-9233 (email: Gail.Haas@theclearinghouse.org).

Sincerely yours,



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