

# ISDA®

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LETTER OF COMMENT NO. 4

June 30, 2008

Mr. Russell Golden  
Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**Re: File Reference: Proposed FSP FAS 133-b and FIN 45-c**

Dear Mr. Golden:

The International Swaps and Derivatives Association (“ISDA”) appreciates the opportunity to provide comments on the Financial Accounting Standards Board’s (the “FASB”) proposed FASB Staff Position FAS 133-b and FIN 45-c (the “Proposed FSP”).

ISDA members represent leading participants in the privately negotiated derivatives industry and include most of the world’s major financial institutions, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Collectively, the membership of ISDA has substantial professional expertise and practical experience addressing accounting policy issues with respect to financial instruments and specifically derivative financial instruments.

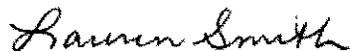
While we are supportive of the FASB’s effort to improve the disclosure of credit-indexed derivative instruments and guarantees, the Proposed FSP will result in the establishment of another separate set of disclosure requirements specific to certain financial instruments in addition to those that exist in other accounting standards such as SFAS 107, SFAS 133, SFAS 161, and SFAS 157. ISDA does not support the issuance of piecemeal disclosure guidance for discrete financial instruments including credit derivatives and guarantees, as we believe that disclosure for financial instruments should be addressed comprehensively and completely in a single project that would also address convergence with IFRS. The piecemeal approach to financial instrument disclosure creates a significant and ongoing burden for preparers who are required to repeatedly implement incremental disclosures,

and to educate financial statement users as to how the separate disclosures do not individually or collectively provide a complete and accurate understanding of the risks of portfolios of financial instruments managed together. At a minimum, ISDA believes that the effective date of the Proposed FSP should be amended to coincide with that of SFAS 161, as a subset of the instruments affected by both SFAS 161 and the Proposed FSP are the same. Further, given the number of significant financial instrument-related accounting standards issued and proposed by the FASB that will be effective for fiscal periods beginning after November 15, 2008, a coordinated implementation for SFAS 161 and the Proposed FSP would reduce the cost to preparers without significantly delaying the effective date.

*ISDA has also recommended certain clarifications to the scope of the Proposed FSP that are necessary to enhance consistency of the Proposed FSP's application in practice.*

We hope you find the comments in the paragraphs that follow to be useful and informative. Should you have any questions or desire any clarification concerning the matters addressed in this letter please do not hesitate to contact the undersigned.

Sincerely,



Laurin Smith  
*J.P. Morgan Chase & Co.*  
Chair, North America Accounting Policy Committee  
*International Swaps and Derivatives Association*  
212.648.0909

**Scope (paragraph 8)**

The scope of the Proposed FSP does not define a credit derivative for the purposes of specifying the instruments for which the proposed disclosures must be made, but rather lists several examples of credit-indexed instruments such as credit default swaps and credit spread options. We note that the underlying of many derivative financial instruments incorporates some degree of credit risk; however, in many cases, this risk is secondary. The current drafting of the Proposed FSP's scope, without further clarification of the instruments for which the proposed disclosures must be made, could lead to inconsistent application in practice. We therefore recommend the FASB to clarify that the Proposed FSP applies to derivative instruments for which credit is identified as the primary underlying risk pursuant to paragraph 44(d) of Statement 133, as amended by Statement 161, as well as to guarantees within the scope of FIN 45.

Accordingly, ISDA recommends the following modifications be made to paragraph 8 of the Proposed FSP (inserted text is underlined).

**8. This FSP applies to credit derivatives within the scope of Statement 133, and to guarantees within the scope of Interpretation 45.** Credit derivatives generally are contracts in which the primary underlying is the credit risk of a specified entity (or a group of entities) or an index based on a group of entities. The primary underlying used to determine the contracts within the scope of this FSP should be consistent with the disclosures required pursuant to paragraph 44(d) of Statement 133, as amended by Statement 161. Examples of credit derivatives within the scope of this FSP include, but are not limited to, credit default swaps, credit spread options, and credit index products.

**Amendments to FIN 45 (paragraph A2)**

The proposed amendment to paragraph 13(a) of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (FIN 45) requires disclosure of the current status of the payment/performance risk of a guarantee, and suggests this requirement may be satisfied by disclosure of external credit ratings or current internal categories/groupings. Because the nature and terms of guarantees within the scope of FIN 45 can vary significantly as discussed in paragraph 3 of FIN 45, a guarantee may have market price risk, liquidity risk, or other non-credit risk as the primary underlying. Thus, disclosure of a current credit rating as the indicator of current payment/performance risk of guarantees for which credit risk is not the primary underlying is not relevant. Instead, ISDA views qualitative information based on the nature/terms of the arrangement and the probability of payment under the contract as a better indicator of payment/performance risk for these types of guarantees. Accordingly, we note that for guarantees whose primary underlying is not credit related, such as indemnifications for a breach of contractual representations and

warranties, certain performance guarantees, and investment partnership fee claw-back arrangements, the FASB should expect disclosures relevant to the current status of the payment/performance risk of such guarantees to reflect qualitative information or other relevant performance indicators other than internal or external credit ratings.

### **Effective Date and Transition**

The Proposed FSP will be effective for financial statements issued for fiscal years and interim periods ending after November 15, 2008. While comparative disclosures for the initial year in which the Proposed FSP is adopted are not required, several significant accounting standards recently issued by the FASB and several proposed amendments to financial instrument accounting standards will have effective dates within the same time period, including:

- SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51*,
- SFAS 161, *Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133*,
- SFAS 163, *Accounting for Financial Guarantee Insurance Contracts—an interpretation of FASB Statement No. 60*,
- Proposed amendment to SFAS 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*,
- Proposed amendment to FIN 46(R), *Consolidation of Variable Interest Entities*, and
- Proposed Statement, *Disclosure of Certain Loss Contingencies—an amendment of FASB Statements No. 5 and 141(R)*.

The exposure, interpretation and implementation of these issued and proposed accounting standards create significant time and resource cost to financial statement preparers active in the capital markets. Accordingly, we strongly recommend the FASB to change the effective date of the Proposed FSP such that it is coincident with the effective date of SFAS 161, which is effective for fiscal years and interim periods beginning after November 15, 2008. We believe this change in effective date is warranted due to the overlapping scope of the Proposed FSP and SFAS 161. In addition, we urge the FASB to consider establishing a temporary moratorium for the effective dates of any additional proposed accounting standards to be issued during the remainder of 2008 so that companies have a sufficient amount of time to prepare for the adoption of both recently issued and proposed accounting standards.