

ISDA

Letter of Comment No: 39
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July 17, 2002

Ms. Suzanne Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference 1100-163
Proposed Statement of Financial Accounting Standards, Amendment of Statement 133 on Derivative Instruments and Hedging Activities

Dear Ms. Bielstein:

International Swaps and Derivatives Association ("ISDA") appreciates the opportunity to comment on the Financial Accounting Standards Board's ("FASB" or the "Board") May 1, 2002 Exposure Draft of the Proposed Statement of Financial Accounting Standards, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities* (the "Exposure Draft"), the guidance in tentative Statement 133 Implementation Issues No. A20, B12, B36, C17 and D2, and Questions and Answers Related to Derivative Financial Instruments Held or Entered into by a Qualifying Special-Purpose Entity ("SPE") (the "Statement 140 Q&As").

We are one of the three industry groups of the Joint Industry Working Group ("JIWG") which has pooled resources to respond to the above-mentioned documents as well as other issues impacting the industry. The JIWG includes ISDA, The Bond Market Association (TBMA), and the Securities Industry Association (SIA). Our detailed comments to the specific issues raised by the Board in the Exposure Draft, the implementation guidance and the Statement 140 Q&As are reflected in the JIWG comment letter. However, ISDA would like to provide its views on one issue separately, given our focus on derivative issues.

Financial Guarantee Scope Exception

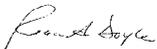
Overall, we are supportive of the changes made to the definition of a financial guarantee included in the SFAS 133 amendment. However, we are concerned with the specific issue of the relationship between the revised guidance and DIG Issue C7. Issue C7 is inconsistent with the new definition since it requires that the guarantee contract explicitly state that the guaranteed party has exposure to and the occurrence of a *loss* in order to qualify for the scope exception.

The new definition of a financial guarantee, however, does not require the occurrence of a loss. The new definition of a financial guarantee is technically correct since it does not require losses; it requires missed payments for reimbursement to occur. Thus, the critical concept for the SFAS 133 financial guarantee scope exclusion is that there is a failure to pay. As noted, the proposed amended language for the scope exception in SFAS 133 already includes this point and does not need to be changed. As indicated in the Basis For Conclusions in section A30 of the Exposure Draft the Board "concluded that the language in paragraph 10(d) should be clarified to eliminate use of the term *loss that would be incurred* and instead focus on amounts due to the guaranteed party but not paid by the debtor."

We strongly recommend that the Board take advantage of the amendment to resolve the inconsistencies by deleting Issue C7 from the Statement 133 Implementation Issues guidance or modifying Issue C7 to conform with the Board's basis for conclusion as noted above.

We appreciate the Board's attention to this issue and the issues raised in the JIWG letter. We would be happy to provide assistance to the Board and staff as you work towards finalizing guidance on these topics. Please contact Stacy Carey, Policy Director of ISDA at (212) 901-6011 or Robin Doyle, Chair, ISDA North American Accounting Committee at (212) 648-3185.

Sincerely,



Robin Doyle
Chair
ISDA North American Accounting Committee
Senior Vice President
JP Morgan Chase