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Via email to director@fasb.org

December 20, 2013

Ms. Susan M. Cosper
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update, *Derivatives and Hedging (Topic 815) Determining Whether the Host Contract in a Hybrid Financial Instrument Issued in the Form of a Share Is More Akin to Debt or to Equity*, a consensus of the FASB Emerging Issues Task Force

(File Reference No. EITF-13G)

Dear Ms. Cosper:

This letter is submitted in response to the request for public comment by the Financial Accounting Standards Board (FASB or the Board) with respect to its Exposure Draft ("ED") of the proposed Accounting Standards Update, ***Derivatives and Hedging (Topic 815) Determining Whether the Host Contract in a Hybrid Financial Instrument Issued in the Form of a Share Is More Akin to Debt or to Equity***, a consensus of the FASB Emerging Issues Task Force.

WeiserMazars LLP appreciates the opportunity to review and comment on this ED.

Our responses to the questions in the Proposed ASU are included on the attached pages for your consideration.

If you have any questions about our comments or wish to discuss any of the matters addressed herein, please contact Mike Crown (212) 375-6748 or Denise Moritz (646) 225-5913.

Very truly yours,

WeiserMazars LLP

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Responses to the Specific Questions

Question 1: Should the scope of the proposed amendments be extended beyond hybrid financial instruments issued in the form of a share? If yes, please explain why and identify other hybrid instruments that should be considered by the Task Force.

Response

Yes. The proposed amendments should apply to all hybrid financial instruments. The question of whether to apply the debt-or-equity classification to the entire instrument or just the host contract is fundamental to the accounting for all hybrid financial instruments. To limit the proposed guidance to shares would create a dichotomy in accounting for shares versus all other types of hybrid financial instruments. Additional guidance would then be needed to define "share," and whether such guidance should apply to other forms of ownership. Expanding the scope of the proposed guidance to all hybrid financial instruments would ensure more consistency in its application and mitigate the opportunity for abuse.

Question 2: Do you agree that a reporting entity should consider all terms and features—including the embedded derivative feature being evaluated for bifurcation—when determining whether the nature of a host contract is more akin to debt or to equity? If another method should be used, please explain that method and why it would be an improvement.

Response

Yes. An investor in a hybrid financial instrument cannot choose which features to purchase. The issuer is not issuing a host contract plus features – the instrument is issued whole. The debt-or-equity question should be applied to the financial instrument upon which the parties involved made their respective investing and financing decisions.

Question 3: Do you agree that no single feature should be determinative in concluding whether the host contract is more akin to debt or to equity? Furthermore, do you agree that a fixed-price, noncontingent redemption option held by an investor embedded in a share is not, in and of itself, determinative in concluding that the nature of the host contract is more akin to debt? If not, please explain why.

Response

The conditions noted in ASC 815-40-25-10 should be determinative in concluding whether the host contract is more akin to debt or equity. These conditions are used to determine whether derivative contracts should be classified in equity. Failure of a single condition leads to classification outside of equity. The same criteria should be used to evaluate whether a host contract is more akin to debt or equity. For instance, an instrument that can only be settled in a fixed number of shares, but that gives the holder the standing of a creditor in bankruptcy court, should be classified outside of equity.

Yes, a fixed-price, noncontingent redemption option held by an investor embedded in a share should <u>*not*</u> *be, in and of itself, determinative in concluding that the nature of the host contract is more akin to debt. There are several other means by which shareholder downside risk can be limited, such as conversion and antidilution provisions. Should all such features be determinative in concluding whether the host contract is more akin to debt? The question hinges upon a better definition of "equity," and whether it should include instruments with limited downside risk. Until then, redemptive features should be weighed according to priority in liquidation. The closer that priority is to debt-holders, the more the host contract is akin to debt.*

Question 4: Will the proposed amendments help reduce diversity in practice with respect to determining the nature of the host contract within hybrid financial instruments issued in the form of a share? If not, please explain why.

Response

Yes. However, unless the scope is expanded to include all hybrid financial instruments, the diversity in practice the proposed guidance seeks to mitigate may exist with regard to hybrid financial instruments not in the form of shares. Abuse may also occur by structuring ownership instruments to avoid the proposed guidance.

Question 5: Do you agree that the effects of the proposed amendments should be applied on a modified retrospective basis to existing hybrid financial instruments issued in the form of a share as of the beginning of the annual reporting period in which the proposed amendments are effective? Do you further agree that retrospective application should be allowed?

Response

Yes, the effects of the proposed amendments should be applied on a modified retrospective basis to existing hybrid financial instruments issued in the form of a share as of the beginning of the annual reporting period in which the proposed amendments are effective. However, retrospective application should not be allowed in order to preserve consistency in the adoption of the standard.

Question 6: Do you agree that an entity should be permitted to early adopt the proposed amendments? If not, please explain why.

Response

Yes, early adoption should be permitted.

Question 7: The proposed amendments would apply to public and nonpublic entities. Should the proposed amendments be different for nonpublic entities? If so, please describe how and why you think they should be different.

Response

The proposed amendments should be the same for public and nonpublic entities.

Question 8: How much time would be needed to implement the proposed amendments and would the implementation period differ for nonpublic entities versus public entities? Please explain why.

Response

Public entities are likely to have more hybrid financial instruments in the form of shares. The time needed to implement would be contingent upon the complexity and volume of such instruments. Nonpublic entities are more likely to have ownership instruments that are not in the form of shares. Our experience has been that embedded features in nonpublic ownership instruments are not likely to meet the criteria for bifurcation due to the lack of net settlement provisions.