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Via Email to director@fasb.org

Berlin, May 29, 2008

File Reference: 1550-100 Preliminary Views “Financial Instruments with Characteristics of Equity”

Here: Joint Comments of German Associations and Public Corporations

Dear Ms. Bielstein,

The Association of German Public Sector Banks (VÖB), the German Cooperative and Raiffeisen Confederation (DGRV), the Federation of German Industries (BDI), the German Federal Chamber of Tax Advisers (BSStBK), the Federal Association of German Cooperative Banks (BVR), the Association of German Chambers of Industry and Commerce (DIHK), the German Savings Bank Association (DSGV) and the Association for the Participation in the Development of Accounting Regulations for Family-owned Entities (VMEBF) are pleased to submit their joint comments regarding the Preliminary Views “Financial Instruments with Characteristics of Equity” issued by the Financial Accounting Standards Board (FASB) in November 2007.

A. General Remarks

We welcome the revision of the regulations changing the criteria for the classification of financial instruments as equity. The revision is of high importance for European entities also, as US-standards may be adopted by the IASB in the course of the convergence project as well. A new regulation should enable all types of enterprises and companies, regardless of their legal form or industry to distinguish between liabilities and equity in a way that is conducive to economic substance. It is important to ensure that international differences with respect to codified corporate law and financial instruments commonly used by entities are adequately reflected in financial statements. In consideration of these points, it is our opinion that the clear emphasis found in the Preliminary Views on publicly listed companies as the dominant form of entities in global capital markets must be extended to other legal forms of companies.

In many instances the equity classification proposed in the Preliminary Views will surely produce suitable results for instruments issued by publicly listed companies. However, the fact must be considered that in numerous countries likewise in the European Union (EU), even non-publicly listed companies are required to apply IFRS-standards. Consequently, these companies are also affected by developments in international financial reporting.

Company Law in Europe provides special rules for partnerships and cooperatives. As opposed to publicly listed companies where capital commitment reigns, in many types of entities it is much more common to take personal risks and assume responsibility for operations. Legal controls and contracts have been created that place more emphasis on the company fulfilling its business objectives and observing the interests of owners and creditors but less on maximizing value for the individual shareholder. This is far remote from being an equity-generating structuring of individual financial instruments; on the contrary, the contracts reflect the basic conditions of the legal environment and company law. In Germany as in the EU these legal forms of companies are very common. Therefore IFRS require consistent application of standards independent of legal form or industry.

Since international financial reporting around the world converges, US-Statements on financial reporting gain in importance steadily. But as corporate law in many European countries provides special rules for non-publicly listed companies, a focus on listed companies seems to be insufficient. The FASB should take into account the specifics of partnerships and cooperatives in their standard setting process.

With this in mind, we would be very appreciative if the FASB includes as an equal alternative for discussion the “Loss Absorption Approach” (LAA) forwarded by the European Financial Reporting Advisory Group (EFRAG) in January 2008 that was based on the findings of a European joint project. The LAA focuses on providing decision-useful information in consideration of the proprietary rights of the owners of a company in different legal forms and across different jurisdictions. In our opinion, the basic idea of the “Loss Absorption Approach” takes into consideration both investors’ interests and the concerns of non-publicly listed companies operating in legal forms that differ from publicly listed companies. From our point of view the LAA poses an adequate alternative to the other approaches discussed by the FASB.

B. Response to Questions

We would like to voice our positions on the individual questions below.

Questions on the Basic Ownership Approach

Q 1 – Do you believe that the basic ownership approach would represent an improvement in financial reporting? Are the underlying principles clear and appropriate? Do you agree that the approach would significantly simplify the accounting for instruments within the scope of these Preliminary Views and provide minimal structuring opportunities?

In our opinion, using the basic ownership approach would not eliminate the problems we currently are experiencing in equity distinction and therefore would not improve financial reporting. On the contrary, the basic ownership approach would exacerbate the problems especially of partnerships and cooperatives in Europe in many instances. We consider the basic ownership approach largely insufficient with regard to the distinction between liabilities and equity that we have called for.

