

27 April 2011

Technical Director
File Reference No. 2011-100
Financial Accounting Standards Board (FASB)
401 Merritt 7/ PO Box 511
Norwalk
CT 06856-5116

Comment Letter on Exposure Draft – Offsetting Financial Assets and Financial Liabilities

Dear Sir / Madam,

SwissHoldings, the Swiss Federation of Industrial and Services Groups in Switzerland represents 53 Swiss groups, including most of the country's major industrial and commercial enterprises. We thank you for the opportunity to comment on the above mentioned exposure draft (the ED). Our response below has been prepared in conjunction with our member companies. We outline some general comments below and answer the specific questions of the ED in the annex.

GENERAL COMMENTS

SwissHoldings agrees with the Boards' considerations to establish a common approach for the offsetting of financial assets and liabilities. As non-financial service industry preparers we will be less significantly affected by the proposals as financial institutions. However we also recognise the need to converge the accounting principles for offsetting of financial assets and liabilities and to have a level playing field so that IFRS preparers are not put at a disadvantage compared to US GAAP preparers.

In particular, we agree with the following proposals made in the ED:

- a) The requirement of an unconditional and legally enforceable right for offsetting financial assets and liabilities;
- b) The application of the same offsetting criteria to both bilateral and multilateral set-off arrangements.

We have concerns on the introduction of additional complexity and would suggest that the Boards reconsider the proposals in the area of the level of detail for disclosures required.

Moreover we noticed that the ED does not address the issue where an unconditional and enforceable right of set-off would be repealed by a future event such as the bankruptcy of the counterparty. We would like to recommend that the Boards should consider adding to the requirements that the right for offsetting should be operational in any circumstance.

Below we further develop our views in our answers to your specific questions on the ED.

Yours sincerely

SwissHoldings

Federation of Industrial and Service Groups in Switzerland



Dr. Gottlieb A. Keller
Current Chair of SwissHoldings
(General Counsel Roche Holding AG)



Dr. Peter Baumgartner
Chair Executive Committee
SwissHoldings

cc SH Board

11-04-27-CL-ED-Offsetting

ANNEXE

QUESTIONS FOR RESPONDENTS – INVITATION TO COMMENT

Question 1 – Offsetting criteria: unconditional right and intention to settle net or simultaneously

The proposals would require an entity to offset a recognised financial asset and a recognised financial liability when the entity has an unconditional and legally enforceable right to set off the financial asset and financial liability and intends either:

- a) to settle the financial asset and financial liability on a net basis or*
- b) to realise the financial asset and settle the financial liability simultaneously.*

Do you agree with this proposed requirement? If not, why? What criteria would you propose instead, and why?

The proposed approach for offsetting financial assets and financial liabilities is imposed by demanding principles. SwissHoldings agrees that offsetting should be based on a sound regulation framework.

We agree with the Boards' view expressed in its Basis of Conclusion (BC), paragraphs BC9 and BC11 that offsetting is only appropriate on the basis of a right or obligation for the net amount and that the net amount reflects the expected future cash flows from settlement. We therefore believe that the proposed requirements will provide decision-useful information.

Question 2 – Unconditional right of set-off must be enforceable in all circumstances

It is proposed that financial assets and financial liabilities must be offset if, and only if, they are subject to an unconditional and legally enforceable right of set-off. The proposals specify that an unconditional and legally enforceable right of set-off is enforceable in all circumstances (ie it is enforceable in the normal course of business and on the default, insolvency or bankruptcy of a counterparty) and its exercisability is not contingent on a future event. Do you agree with this proposed requirement? If not, why? What would you propose instead, and why?

Our experiences show that the unconditional and legally enforceable right to set-off depends largely on the different jurisdictions an entity is operating. In general, netting agreements focus on certain circumstances and risks and are contingent on a future event such as default or settlement failures. We evaluate the ability to set-off unconditionally as barely realisable. We agree that offsetting of financial assets and liabilities presuppose the two conditions.

