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International Accounting Standards Board

This observer note is provided as a convenience to observers at IFRIC meetings, to assist them in following the IFRIC's discussion. Views expressed in this document are identified by the staff as a basis for the discussion at the IFRIC meeting. This document does not represent an official position of the IFRIC. Decisions of the IFRIC are determined only after extensive deliberation and due process. IFRIC positions are set out in Interpretations.

Note: The observer note is based on the staff paper prepared for the IFRIC. Paragraph numbers correspond to paragraph numbers used in the IFRIC paper. However, because the observer note is less detailed, some paragraph numbers are not used.

INFORMATION FOR OBSERVERS

IFRIC meeting:	**2 November 2006, London**
Project:	**Review of published tentative agenda decisions**
Subject:	**IFRS 2 *Share-based Payment* - Fair value measurement of post-vesting transfer restrictions (Agenda Paper 7(i))**

Tentative agenda decision published in July-2006 IFRIC Update

The IFRIC was asked whether the estimated value of shares issued only to employees and subject to post-vesting restrictions could be based on an approach that would look solely or primarily to an actual or synthetic market which consisted only of transactions between an entity and its employees and in which prices, for example, reflected an employee's personal borrowing rate. The IFRIC was asked whether this approach is consistent with the requirements under IFRS 2.

The IFRIC noted the requirements in paragraph B3 of Appendix B to IFRS 2, which states that, 'if the shares are subject to restrictions on transfer after vesting date, that factor shall be taken into account, but only to the extent that the post-vesting restrictions affect the price that a knowledgeable, willing market participant would pay for that share. For example, if the shares are actively traded in a deep and liquid market, post-vesting transfer restrictions may have little, if any, effect on the price that a knowledgeable, willing market participant would pay for those shares.'

The IFRIC noted that this paragraph requires consideration of actual or hypothetical transactions, not only with employees, but rather with all actual or potential market participants willing to invest in restricted shares that had been or might be offered to them.

The IFRIC believed that the issue was not expected to create significant divergence in practice and that the requirements of IFRS 2 are clear. The IFRIC, therefore, [decided] not to take the issue onto the agenda.

acteo Association pour la participation des entreprises françaises à l'harmonisation comptable internationale

Mouvement des Entreprises de France
MEDEF

IFRIC
To the attention of all IFRIC members
30 Cannon Street
London EC4M 6XH
UK

Paris, September 22, 2006

Re: <u>Post vesting transfer restrictions:</u> IFRIC's re-exposed wording for rejection

ACTEO & MEDEF would like to express that the re-exposure of IFRIC's wording for rejection on post vesting transfer restrictions does not solve or alleviate in any way the very strong concerns that the whole issue has arisen. IFRIC remains unable to quote IFRS to justify the meaning attributed to IFRS 2.B3 and nonetheless claims that the requirements of IFRS 2 are clear.

When IFRIC prepares itself to state that IFRS 2.B3 "requires consideration of actual or hypothetical transactions, not only with employees, but rather with all actual or potential market participants", IFRIC *is interpreting* IFRS 2, IFRIC *is building supplementary guidance into IFRS 2.* Moreover we believe that this supplementary guidance is not compliant with the objective of fair value measurement.

As we had explained in our letter of comments on IFRIC's first tentative wording for rejection, no IFRS guidance presently exists to identify market participants. The existing guidance (within IFRS 2 or IAS 39) requests that the instruments be valued from an entity's perspective. No guidance indicates that actual or potential market participants *available* to the entity should be disregarded in order to give precedence to hypothetical market participants who are not available to transact with the entity.

We strongly believe such precedence would not be consistent with the objective of fair value, which is to ensure that similar transactions are valued by different entities on the basis of current market inputs, independently from the specific position of the entity on the market or in the transaction. We have not understood fair value as being aimed at presenting a transaction based on as hypothetical a basis as possible, oblivious of the actual characteristics of the transaction.

Facts are that, in France which is the market relevant for the transaction, the only existing and possible similar share plans are for all entities share plans available to employees. From a legal stand-point, only employees can receive restricted shares. No other market participant (another company, banks for instance) have access to restricted shares; it would be anyway illegal. Besides, as no deep and liquid market exists for this kind of restricted shares and as the restriction covers a relatively long period, post-vesting transfer restrictions may have material, or non negligible, effect on the fair value of such a share.

Moreover, we still cannot understand how IFRIC could ascertain that identifying market participants relevant to fair value measurements is clear within IFRS when IASB has identified, as part of its active project on fair value measurements, the identification of market participants as a critical issue requiring future deliberations. