Financial Accounting Standards Board Technical Director: Ref. 1900-100

Due: 1- 15- 2011

Transfers and Servicing (860) Due 1-15-2011

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Colleagues,

Thank you for the opportunity to critique this submission.

The details follow:

## Background:

The proposed guidance considers the Reconsideration of Effective Control for Repurchase Agreements. The change , if adopted, would alter the way that companies who account for repurchase (repo) agreements and other similar agreements need to assess a transferor's ability to exercise effective control. The assessment of effective control would be focused on the transferor's contractual rights, duties, obligations **and recourse** by removing the criterion to assess a transferor's ability to exercise those rights or honor such obligations. This change would result constructively in most repo agreements being accounted for as secured borrowings instead of a sale .

The purpose of the guidance is to improve the guidance for repos that entitle and obligate a transferor to purchase or redeem financial assets prior to maturity. In repos, the entity transfers financial assets to a counterparty for cash with an agreement that they return the same for a fixed price at some future determinate date. Topic 860 prescribes when the entity may or may not recognize a sale upon the transfer of financial assets subject to the repurchase agreement. Has the entity retained effective control over the financial assets? Is there an exchange of collateral which is sufficient to reasonably assure the arrangement's completion on substantially on the agreed terms in the event of the transferee's default?

The Board and IFRS consider effective control with regard to the transferor's financial rights, duties, obligations (and recourse of the parties) on transferred assets to be dispositive and not the ability to pay of the parties to the transaction.

The conditions precedent for the guidance is as follows:

- (1) The financial assets to be repurchased are the same or substantially the same as those transferred
- (2) The agreement is to repurchase before maturity at a fixed price transferred.
- (3) The agreement or nature of the agreement fully contemplates a transfer in substance

Questions Presented for Review:

- (1) Would the proposed agreement be a simplification? Is the guidance clear and appropriate?
- (2) Is the proposal operationally feasible?
- (3) Do the benefits outweigh the costs of implementation?

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There are several places where this issue could be addressed. The FASB and IFAC are the requisite accounting entities, as well as the Uniform Commercial Code-Section of the American Bar Association- Leadership Roster.

http://www.abanet.org/buslaw/committees/CL190000pub/newsletter/200907/ucc-directory.pdf

The Lehman case highlighted a weakness in rules-based accounting. Lehman Brothers constructed the Repo 105 device specifically around FAS 140 so that the transactions would be reported as sales.

If approved, the guidance would remove considerations of collateral as a factor when determining whether or not an entity has maintained effective control of an asset, a key criterion for whether a repo is accounted for as a sale or as a secured borrowing.

A repurchase agreement is a transaction that a company can enter into in order to secure short-term financing. In such an agreement, the company sells assets, such as securities, to another party with the understanding that this company will buy them back at a fixed price in the future, according to this exposure draft. These types of transactions, depending on the circumstances, may or may not be able to be recognized on the balance sheet as sales.

One of the factors in determining if a repo can be counted as a sale is whether or not the transferring entity has maintained effective control of that asset. An entity can count repos as sales on its balance sheet if it no longer maintains effective control of the asset, according to Accounting Standards Codification (ASC) 860 (formerly Financial Accounting Standard 140), as amended.

If there is an exchange of collateral in a sufficient amount to provide a reasonable assurance of the arrangement's completion on the agreed-upon terms - even in the event of the transferee's default - the effective control of the asset is maintained.

There are potential problems in the valuation of collateral; such that, the collateral - might fall below the minimum level required by the contract provisos. If adjustments aren't made, the transferor, as a result, does not maintain effective control over the asset. If the assets at the time of the transfer are substantially the same and the price is fixed or determinable, the problem is academic.

The business should not be forced by accounting rules to use collateral in order to consummate a transaction when not required by the principals and counterparties to a transaction. Thus, the rights, duties, obligations and recourse in the contract agreement should suffice to govern the requirements of the contract without an added operating burden to encapsule the arrangement with complex collateralization requirements and monitoring.

Questions Presented for Review

(1) Would the proposed guidance by a simplification of this process? Yes, subject to the valuation of collateral as a complicating factor in unusual circumstances.

(2) Are there complex operational issues to address? same as in (1) Also refer to the UCC

**Uniform Commercial Code-**

Section of the American Bar Association- Leadership Roster.

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(3) Do the benefits outweigh the costs in whole or in part? same as in (1)