Moreover we believe that financial statements presentation should not be contingent on future circumstances but should rather reflect the actual business and operations. Consequently, the presentation should not be compiled of cash flows that will not necessarily occur. Such a case could also occur where the right of set-off is currently enforceable but would become non-enforceable and repealed by a future event, e.g. the bankruptcy of the counterparty. The ED does not address the reverse situation. Paragraph C6 of the Application Guidance emphasises that an entity's right of set-off *'will depend on the law governing the contract and the bankruptcy regime that governs the insolvency of the counterparties'*. Again we believe that offsetting in such circumstances will be almost impossible to achieve due to the diverse jurisdictions and laws applicable.

SwissHoldings agrees with the proposed requirement that offsetting will be a prerequisite to the unconditional and legally enforceable right of set-off, but also the Boards should consider adding to the requirements that the execution should be guaranteed in case the right would be disputed due to default or bankruptcy.

Question 3 – Multilateral set-off arrangements

The proposals would require offsetting for both bilateral and multilateral set-off arrangements that meet the offsetting criteria. Do you agree that the offsetting criteria should be applied to both bilateral and multilateral set-off arrangements? If not, why? What would you propose instead, and why? What are some of the common situations in which a multilateral right of set-off may be present?

We understand that in a multilateral set-off arrangement the total netted amount of the balances of a group of entities would be the subject to set-off with a counterparty such as a financial institution. We agree with the Boards' view expressed in paragraph BC61 that there is no reason to exclude multilateral arrangements from the scope of offsetting financial assets and liabilities. We also believe that for both kinds of set-off arrangements the same criteria should be required.

Question 4 - Disclosures

Do you agree with the proposed disclosure requirements in paragraphs 11-15? If not, why? How would you propose to amend those requirements, and why?

In general, we agree that disclosure about the extent of offsetting financial assets and liabilities should be required. However, our member companies of non-financial service industries are extremely concerned about the proposed level of detail required for disclosure purposes. Like certain other recent EDs, this proposal seems to combine a principle-based objective, which we support, with an extended rule-based minimum disclosure list which is likely to be addressed in practice by a 'tick-box' approach. This creates a danger that financial statements will come to resemble what a recent former Board member has described as a 'New York phone book of disclosures', and will not be effective in meeting the user needs referred to in paragraph BC72. We consider the proposed minimum disclosures in the illustrative examples of the ED as exhaustive and unduly complex. We would expect the Boards to differentiate the level and detail of disclosures depending on their relevance. We expect the Boards to consider the introduction of more flexibility in these requirements in order to tailor the disclosures accordingly. We believe that a less extensive illustrative example should be prepared in order to accommodate the business activities of the non-financial services industry.

Our specific comments are:

Paragraph 12 (c): we do not see how disclosing the existence of set-off rights which the entity is not enforcing and does not intend to enforce is relevant to the entity's financial position and therefore to users of general purpose financial statements.

Paragraph 12 (d): the disclosure of conditional set-off rights is in our opinion relevant only if the contingent event which triggers these rights is considered reasonably possible. As drafted, this disclosure requirement does not consider the probability of the condition being fulfilled.

Paragraph 12 (e): disclosing this subtotal would risk confusing users or in the worst case be positively misleading if the conditional set-off trigger is unlikely to occur.

Paragraph 15: the intention behind this is unclear to us. As drafted, we read it as saying that an entity need not provide any information if there is no information to provide, which is not a substantive point. If the intention is to exempt the entity from disclosing relevant comparative amounts which did exist at prior period ends if there is no relevant data at the current period end, the wording should be revised to make this clear.

Question 5 – Effective date and transition

- a) *Do you agree with the proposed transition requirements in Appendix A? If not, why? How would you propose to amend those requirements, and why?*
- b) *Please provide an estimate of how long an entity would reasonably require to implement the proposed requirements?*

We agree with the proposal to apply the offsetting requirements retrospectively.

The inclusion of our member companies in set-off arrangements and the related impact varies significantly by industries. It would be difficult to estimate generally the time period for the preparation and implementation of the proposed requirements.
