



International Swaps and Derivatives Association, Inc.
 360 Madison Avenue, 16th Floor
 New York, NY, 10017
 United States of America
 Telephone: (212) 901-6000
 Facsimile: (212) 901-6001
 email: isda@isda.org
 website: www.isda.org



LETTER OF COMMENT NO. 9

January 31, 2007

Mr. Lawrence W. Smith
 Director, TA&I – FSP
 Financial Accounting Standards Board
 401 Merritt 7
 P.O. Box 5116
 Norwalk, CT 06856-5116

Re: Proposed FASB Staff Position No. FIN 39-a, *Amendment of FASB Interpretation No. 39*

Dear Mr. Smith:

The International Swaps and Derivatives Association (“ISDA”) appreciates the opportunity to comment on the proposed FASB Staff Position No. FIN 39-a, *Amendment of FASB Interpretation No. 39* (“Proposed FSP”). ISDA members represent leading participants in the privately negotiated derivatives industry. Collectively, the membership of ISDA has substantial professional expertise and practical experience addressing accounting policy issues with respect to financial instruments.

We strongly support the Board’s decision to amend Interpretation 39 (“FIN 39”) to permit offsetting of fair value amounts recognized for the right to reclaim cash collateral (a receivable) or the obligation to return cash collateral (a payable) against fair value amounts recognized for derivative instruments. We believe that the Proposed FSP will result in more relevant and useful disclosure of an entity’s credit risk exposures.

We have comments on several of the proposed amendments made in the Proposed FSP. For your convenience, we have referenced the paragraphs of the Proposed FSP to which each of our comments refers.

Comments:

1. *Fair Value Amounts Recognized for Cash Collateral Receivable or Payable (paragraphs 1, 4a, 4c – paragraph 10, 4d, 4e – paragraphs A2, A4, A5, Appendix – paragraph A2)*

The Proposed FSP uses the term *fair value amounts* when referring to the rights to reclaim cash collateral (a receivable) or the obligations to return cash collateral (a payable) that may be offset. However, the Proposed FSP does not explicitly define *fair value amounts* and what determines whether the cash collateral receivable or payable is measured at fair value. While we agree with the Board's determination that terms of the entity's contractual arrangements determine what would be appropriately netted, we believe that inclusion of the Board's deliberation regarding what likely approximates fair value would be useful and necessary to understand the Board's intent with respect to what should and should not be offset.

In interpreting *fair value amounts*, we believe that, given the frequency of the collateral calls, i.e., daily or weekly, and that cash collateral receivables and payables bear interest at a market rate that resets daily or weekly, the amounts at which cash collateral receivables and payables are recognized fall within an acceptable range of fair value measurements determined under Statement of Financial Accounting Standards ("SFAS") No. 157, *Fair Value Measurements*. We point out that fair value amounts for rights to reclaim or obligations to return cash collateral likely would fall within Level 2 of the fair value hierarchy.

We strongly concur with the view that offsetting should be allowed for cash collateral receivables and payables recognized either at fair value or approximately fair value. We believe that the FASB meeting minutes are useful and necessary in understanding the Board's intent when using the term *fair value amounts* in the Proposed FSP. We encourage the Board to consider including, in the Background Information and Basis for Conclusions, its discussion and conclusion with respect to *fair value amounts*, to clarify the Board's intended interpretation of that term.

2. *Replace "Conditional Contracts and Exchange Contracts" with "Derivative Instruments" (paragraphs 1, 3, 4a, 4b, 4c – paragraph 10, 4c – paragraphs A2, A3, A5, Appendix - paragraph A5)*

During its deliberations, the Board discussed whether FIN 39 should be amended to clarify the intended meaning of conditional contracts. The Board concluded that the exception in paragraph 10 regarding the requirement of the reporting party's intent to set off was intended to apply to only derivative instruments. The Board acknowledged that certain contracts that may have met the definition of a conditional contract in FIN 39 may not meet the definition of a derivative instrument under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* ("SFAS 133") (for example, certain contracts requiring physical settlement of a commodity that is not readily convertible to cash).

Firms may enter into a variety of contracts that meet the definition of derivative in accordance with paragraphs 6-9 of SFAS 133, but are not accounted for as derivatives because they meet the scope exceptions provided under paragraph 10 of SFAS 133. Examples of these contracts include, but are not limited to, certain financial guarantee contracts, weather derivatives, etc. Some of these contracts would be eligible to be measured at fair value under the Board's proposed Statement *Fair Value Option for Financial Assets and Financial Liabilities* ("FVO").

Generally, they are covered by the same master netting arrangement that covers contracts that are considered derivatives under SFAS 133.

