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Matthew L. Schroeder Managing Director

Letter of Comment No: / File Reference: FSPFIN46RC



November 30, 2005

Mr. Lawrence W. Smith
Director—Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Proposed FASB Staff Position No. FIN 46(R)-c, Determining the Variability to Be Considered in Applying FASB Interpretation No. 46(R)

Dear Mr. Smith:

Goldman Sachs appreciates the opportunity to comment on the above-referenced Proposed FASB Staff Position (the "Proposal").

Principles-based approach

We view the Proposal as a positive step toward the use of principles-based accounting standards, which we support. The decision to consider the design of the entity in determining the variability that is created and absorbed, like any principles-based approach, will require the exercise of professional judgement by preparers and auditors of financial statements. As a result, we believe the Proposal will not result in complete consistency of application, since legitimate differences of opinion will exist when different preparers are evaluating similar transactions. We believe this is an acceptable outcome, and commend the Board for its decision to pursue such an approach.

Offsetting forward contracts

In particular, we agree with Example 6, which demonstrates that when two derivative forward contracts offset each other, each creates variability, and neither is necessarily viewed as a variable interest. The example is consistent with views we expressed in our letters commenting on EITF Issue 04-7, dated June 29, 2004 and March 3, 2005, and with View D of the ISDA letter dated June 25, 2004 which we supported.

A forward contract to purchase a commodity at a fixed price on a future date can be either an asset or a liability depending on market movements. Similarly, a forward contract to sell a commodity can also be either an asset or a liability. In Example 6, the combination of the two contracts creates a cash annuity to the VIE that services the VIE's debt. The issued debt absorbs the credit risk of the two forward contract counterparties, while the price volatility of electricity has no impact on those cash flows. The credit risk absorbed by the debt investors may be small (if the forward counterparties are of high credit quality), but they still outweigh the contingent credit risk borne by the forward counterparties (who are senior in the waterfall). By themselves, each forward contract introduces (creates) electricity price risk to the VIE. However, when taken together based on the design of the entity, the two forward contracts offset each other and create a cash annuity to the VIE.

We do not believe that a derivative forward purchase contract held by a VIE economically constitutes an "owned" or "held" asset, as those terms are used in paragraphs B12, B13, and B17 of FIN 46(R) (and elsewhere within Appendix B). Under that view (referred to as "synthetic assets" in Issue 04-7), the forward purchase contract is a creator, while the forward sale contract is an absorber, of variability from the VIE's perspective. Rather, we believe owning an asset and owning a contract to purchase an asset in the future have potentially significant economic and risk profile differences, especially as it relates to physical commodities. For example, ownership of a physical asset exposes the holder of that asset to a variety of risks, such as changes in near-term supply/demand, funding, transportation and storage costs. These economic differences can also be seen in the volatility of prices in the spot market versus the volatility of prices in the forward market.

We also look to the conceptual framework and note that a forward purchase contract embodies an obligation of the counterparty to transfer assets. In contrast, a physical position in the asset underlying a forward contract does not embody an obligation of the VIE but represents a probable future benefit of future net cash inflows to the VIE. Fixed price forward purchase or forward sale contracts may result in either a future net economic benefit (net cash inflows) or sacrifice (net cash outflows) for the VIE as evidenced by their measurement at fair value as either assets or liabilities under FAS 133 depending on changes in underlying asset prices.

Consistent with paragraphs B12 and B13 of FIN 46(R) and as demonstrated above, neither forward contract in Example 6 by itself constitutes an "owned" or "held" asset or relates to an asset "owned" or "held" by the VIE, and therefore neither forward contract in that example can be considered a variable interest. Therefore, we believe that, from the VIE's perspective, the two offsetting risk profiles of the forward contracts create a cash annuity to the VIE that may then be monetized (i.e. sold to investors in the form of debt). The inter-relationship of the forwards is fundamental to the economic design of the entity.

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Matt Shoeler

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We appreciate the opportunity to provide you with our views on the proposal. If you have any questions regarding our comments, please contact me at 212-357-8437.

Sincerely,