In our view it is exceedingly problematic that only financial instruments in the most subordinate classes of instruments (i. e. the most residual claim) are classified as equity. This would give rise to equity instruments that, for example, are given preferred settlement over other shareholders within partnership contracts to be classified as liabilities. It is our understanding that equity should primarily serve to protect creditor claims. We cannot see any reason to protect the interests of the partners or shareholders of a company against each other. Moreover, the conditions under which a partner, member or shareholder invests in a company, even in one that does not issue shares, are usually known beforehand. Regardless of legal structure, in our understanding of equity classification, the sole matter is therefore to what extent the instrument is subordinate to third-party creditors that are not associated with the company.

We doubt whether the installation of an upper limitation of the holder's entitlement to a share of the entities net assets should be a prerequisite for qualifying as equity. An equity investor, acting in a free market, should be free to choose how and to what extent he or she benefits from a company's performance. With respect to the economic character of equity being risk capital we recommend to focus on the question whether capital is available for covering creditor demands.

Perpetual Instruments

Q2 – Under current practice, perpetual instruments are classified as equity. Under the basic ownership approach (and the REO approach, which is described in Appendix B) certain perpetual instruments, such as preferred shares, would be

classified as liabilities. What potential operational concerns, if any, does this classification present?

We believe perpetual instruments like preferred shares should be classified as equity, provided the capital allocated to them is available for creditor claims. As we stated in our response to Question 1, our concern with classifying equity is not the dialogue of shareholders among themselves in a company. Consequently, the single criterion for classifying an instrument as equity must be the ability to absorb losses, or to put it another way, the ability to service the claims of creditors should the worst case occur. Under these conditions, we reject a general classification of perpetual instruments as liabilities.

Q 3 – The Board has not yet concluded how liability instruments without settlement requirements should be measured. What potential operational concerns, if any, do the potential measurement requirements in paragraph 34 present? The Board is interested in additional suggestions about subsequent measurement requirements for perpetual instruments that are classified as liabilities.

In keeping with our remarks in Question 2, we assume that these instruments are equity, which makes the question of subsequent measurement requirements superfluous in our view. We would like to point out that the issue of subsequently measuring perpetual instruments reveals a conceptual error in the basic ownership approach. It is in the nature of liabilities that they become due. Perpetual instruments do not exhibit this characteristic, so the timing and magnitude of an outflow of resources embodying economic benefit is incalculable. This uncertainty makes it quite difficult to provide a general statement on the topic of subsequent measurement requirements. We advocate classifying equity based on subordinate ranking to the company's third-party creditors' claims.

Redeemable Basic Ownership Instruments

Q 4 – Basic ownership instruments with redemption requirements may be classified as equity if they meet the criteria in paragraph 20. Are the criteria in

paragraph 20 operational? For example, can compliance with criterion (a) be determined?

We expressly support the ruling that redeemable instruments are to be classified as equity. As stated above, however, we don't believe the criteria for classifying basic ownership instruments are suited for ensuring the distinction between equity and liabilities independent of a company's legal form. Equity instruments are naturally subordinate to creditors' claims and can only grant claims to the residuals in case of liquidation. It is rather evident that the assumption of liability of equity instruments is of key importance for each user of the financial statement. Knowing the potential amount of coverage for losses is of great importance for a company's investors, banks, suppliers and clients. In our view, the classification of a financial instrument as equity clearly necessitates a redemption amount with no lower limit. How a "more" of net assets is distributed should not play a role in equity classification.

Separation

Q 5 – A basic ownership instrument with a required dividend payment would be separated into liability and equity components. That classification is based on the Board's understanding of two facts. First, the dividend is an obligation that the entity has little or no discretion to avoid. Second, the dividend right does not transfer with the stock after a specified ex-dividend date, so it is not necessarily a transaction with a current owner. Has the Board properly interpreted the facts? Especially, is the dividend obligation that the entity has little or no discretion to avoid? Does separating the instruments provide useful information?

