INSTITUT DER WIRTSCHAFTSPRÜFER

IDW

Sir David Tweedie
Chairman of the
International Accounting Standards Board
30 Cannon Street

London EC4M 6XH
United Kingdom

Düsseldorf, September 28, 2004
511/520

Dear Sir David

Re: Exposure Draft of Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement – Financial Guarantee Contracts and Credit Insurance

We appreciate the opportunity to comment on the Exposure Draft mentioned above and would like to submit our comments as follows:

General Matters

We do not agree with an amendment of IFRS 4 only a short time after issuing IFRS 4. This is contrary to the intent of IASB to create a stable platform of Standards by 31 March 2004 at the latest. In our view, there should be no isolated changes to the treatment of financial guarantee contracts in the short term. Potential amendments should be discussed at the same time as for all other insurance contracts in phase II of the project on insurance contracts.

Question 1 – Form of contract

The Exposure Draft deals with contracts that require the issuer to make specified payments to reimburse the holder for a loss it incurs if a specified debtor fails to make payment when due under the original or modified terms of a debt instrument (financial guarantee contracts). These contracts can have various legal forms, such *as that of a financial guarantee, letter of credit, credit default contract or insurance contract. Under the proposals in the Exposure Draft the legal form of such contracts would not affect their accounting treatment (see paragraphs BC2 and BC3).*

Do you agree that the legal form of such contracts should not affect their accounting treatment?

If not, what differences in legal form justify differences in accounting treatments? Please be specific about the nature of the differences and explain clearly how they influence the selection of appropriate accounting requirements.

We agree that the legal form of financial guarantee contracts should not affect their accounting treatment. In our view, the accounting treatment should depend on whether financial guarantee contracts contain a financial risk or an insurance risk according to IFRS 4, Appendix A.

Question 2 – Scope

The Exposure Draft proposes that all financial guarantee contracts should be within the scope of IAS 39 (see paragraph 2 of IAS 39 and paragraph 4 of IFRS 4), and defines a financial guarantee contract as "a contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instrument" (see paragraph 9 of IAS 39).

Is the proposed scope appropriate?

If not, what changes do you propose, and why?

In our opinion, financial guarantee contracts should not be within the scope of IAS 39 but within the scope of IFRS 4 if they meet the definition of an insurance contract. We understand that a contract qualifies as an insurance contract if one party accepts significant insurance risk from another party. In our view, this may often be the case for financial guarantee contracts. However, if a financial risk is transferred from the holder of a financial guarantee contract to the issuer, IAS 39 should apply. This applies in case of a transfer of the risk of a possible future change in one or more of a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of price or rates, credit rating or credit index or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the contract.

In our view, the Board should resolve the problem how to treat financial guarantee contracts that contain insurance risks in phase II of the project on insurance contracts. Hence, the final decision on the treatment of those financial guarantee contracts should be discussed at the same time as for all other insurance contracts. Meanwhile, there should be no changes to the accounting for insurance contracts.

Question 3 – Subsequent measurement

The Exposure Draft proposes that financial guarantee contracts, other than those that were entered into or retained on transferring financial assets or financial liabilities within the scope of IAS 39 to another party, should be measured subsequently at the higher of:

(a) the amount recognised in accordance with IAS 37 Provisions, Contingent Liabilities and Contingent Assets; and

(b) the amount initially recognised (i.e. fair value) less, when appropriate, cumulative amortisation recognised in accordance with IAS 18 Revenue (see paragraph 47(c) of IAS 39).

Is this proposal appropriate? If not, what changes do you propose, and why?

As stated in our answer to Question 2, in our view, the proposed amendments should be reconsidered in phase II of the project on insurance contracts. According to BC26 the Exposure Draft like FASB Interpretation No. 45 *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (FIN 45) proposes that at inception the liability for the fair value of the obligation undertaken in issuing the guarantee should be the premium received or receivable in an arm's length transaction with an unrelated party. However, in our view in phase II it should be clarified that there should be a separate subsequent measurement of the liability.

Question 4 – Effective date and transition

The proposals would apply to periods beginning on or after 1 January 2006, with earlier application encouraged (see paragraph BC27). The proposals would be applied retrospectively.

Are the proposed effective date and transition appropriate? If not, what do you propose, and why?

As stated in our answer to Question 2, in our view, the proposed amendments should be reconsidered in phase II of the project on insurance contracts. Therefore, this issue should be deferred until a comprehensive solution is developed in phase II.

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Question 5 – Other comments

Do you have any other comments on the proposals?

Apart from our comments stated above we have no further remarks.

We would be pleased to answer any questions that you may have or discuss any aspect of this letter.

Yours sincerely

Klaus-Peter Naumann Chief Executive Officer	Norbert Breker Technical Director Accounting and Auditing