

January 14, 2011

Susan M. Cosper Technical Director File Reference No. 1900-100 Financial Accounting Standard Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update—Transfers and Servicing (Topic 860) Reconsideration of Effective Control for Repurchase Agreements

Dear Ms. Cosper,

Deutsche Bank (DB) appreciates the opportunity to comment on the Proposed Accounting Standards Update - *Transfers and Servicing (Topic 860) Reconsideration of Effective Control for Repurchase Agreements* (the proposed "Update"). In order to facilitate your review of our letter, we have provided a summary of our key message below. We have also included additional information regarding our views in the Appendices to this letter and would be glad to discuss these points in further detail with the Board and Staff to facilitate the finalization of the proposed Update.

Key Message

We support the Board's objective of simplification and improvement of the financial instrument derecognition model through reconsideration of effective control for repurchase agreements. We believe the Board's assessment that effective control should focus on a transferor's contractual rights and obligations with respect to transferred financial assets, not on whether the transferor has the practical ability, by way of a collateral maintenance agreement, to exercise those right or honor those obligations will serve to simplify and improve the accounting treatment of these transactions. However, we believe implementation of a substance-based approach to accounting for these transactions would further serve the Board's simplification and improvement objectives. We believe that most sale and repurchase agreements involving readily obtainable financial assets are in substance financings. Therefore, we believe that the derecognition model should be modified to account for sale and related repurchase agreements in line with their substance, based on who has the broad risks and rewards of the transactions (the primary economic benefit of the asset/transactions) and based on management's intention for execution of these transactions. In determining the substance of sale and related repurchase agreements, we believe that considerations beyond the traditional control concept should be made and have outlined those considerations in our detail discussions in Appendix A.

Such an approach, if converged with or expanded beyond that of IFRS, would serve not only to simplify and improve the derecognition analysis process, but would also serve to converge financial asset derecognition principles in financial markets around the world.

Our responses to the specific questions posed in the proposed Update are included in **Appendix B** to this letter.

We hope you find our comments useful and relevant and we would be glad to work with you in the deliberation of these and other points to arrive at a final Update. Should you wish to discuss any of the comments or responses in this letter, please do not hesitate to contact Cynthia Mustafa at Cynthia.mustafa@db.com, or +44 20 754 50978.

Yours sincerely,

Cynthia Mustafa

Managing Director

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Deutsche Bank AG

APPENDIX A – Overall Substance Approach

Substance-Based Approach

In recent analyses of well-publicized sale and repurchase transactions (SEC's Dear CFO letters, Lehman bankruptcy report), a key to arriving at the appropriate accounting for these transactions was often obtaining an understanding not only of the substance of a transaction or series of transactions, but of the intention of management in executing what were originally recorded as separate sale and repurchase (derivative) transactions. Management's intentions did not always become apparent when assessing these transactions in accordance with the existing guidance (Topic 860). Accordingly some of these transactions may have been inappropriately recorded as sales and repurchase derivatives (indicating control had passed to the counterparty) to effect balance sheet reduction targets, rather than, in our view, more appropriately as short-term financings. A substance-based analysis, such as an analysis of broad risks and rewards of and management's intentions for these transactions, may have more clearly assisted preparers and auditors in determining the proper accounting for these transactions.

When considering whether to separately account for a transfer of a financial asset and a related repurchase financing, we believe the rules-based or checklist approach of Topic 860 should be expanded to a broader, more all-encompassing substance-based approach.

Additional facts and circumstances, including points around management intent, as well as indications of who has the broad risks and rewards or primary economic benefit, that could be analyzed to understand when sale and repurchase transactions should be considered one unit, or a financing, include, but are not limited to:

- Transactions that, when combined, would result in another less favorable transaction result
 than if maintained as separate trades. Such broad "risks and rewards" that are impacted by
 whether the transaction is considered a sale or a financing include:
 - Balance sheet leverage ratio calculations,
 - Regulatory capital calculations,
 - Income tax calculations,
 - Legal considerations,
 - Existing debt covenant ratio calculations.
- Collateralization levels and arrangements, off-market terms undercollateralization or other
 off-market terms of a trade, including non-arms length intercompany transactions between
 differing legal jurisdictions, may indicate that the trade is linked to another (repurchase) trade
 better accounted for as a single unit of account.
- Costly transactions derecognition via a costly and/or structured transaction other than
 outright sale may indicate that a financing is more appropriate as risks and rewards of the
 transactions accrue to the transferor. When a structured transaction or transactions is used to

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achieve a result rather than an outright sale, further analysis should be completed and the benefits and costs of the transaction more clearly understood.