IAS 32 already requires the separation of dividend payments, so we cannot discover any differences. We advocate, however, restricting separation obligations explicitly to instruments that assure at the date of issue an ongoing dividend with clear reference to timing and amount of payment. As soon as the warranted dividend payment is tied to conditions, the obligation to separate, and therewith the requirement for valuation of claims, should be omitted. Due to the existing

uncertainties this would produce extremely complex presentation that would be difficult for the recipients of the financial statement to understand.

Q 6 – Paragraph 44 would require an issuer to classify instruments based on their substance. To do so, an issuer must consider factors that are stated in the contract and other factors that are not stated terms of the instrument. That proposed requirement is important under the ownership settlement approach, which is described in Appendix A. However, the Board is unaware of any unstated factors that could affect an instrument’s classification under the basic ownership approach. Is the substance principle necessary under the basic ownership approach? Are there factors or circumstances other than the stated terms of the instrument that could change an instrument’s classification or measurement under the basic ownership approach? Additionally, do you believe that the basic ownership approach generally results in classification that is consistent with the economic substance of the instrument?

The principle of economic substance is one of the basic principles of international financial reporting and should be included in the criteria used for classifying equity instruments. As stated previously, the classification criteria proposed here are essentially geared towards the needs of publicly listed companies. This, however, means that the classification criteria with regard to equity instruments of non-publicly listed companies do not reflect the economic substance of those instruments’ appropriately. Therefore, we advocate creating classification criteria that disregard a company’s legal form so that the various share instruments can be classified and depicted as equity instruments in a way that reflects their economic substance to fulfill creditor claims.

Linkage

Q 7 – Under what circumstances, if any, would the linkage principle in paragraph 41 not result in classification that reflects the economics of the transaction?

No comment.

Measurement

Q 8 – Under current accounting, many derivatives are measured at fair value with changes in value reported in net income. The basic ownership approach would increase the population of instruments subjected to those requirements. Do you agree with that result? If not, why should the change in value of certain derivatives be excluded from current-period income?

Call options on a company's own shares should not be subject to fair value measurement, and consequently gains derived from a change in the fair value of these instruments should not have any effect on the income statement. Fair value changes in these options are ultimately the result of changes in a company's own shares, which do not produce gains in the sense of company performance.

Presentation Issues

Q 9 – Statement of financial position. Basic ownership instruments with redemption requirements would be reported separately from perpetual basic ownership instruments. The purpose of the separate display is to provide users with information about the liquidity requirements of the reporting entity. Are additional separate display requirements necessary for the liability section of the statement of financial position in order to provide more information about an entity's potential cash requirements? For example, should liabilities required to be settled with equity instruments be reported separately from those required to be settled with cash?

In our view, any requirements that extend beyond a separate disclosure of perpetual and redeemable components of equity are not necessary.

Q 10 – Income Statement. The Board has not reached a conclusion about how to display the effects on net income that are related to the change in the instrument's fair value. Should the amount be disaggregated and separately displayed. If so, the Board would be interested in suggestions about how to disaggregate and

display the amount. For example, some constituents have suggested that interest expense should be displayed separately from unrealized gains and losses.

No comment.

Earnings Per Share (EPS)

Q 11 – The Board has not discussed the implications of the basic ownership approach for the EPS calculation in detail. However, it acknowledges that the approach will have a significant effect on the computation. How should equity instruments with redemption requirements be treated for EPS purposes? What EPS implications related to this approach, if any, should the Board be aware of or consider?

This question refers exclusively to companies whose equity solely exists in shares. As we firmly advocate a distinction of equity and liabilities independent of the legal form, we refrain from answering this question.

Questions on the Ownership-Settlement Approach

Q 1 – Do you believe the ownership-settlement approach would represent an improvement in financial reporting? Do you prefer this approach over the basic ownership approach? If so, please explain why you believe the benefits of the approach justify its complexity.

