September 30, 2010

To: File Reference No. 1810-100

FASB

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Subject: File Reference No. 1810-100 – FASB Exposure Document

Dear Mr. Golden,

Thank you for providing the industry and Pricelock the opportunity to provide comments for File Reference No. 1810-100. It is extremely important for businesses that FASB guidelines balance out financial transparency and ease of application. Our comments are with reference to freight fuel surcharge risks that companies across the US are exposed to when fuel prices go up. With the economic uncertainties of our economy, the companies desire to have stronger operational predictability of expenses is very high. However, it is our opinion that thousands of companies do not hedge certain fuel surcharge risks in their transportation contracts because of the interpretation of the FASB hedge accounting FAS-133 and ASC-815 rules by major auditing companies.

Companies literally lost millions of dollars while not hedging indirect fuel or fuel surcharges because of the current accounting treatment from auditors and the interpretation of ASC-815 guidelines. Further, we understand that the International Financial Reporting Standards (IFRS) hedge accounting standards are less cumbersome and clearer than U.S. standards. We also understand that the International Accounting Standards Board (IASB) would approve hedge accounting for fuel surcharges as a stand-alone host contract. We believe that the intent of FASB was to provide financial transparency of business activities and financial reporting, while at the same time not inhibiting companies from making prudent hedging decisions because of income statement ramifications from the subjective and various interpretations from different auditors of certain ASC-815 guidelines.

In summary, we believe that fuel surcharges should be considered as their own host contracts for purposes of identifying changes in monthly cash flows with the hedging instrument, calculating the resulting required statistical relationships and determining the resulting effectiveness and ineffectiveness.

Line haul and ancillary charges are each independent of fuel surcharges within a transportation contract, and usually a separate line item on the transportation bill. We would like FASB to clarify their position for the industry and auditors that fuel surcharges are not a component or ingredient of a transportation contract, but are their own independent variable cash flow which can be hedged separately from other fixed line haul and assessorial charges. In general, we would like FASB to include more specific examples of fuel surcharges and indirect hedges.

We would like to comment on Question 56, and on the proposed implementation guidance IG 41 and IG 43. Before we comment on these sections, we would like to put these comments into context of fuel surcharges within a company's overall trucking, rail or intermodal transportation contract. Intermodal transportation contracts combine the trucking and container freight movements from location B.

Fuel Surcharges

Many transportation contracts include separate line items for line haul charges, ancillary charges and fuel surcharges. Economically, line haul freight and ancillary charges have nothing to do with how the fuel surcharges are determined and are not statistically correlated. All three have their costs determined independently of each other. Line hauls are a function of the specific route, the type of material being shipped, return on equipment, replacement cost of labor and the return of other transportation assets. Ancillary charges are a function of what service is required and any demurrage resulting from how quickly trucks are loaded and unloaded. Fuel surcharges are a function of the up and down price movements of a published price index and not the actual diesel fuel purchases at the pump.

Specifically, fuel surcharges are calculated on a per mile rate or a percent of line haul freight charges, which typically reference the Department of Energy (DOE) National On-Highway Retail Diesel fuel price published each Monday. The fuel surcharge rates are typically in the format of a step function with a starting price base. For example, the base may be \$1.20 and the fuel surcharge is 1 cent per mile for every 6 cent increase in the DOE national retail diesel fuel price published. Historically, fuel surcharges were not added to transportation bills prior to 2003.

There are two simple reasons fuel surcharges could be accounted for separately for hedge accounting calculations. First, the transportation contract does not necessarily have fuel surcharges imbedded within it. The scope of such a contract may be limited to just freight costs and other ancillary charges for given transportation moves. Therefore, transportation charges and fuel surcharges are calculated independently and are included in the monthly transportation bill purely out of commercial convenience. Transportation bills do not have to have a fuel surcharge in them and historically have not had them. This clear separation of freight services costs, from fuel price increase related expenses, is why fuel surcharges should be independently applied for possible hedge accounting treatment. Secondly, fuel surcharges do not represent a physical service or product of the transportation bill, whereas corn, soybean, and wheat are physical ingredients and components of corn sweeteners, soybean meal and flour, respectively. One can touch and handle corn, soybeans and wheat, where one cannot touch a fuel surcharge, which is simply a financial payment based upon a national fuel index published that acts as a cost adjuster for the transportation bill. Since this cost adjustor is financial and does not represent labor or materials, then it should be allowed to be accounted for separately from a hedge accounting perspective.