We understand that the Board provided a narrow scope exception in paragraph 10 of FIN 39 for derivative instruments and its decision that the gross receivables and payables recognized in the statement of financial position for unconditional assets and liabilities provide useful information about the timing and amount of future cash flows that would be lost if those amounts were offset. However, we believe the Board's decision to limit the scope exception to only SFAS 133 derivative instruments may preclude many contracts that meet the SFAS 133 definition of a derivative but are scoped out under paragraph 10 of that statement, from being offset in the statement of financial position with SFAS 133 derivative instruments that are executed under the same master netting arrangement. From a practical perspective, it would be burdensome for firms to exclude certain derivative contracts from their existing master netting agreements and execute these contracts under separate master netting arrangements.

We believe the Board's decision that offsetting the recognized fair value amounts under a master netting agreement fairly portrays the amount of credit risk exposure is equally relevant for these contracts. Therefore, we suggest the Board consider extending the scope exception provided in paragraph 10 of the Proposed FSP to include contracts that meet SFAS 133 definition of a derivative but are not accounted for as derivatives based on scope exceptions provided under paragraph 10 of SFAS 133.

3. *Effective Date and Transition (paragraph 5)*

The Proposed FSP is effective for fiscal years beginning after December 15, 2006. We concur with the Board's conclusion that offsetting cash collateral receivables or payables with the fair value of the related derivative under a master netting arrangement is a more relevant presentation, which we believe truly reflects the amount of credit risk to which an entity is exposed.

However, we emphasize that the Board's decision to replace references to the terms "conditional and exchange contracts" with "derivative instruments" as that term is defined in SFAS 133 has changed the population to which paragraph 10 of FIN 39 applies. As noted above, conditional and exchange contracts are included in the same master netting arrangements as instruments meeting the derivatives criteria in paragraphs 6-9 of SFAS 133. As a result of the Proposed FSP, firms must create operational processes to identify and exclude fair value amounts related to conditional and exchange contracts that are not SFAS 133 derivatives from the population of instruments currently allowed to be netted under FIN 39. As currently drafted, calendar year end companies would be required to apply the proposed FSP on a retrospective basis for March 31, 2007 reporting. Because of the operational complexity that will be involved for reporting entities, we urge the Board to consider a later effective date to allow reporting entities sufficient time to develop the systems and/or procedures necessary in order to implement the proposed changes.

While we acknowledge that many preparers already net fair value amounts recognized for cash collateral receivables and payables with fair value amounts recognized for derivative instruments, we note that there exist some preparers who currently do not net these amounts. Therefore, we encourage the Board to consider permitting early adoption of the Proposed FSP. We believe that early adoption of the Proposed FSP by reporting entities with fiscal years ended prior to

December 15, 2006 that are not offsetting these amounts but for whom such early implementation is feasible will, in our view, improve the presentation and comparability of financial reporting.

4. Disclosure (paragraph 4d)

We support the Board's decision to require disclosure of amounts recognized for the right to reclaim cash collateral or the obligation to return cash collateral, and would support clear disclosure of amounts offset and not offset against the related derivative fair value amounts. However, we do not believe that the reasons that certain amounts may not be offset under paragraph 10 of FIN 39 are useful or relevant information. We encourage the Board to consider whether the benefit of the proposed disclosure in the Proposed FSP outweighs the cost of providing such disclosure, and recommend that the Board deletes the phrase "because those amounts are not fair value amounts".

5. Others (paragraphs 1.b, A4, Appendix A3, etc.)

For clarity, we suggest paragraph 1.b line 2 be modified as follows:

"Whether a reporting entity that is party to a master netting arrangement can offset the receivable or payable recognized upon payment or receipt of cash collateral against fair value amounts recognized for cash collateral receivables or payables against the fair value amounts recognized for of related derivative instruments that have been offset consistent with the entity's policy to offset the fair value amounts of derivative instruments under the same master netting arrangement in accordance with paragraph 10 of Interpretation 39."

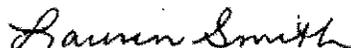
In paragraph A4 line 1 of Appendix A, Implementation Guidance, we suggest that "Example 1" be changed to "Illustration 1" to be consistent with previous paragraphs.

We suggest paragraph A3 line 7 in the Background Information and Basis for Conclusions be modified as follows:

"However, the Board and some constituents believes that the receivable or payable associated with cash collateral is conditional because..."

We again thank the Board for the opportunity to comment on the Proposed FSP. We would be pleased to discuss our comments with the Board and/or the FASB staff at your convenience. If you have any questions about our comments, please contact the undersigned (212-648-0909); laurin.t.smith@jpmorgan.com) or Hee Lee (212-773-8605); hee.lee@ey.com).

Sincerely,



Laurin Smith
J.P. Morgan Chase & Co.
Chair, N.A. Accounting Policy Committee
International Swaps and Derivatives Association