
September 2008: Is FAS 133r Going to Go Away?

Rumors of the imminent demise of the proposed amendment to FAS 133 (FAS 133r) were rampant in September, even as the FASB has issued a terse statement in late September refuting the rumors and admitting only that the deadline may be pushed beyond the original effective date of 2009. Whether the FASB does end up doing one of the most dramatic about faces in its history remains to be seen: The Board is likely to address the issue at its October 21, 2008 meeting.

WILL IT OR WON'T IT?

News that FAS 133 will be taken off the “fast-track” and put instead on the back burner by folding it into a broader, longer-term convergence project with the IASB was the topic de jure at most of the Big Four. (Speaking at an FEI audience, the FASB’s Russ Golden said as much.) According to one national office partner, *“I think FAS 133(R) is on the very slow track now . . . with its ideas expected to be folded into a larger reduction of complexity joint project with IASB.”*

One could almost hear the collective sigh of relief amongst corporates, their advisers, auditors and financial institutions, as news of FAS 133r’s derailment spread. However, the Board’s change of heart is not all good news.

- **The good news** is that companies may not have to implement yet another set of rules, many of which would have required a complete overhaul of long-held hedging practices and increased volatility in earnings.
- **The bad news** is that the FASB may throw out the baby along with the bath water. The genesis of the project was pressure by audit firms for simpler and more consistent guidance regarding effectiveness testing. If 133r goes away, those questions may remain unanswered.
- **The sad news is** that there were some positive changes in the ED, e.g., it lowered the bar for qualifying for hedge accounting and proposed to allow

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companies to use qualitative methods at designation for prospective effectiveness.

If FAS 133r is put to pasture, both interest rate and currency risk managers may have dodged the bullet, but are not yet entirely out of harm's way.

- IR hedgers would have been hit especially hard by some aspects of 133r, e.g., the inability to hedge the risk-free rate, the ban on late-term hedging and the de- and re-designation of existing hedges. Some of these ideas may survive in a different form.
- While FX hedges were given special exception from some guidance, they're not in the clear either, specifically with regard to hedges of forecasted intercompany cash flows.

The ED included a proposed revision to Paragraph 40 of FAS 133, which seemed to disqualify intercompany hedges unless they survive consolidation, which, by definition, they do not. Even more troubling, the Staff seemed to believe that this has been the intent of paragraph 40 all along, despite the fact that: (a) Paragraphs 482-487 in FAS 133's basis for conclusions provide examples that involve interco hedges; and (b) the Staff did not rewrite other areas of the standard where interco hedges are discussed, or DIG Issue H-13.

Interco hedges are the mainstay of many companies' centralized FX hedging activities. Were they to be disqualified, it would be nearly impossible to achieve hedge accounting without a wholesale change of functional currency choices under FAS 52. With a "final" standard nowhere in sight, how will these questions be put to rest? Hopefully, the Board and Staff, who are set to discuss the issue on October 21, may provide some clues during their deliberations.

WHY THE CHANGE OF HEART?

It's not entirely clear at this point why (and if) the Board is opting to slow-track FAS 133r, after making a big fuss about getting it out ASAP, but there are some hypotheses.

- First, the ED sparked an overwhelmingly negative response. Only a handful of the over 125 comment letters that clogged the FASB's inbox were positive. Letter #125 was sent by the four banking regulators urging



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the Board to reconsider, particularly in light of the volatile state of the US banking industry (which has gotten much worse since).

- Second, the strongly worded dissenting views by two Board members revealed an internal rift.
- Finally, 133r was taking US GAAP further away from IFRS (IAS 39), which is against the stated objectives of the SEC and the memorandum of understanding between the FASB and the IASB.

So while it's OK to start breathing again, some of the questions raised by 133r are not likely to disappear along with the ED.■