The financial market place is very well set up to allow businesses relief from fuel surcharge risk. Over-the-counter derivatives using the DOE national retail diesel fuel index are very well correlated to the fuel surcharges themselves since they are based upon the same exact published index price. In many instances this correlation is over 99%, since the hedging instrument uses the same index as the fuel surcharge contract. However, the entire transportation bill may not be highly effective or even reasonably effective compared to the DOE national retail diesel fuel hedging instrument, as the price of fuel paid by the trucking company has nothing to do with the actual transportation line haul rate, nor the ancillary charges. A clarification from FASB that allows companies to separate out fuel related part of their costs will enable companies to hedge away their fuel price volatility exposure. On the other hand, the correlation between a DOE national retail diesel fuel derivative change in cash flows versus the entire transportation bill change in cash flows, may only be between 0.40-0.95 correlated in terms of R-square values. The lack of correlation is more prevalent for a \$/mile fuel surcharge rate table, since the line haul charges may be different from lane to lane and changing through time.

In regards to Question 56, we believe that the effectiveness criteria should be changed from highly effective to reasonably effective. There are several issues involved in this change. Even when the host contract is defined as the sum of the line haul rate, ancillary charges and fuel surcharges, many companies do not hedge because the hedging relationship may not be highly effective, but might be reasonably effective. FASB should not have accounting rules that deter companies from doing the right thing initially and hedging with an instrument that is over 99% correlated to the risk. By changing the criteria to reasonably effective, this will give more incentive for companies to apply for hedge accounting and execute hedging structures. This strategy makes economic sense, as it allows a company to greatly reduce earnings volatility, which is a major goal of creating a sound business environment for American businesses. More importantly, if the hedge or part of the hedge is not effective, we are supportive of the company taking the ineffective portion to the income statement, whether the company was under or overhedged.

Some auditors have interpreted that the Board would not permit a firm to designate only a component risk exposure of a nonfinancial asset, such as the market price risk of a component or an ingredient such as a surcharge as the hedged item because each component or ingredient does not generate specific cash flows that would offset the cash flows of the derivative hedging instrument. We believe that the surcharge is a financial asset as one cannot take delivery of a surcharge and it does generate specific cash flows which are translated into account payables. While other auditors believe that since a firm can separate the surcharge from the transportation contract, that it could be applicable for hedge accounting treatment. In addition, other auditors believe that components such as surcharges do not react to market price changes, that they are unpredictable and cannot be determined on a separate basis. We would suggest that forward surcharges react to forward market prices on a daily basis and are predictable and separately determinable. In general, since fuel surcharges and surcharges in general are relatively new to FASB and the industry and are not mentioned in the latest ASC guidelines, we would ask for additional clarification and examples. Different, auditors are providing different interpretations of ASC 815 and specifically in component or ingredient hedging. For example, some auditors state that fuel surcharges represents a variable expense and can be highlighted individually, and then it should be treated as an applicable individual exposure that could secure hedge accounting treatment as long as the bill is separated for fuel surcharges.

Next, we would like to proceed from general interpretations and discuss some specific examples from past FASB documentation and industry examples. First, we would argue that fuel surcharges are not a component of a transportation bill, the way rubber is an ingredient to a tire; the way corn is a component

to corn sweetener, and the way that wheat is an ingredient to flour. A fuel surcharge is not required to make a transportation invoice of line haul and ancillary charges. Fuel surcharges are put into transportation contracts purely for commerce convenience. They enable the shipper and carrier to define a long-term contract without knowing what future fuel prices will be and provide a mechanism for the shifting of price risk from the seller to the buyer. A fuel surcharge does not represent the actual fuel purchased at the retail pump or bulk storage tank by the actual carrier. It is instead a financial surcharge of the cost of fuel from some pre-determined standard base, the DOE national retail diesel fuel published index in most cases, and does not represent the actual fuel purchased at the pump by the carrier.

We would further highlight these differences by noting that a vendor and a buyer would set up a stainless steel contract in one of two ways. The vendor could sell stainless steel, and the buyer could hedge the future stainless steel purchases with nickel and be obligated to follow all the ASC guidelines when applying from hedge accounting or the vendor could sell stainless steel with a separate nickel surcharge. The nickel surcharge is its own derivative and should be treated separately and distinctly when the buyer applies and documents a hedge accounting process. In the latter example, the surcharge now has nothing to do with the stainless steel product but has something to do with the floating price of nickel.

In a second example, the vendor could sell High Fructose Corn Syrup (HFCS), and the buyer could hedge the future HFCS purchases with corn and be obligated to follow all the ASC guidelines when applying hedge accounting or the vendor could sell corn with a processing fee and feed credit. The corn is its own derivative and should be treated separately and distinctly when the buyer applies and documents a hedge accounting process. In this example, the buyer would hedge the corn in the formula that calculates the resulting HFCS charge to be paid for by the buyer and apply for hedge accounting treatment.

