

April 28, 2011

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Re: IASB File: Offsetting Financial Assets and Financial Liabilities ED/2011/1 FASB File Reference: 2011-100 Balance Sheet (Topic 210) Offsetting

Dear Sir/Madam,

The Bank of New York Mellon Corporation ("BNY Mellon") appreciates the opportunity to comment on the IASB's Offsetting Financial Assets and Financial Liabilities ED/2011/1 and the FASB's Balance Sheet (Topic 210) Offsetting (the "Exposure Draft"). BNY Mellon is a global financial institution with \$258 billion in assets and \$1.2 trillion in assets under management.

We continue to be a strong supporter of global accounting convergence and, for us, the proposals described in this Exposure Draft address the largest differences between U.S. GAAP and IFRS and would result in significant impacts to our balance sheet. While we are not a major derivatives dealer and the impact may not be as great for us as some of the major U.S. based dealers, we do believe that to achieve a high quality accounting standard that the IASB may need to move closer to the current FASB accounting model for netting of certain financial

instruments. The Boards have acknowledged in the development of other financial instruments projects (Hedge Accounting, Classification and Measurement) that the business model of financial institutions should be relevant in determining the accounting principles that apply.

We respectfully submit that the business model of financial institutions, including the way certain financial instruments are risk managed (particularly collateralized derivatives, and certain repurchase agreements that are subject to master netting agreements), should not be misrepresented by a gross presentation on the balance sheet.

In addition, we have heard that as part of its ongoing outreach activities the FASB have sought input on the consistency of the offsetting proposal with the other business models, and therefore, while the accounting for lessors is currently being redeliberated by both boards, we would like to take this opportunity to submit that there should be further consideration of the presentation of leveraged leases, either on a net basis or by a linked presentation approach on the balance sheet. The long term funding component to a leveraged lease transaction is inextricably linked to the leased asset, both legally and from a business and risk management perspective. If this cannot be achieved, we believe that the accounting for leveraged leases should at least be "grandfathered" and be only applied to new leveraged leases on a prospective basis from the date that the leasing standard becomes effective.

We are aware that the users are split in their views on this offsetting proposal, in particular there was no strong consensus regarding net or gross presentation on the statement of financial position, and we encourage the boards to closely study the decision usefulness of the proposed presentation and to weigh the significant costs to preparers versus the perceived benefits.

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

The proposals would require an entity to offset a recognized financial asset and a recognized 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 realize 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?

#### **Response:**

Yes, we agree with this principle. However, we are concerned that the term "simultaneously" does not account for the operational realities of repurchase and reverse repurchase agreements settlement which may not occur at the exact same instant, but largely occurs intraday. We believe that the term "simultaneously" should be replaced with "within the same 24 hour period considering relevant time zones of the reporting entity". In addition, we believe that derivative

financial instruments (along with related cash collateral) that are subject to master netting arrangements should be presented on a net basis in the balance sheet of the reporting entity because that would more appropriately reflect the credit and liquidity risk exposure.

## 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?

#### **Response:**

Please refer to our response to Question 1. regarding derivatives and repurchase and reverse repurchase agreements. In the case of derivatives and repurchase and reverse repurchase agreements, we believe that the enforceability criteria for netting should not include "enforceable in all circumstances" such that it is enforceable in the normal course of business. We believe that the enforceability criteria that includes "on the default, insolvency or bankruptcy of a counterparty is sufficient for such transactions.

## **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?

#### **Response:**

Yes.

### **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?

#### **Response:**

Disclosures should be presented to represent the way the business is managed, in particular the way credit risk is managed for these transactions.

# 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.

## **Response:**

Retrospective adoption will be a challenge without sufficient time to make necessary systems changes to build the information from the financial data, therefore we suggest the earliest effective date be January 1, 2015, with provision for early adoption for those reporting entities that may become ready sooner. We believe that to operationalize the new standard would require approximately two years of implementation time.

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Thank you for considering our comments regarding the Exposure Draft. If you have any questions or require further information, please contact me at 212-635-7080 or Ross Brown at 212-635-7023.

Sincerely,

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