Yes, in our view the ownership-settlement approach is superior to the basic ownership approach. The ownership-settlement approach allows the classification as equity of additional perpetual instruments and indirect ownership instruments. In our opinion, it has fewer disadvantages, especially for companies that are not operating as publicly listed companies. Therefore, it allows to account for their shares as equity at least some of the non-publicly listed companies.

Q 2 – *Are there ways to simplify the approach? Please explain.*

No comment.

Q 3 – *Paragraph A40 describes how the substance principle would be applied to indirect ownership instruments. Similarly to the basic ownership approach, an issuer must consider factors that are stated in the contract and other factors that are not stated in the terms of the instrument. Is this principle sufficiently clear to be operational?*

No comment.

Presentation Issues

Q 4 – *Statement of financial position. Equity instruments with redemption requirements would be reported separately from perpetual equity instruments. The purpose of the separate display is to provide users with information about the liquidity requirements of the reporting entity. What additional, separate display requirements, if any, are necessary for the liability section of the statement of financial position in order to provide more information about an entity's potential cash requirement? For example, should liabilities required to be settled with equity instruments be reported from those required to be settled with cash?*

We do not believe separate disclosures for liabilities are necessary. The separation of perpetual and redeemable equity instruments that is currently stipulated is sufficient.

Separation

Q 5 – *Are the proposed requirements for separation and measurement of separated instruments operational? Does the separation result in decision-useful information?*

No comment.

Earnings Per Share (EPS)

Q 6 – The Board has not discussed the implications of the ownership-settlement approach for the EPS calculation in detail. How should equity instruments with redemption requirements be treated for EPS purposes? What EPS implications related to this approach, if any, should the Board be aware of or consider?

The question refers exclusively to companies whose equity solely exists in shares. As we firmly advocate a distinction of equity and liabilities independent of legal form, we refrain from answering this question.

Settlement, Conversion, Expiration, or Modification

Q 7 – Are the requirements described in paragraph A35-A38 operational? Do they provide meaningful results for users of financial statements?

No comment.

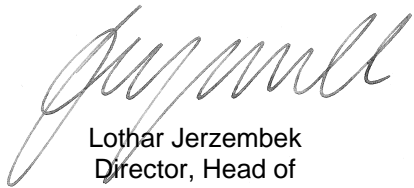
Questions on the REO Approach

Q 1 – Do you believe that the REO approach would represent an improvement in financial reporting? What would be the conceptual basis for distinguishing between assets, liabilities and equity? Would the costs incurred to implement this approach exceed the benefits? Please explain.

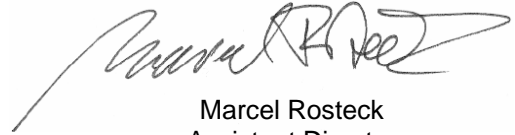
In our opinion the complex REO approach would be difficult to operationalize and should therefore not be pursued any further. That is why we refrain from answering the individual questions asked here.

Please feel free to contact representatives of DGRV (Eckhard Ott, ott@dgrv.de, Ulf Jessen, jessen@dgrv.de), if you have any further questions or desire any further exchange of information.

Best regards,



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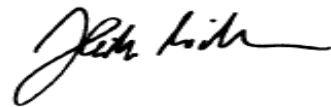


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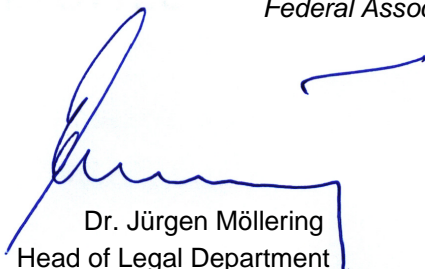


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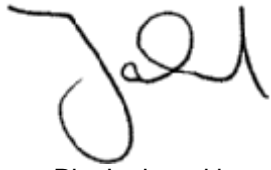


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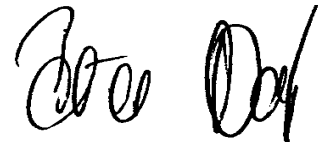


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