In a third example, the vendor could sell a transportation rate or total charge and the buyer could hedge the future freight payment with diesel and be obligated to follow all the ASC guidelines when applying hedge accounting or the vendor could sell a line haul rate, with applicable ancillary charges and a fuel surcharge. The fuel surcharge is its own derivative and should be treated separately and distinctly when the buyer applies and documents a hedge accounting process. In this example, the buyer would hedge the fuel in the formula that calculates the resulting fuel charge to be paid for by the buyer.

IG 41 suggests that an embedded derivative should be separated from a host contract and be accounted for as a derivative, if the three conditions (a) through (c) are met. We believe fuel surcharges satisfy each condition and, consequently, only the fuel surcharge component of the host contract should be compared to the hedging instrument. We would like FASB to confirm and clarify this for the industry.

In IG 43, the notion of clearly and closely related focuses on whether the economic risks and characteristics of the embedded derivative feature within a contract are related or unrelated to the host contract. We believe that the embedded derivative (fuel surcharges) meets the definition of a derivative and that it is unrelated to the rest of the host contract as mentioned above. Therefore, the embedded derivative or the fuel surcharge should be accounted for separately from the rest of the host or the balance of the transportation contract if it is a separate line item on the transportation bill. We would like FASB to confirm and clarify this for the industry.

Within the ASC documentation, we believe that other examples could also be applied to help make the case that fuel surcharges within a transportation contract should be allowed to be used as an independent cash flow versus a derivative when applying for hedge accounting. Specifically, ASC 815

suggests on interest rate hedges, one could compare only the variable legs of the hedging instrument and host contract, even though the host contract did include a fixed-rate cash flow because it was irrelevant. Specifically, (Section 815-30-35-16) says "the change-in-variable-cash-flows method measures hedge ineffectiveness based on the variable leg of the interest rate swap and second, the hedged variable-rate cash flows on the asset or liability."

(Section 815-30-35-18) discusses how the fixed-rate leg is not relevant in the calculation. Specifically, "the change-in-variable-cash-flows method is consistent with the cash flow hedge objective of effectively offsetting the changes in the hedged cash flows attributable to the hedged risk. The method is based on the premise that only the floating-rate component of the interest rate swap provides the cash flow hedge, and any change in the interest rate swaps fair value attributable to the fixed-rate leg is not relevant to the variability of the hedged interest payments (receipts) on the floating-rate liability (asset)."

Finally, ASC 815 concludes by explaining what two variable cash flows will be specifically compared to each other, to come up with the ineffectiveness calculation. Specifically, in (Section 815-30-35-19), "under this method, the interest rate swap designated as the hedging instrument would be recorded at fair value on the balance sheet. The calculation of ineffectiveness involves a comparison of the following amounts: first the present value of the cumulative change in the expected future cash flows on the variable leg of the interest rate swap and second with the present value of the cumulative change in the expected future interest cash flows on the variable-rate asset or liability." This suggests that one could compare either the monthly cash flow changes or monthly cumulative present value of cash flows of the variable amount in the freight bill, which is the fuel surcharge cost, with the variable hedge derivative, and not a fixed charge cost such as a line haul or assessorial charge. This language suggests that only the variable leg of the host contract; in this case the fuel surcharges should be measured against the hedging instrument.

The last three paragraphs suggest from respective ASC sections, that only the variable component should be used to determine whether the fuel surcharge is highly effective or reasonably effective against the hedging instrument. In most transportation contracts, the fuel surcharge is the variable component of the bill, while the line haul rates and the ancillary rates are fixed. The entire host transportation contract should not be used to make this calculation when testing for hedge accounting.

In conclusion, we believe that fuel surcharges, if they can be clearly identified, should be considered as their own host contract for purposes of calculating changes in monthly cash flows with a hedging instrument, calculating the resulting required statistical relationships and determining effectiveness and ineffectiveness. Line haul and ancillary charges are each independent of fuel surcharges within a transportation contract. Finally, FASB should clarify the ASC guidelines and for the auditors that fuel surcharges are not a component or ingredient of a transportation contract, but are their own independent variable cash flow which can be correlated to specific hedging instruments. FASB must find a balance that does not hinder firms from making prudent economic decisions to not hedge because of the auditing company interpretations of FAS and ASC and still provide financial transparency for investors and stakeholders of the firm's financial decisions and future results.