- The existence of a refinancing requirement within a short time frame after trade execution/maturity. That is, proceeds received from the sale are required to fund the related repurchase agreement and other financing has to be raised to fund normal operations as a result.
- Timing of the execution of the agreements sale just before period end following by repurchase just after period end, generally a short time frame which may be, for example, around 10 days.
- Increases in the volumes of sale and repurchase agreements at or near period end. These sales
 and repurchase agreements may represent a deviation from normal business activities. This
 may be an indicator of financing motives and provide indication that the sale and repurchase
 agreements are in effect designed to achieve a result other than the normal profit motive of the
 business, or indicate that the primary economic benefit of the transactions accrues to the
 transferor.
- The existence of limits on a particular type of transaction. If transactions have a good business purpose, no limits would be necessary.
- Inconsistent accounting and legal treatment in the primary jurisdiction in which the transaction originates.
- Existence of restrictions on transfer included in the sale/repurchase agreements.
- Transfer of illiquid, "sticky" assets or assets with lower credit ratings may be indicators that the primary economic benefit of the transactions accrue to the transferor.
- Assessment of control only from the viewpoint of transferor or only the transferee may lead to structuring opportunities. A holistic primary economic benefit analysis may reduce these structuring opportunities.

Rather than attempting to create an all-inclusive list of indicators, we suggest the Board consider the application of a substance-based approach to assess the substance of sale and repurchase transactions, perhaps based on an analysis of the broad risks and rewards of the combined transactions, possibly similar to but expanded beyond that included in the IAS 39 derecognition model.

We further believe the adoption of a substance-based or risk and reward approach would alleviate the need for a detailed definition of the term *Substantially the Same* currently included in Topic 860. By focusing on the overall substance of a transaction, this definition, although more judgmental, will be based on facts and circumstances rather than a defined set of accounting rules, subject to structuring opportunities.

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Finally, we believe disclosure, similar to that proposed by the SEC, would enhance financial reporting, including:

- Requirement for disclosure of intention and purpose of repurchase and related transactions.
- Disclosure of the use of proceeds of repurchase and related transactions. If proceeds are required to repurchase an asset and the transaction is not in the normal course of business but used to meet financing requirements, this information should be disclosed.
- Disclosure of unusual period-end activity and disclosure of financing requirements and trends.

As intermediate consideration of the above, the following changes could be implemented as short-term improvements to prevent of improperly recorded repurchase and similar transactions:

- Treat all sales with repurchase agreement as financings, regardless of other factors;
- Require disclosure of all transactions near period end (SEC disclosure requirements);
- Implement a tainting rule, such that all similar transactions are treated in the same manner.

Question 1: Would the proposed amendments represent an improvement and simplification to the assessment of effective control for agreements that both entitle and obligate the transferor to repurchase or redeem the financial assets before their maturity? Are the proposed amendments clear and appropriate? Will the proposed amendments result in financial reporting that provides users with decision-useful information?

Response: We believe the proposed amendments would represent an improvement and simplification to the assessment of effective control for agreements that both entitle and obligate the transferor to repurchase or redeem the financial assets before their maturity. However, when assessing control, we believe a substance-based approach or an analysis of the broad risks and rewards would further serve the Board's improvement and simplification efforts. We urge the Board to consider a more comprehensive substance-based approach that would assess these transactions in their entirety and thereby eliminate the potential for structuring opportunities. We would support the investigation of the use of a broad risks and rewards type model similar but possibly expanded beyond that currently in use under IAS 39. We believe this approach would more closely reflect appropriate accounting results in the financial statements and also serve to converge financial asset derecognition guidance with IFRS.

Question 2: The Board plans to require that the amendments in the final Update be effective for entities as of the beginning of the first interim or annual period after its issuance. Are there any significant operational issues that the Board should consider in determining the appropriate effective date for the final amendments?

Response: We believe transactions that have used collateralization requirements to determine whether sale accounting or a financing is appropriate to be infrequent. Therefore, we support the proposed effective date. If the Board were to consider moving to a more comprehensive substance-based approach as we have described above, we understand that development of such a model would result in a significant delay to the effective date of any amendment.

Question 3: Paragraphs BC16 and BC17 set out the Board's assessment of the costs and benefits of the proposed requirements. Do you agree with the Board's assessment that the benefits of the proposals outweigh the cost? Why or why not?

Response: We agree with the Board's assessment that entities would not incur significant costs as a result of implementing the amendments in the proposed Update.

Question 4: Should the amendments in this proposed Update be different for nonpublic entities (private companies and not-for-profit organizations)? If the amendments in this proposed Update should be applied differently to nonpublic entities, please provide a rationale for why.

Response: N/A