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October 30, 2008

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7, P.O. Box 5116
Norwalk, CT 06856-5116



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LETTER OF COMMENT NO. 3

Re: Proposed Amendments to Statement 140 and FIN 46(R)

Dear Mr. Golden:

Goldman Sachs appreciates the opportunity to comment on the exposure drafts that would amend Statement 140, *Accounting for Transfers of Financial Assets*, and FIN 46(R), *Consolidation of Variable Interest Entities*. Our comments are as follows:

- The FASB and IASB have each undertaken separate derecognition and consolidation projects in response to the global credit crisis. FASB's project started first and the SEC understandably is pressing for rapid completion. As a result, both Boards are expected to issue separate standards, and then eventually converge, potentially requiring constituents to change their accounting twice – an inefficient use of time and resources. Ideally, both Boards should combine their separate projects, take the best of both, and issue a single set of identical standards as quickly as possible. We urge the FASB to reconsider the timing of its projects and engage the SEC in a similar dialogue. FASB's expected FSP, *Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities*, provides an appropriate bridge until then.
- The QSPE model is broken and we agree it should be eliminated.
- We support determining the primary beneficiary (parent) of a variable interest entity (VIE) on the basis of control so as to obtain benefits, a view we have long held and advocated. The Board's definition of control – power when it matters –

is very broad and will materially increase the balance sheets and reported leverage ratios of enterprises that service securitization and structured finance vehicles and have economic exposure to them. We are not convinced this is an appropriate outcome in the many situations where assets are held in a bankruptcy-remote entity, there is no practical ability to control, the liabilities have no explicit or implicit substantive recourse to the general credit of the parent enterprise, and the enterprise does not have exposure to a majority of the entity's substantive risks and rewards.

The Board appears comfortable with this outcome, perhaps believing higher reported leverage ratios are an effective means of informing users about an enterprise's risk exposures to these vehicles. We believe leverage is an imprecise indicator of risk that has the potential to both inform and mislead investors because it only informs how an instrument is financed and not its underlying risk profile.

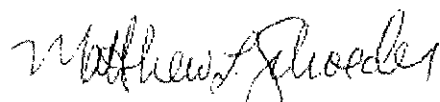
- We believe the Board should consider alternative approaches. We prefer a holistic approach with three critical elements:
 1. **Practical ability to control** – we would define control as the practical ability to direct the substantive operating, investing, and/or financing activities of a VIE so as to obtain benefits. If an analysis of the VIE's governing documents and contractual arrangements reveals the enterprise does not have the practical ability to control, then the enterprise would not consolidate the VIE, unless it met the risks and rewards backstop.
 2. **Majority risks and rewards backstop** – we would require an enterprise to consolidate a VIE if it has majority exposure to the VIE's substantive risks or rewards (or both) as of the date it becomes involved with the VIE. We would not impose a particular risks and rewards framework, for example, expected losses. Rather, we would leave the choice of framework to preparers and their auditors exercising sound judgment based on a consideration of all relevant facts and circumstances, including explicit and implicit arrangements.
 3. **Greater use of fair value accounting** – we would require fair value accounting (with changes in fair value recognized in earnings) for all financial interests held by an enterprise in an unconsolidated VIE it sponsored or to which it transferred assets.
- We also would support a linked-presentation model as suggested by the joint comment letter of the American Securitization Forum and the Securities Industry and Financial Markets Association, if the Board retains its current model.
- Regardless of the ultimate consolidation model, we believe the Board should require fair value accounting for all financial interests held by an enterprise in an unconsolidated VIE it sponsored or to which it transferred assets. While the amendments to Statement 140 and FIN 46(R) will increase transparency, more can and should be done, given the scope and severity of the global credit crisis. Investors are demanding greater transparency. Fair value accounting, although

not perfect, provides better information to investors than alternative accounting treatments.

- We support requiring the enterprise to conduct ongoing assessments of an entity's status as a VIE and whether the enterprise is the primary beneficiary, if there are changes in control indicators, consistent with the report of The Counterparty Risk Management Policy Group III, *Containing Systemic Risk: The Road to Reform* (recommendation II-3). We do not believe ex-post changes in market conditions, per se, should trigger consolidation.
- We believe the second step in the Board's consolidation model should be deleted because expected losses, as a framework for measuring risks and rewards, has been discredited; we share the concerns expressed in paragraphs B17 through B19 of the FIN 46(R) exposure draft.
- We disagree with Board's decision to ignore the presence of kick-out rights in a VIE unless they are held by a single party. Kick-out rights can be substantive depending on the facts and circumstances. The Board is sending its constituents mixed messages; they are encouraged to use sound judgment in the qualitative primary beneficiary analysis, but are precluded from doing so when it comes to analyzing kick-out rights. We encourage the Board to resolve this inconsistency in favor of a principles-based approach that relies on the exercise of sound judgment in all circumstances.
- Our comments on the disclosure package are reflected in our comment letter about the disclosure FSP mentioned above.

Thank you for the opportunity to provide our views. As previously communicated, Goldman Sachs would like to participate in the Roundtable scheduled for November 6. If you have any questions or comments regarding our letter, please do not hesitate to contact me.

Sincerely,



Matthew L. Schroeder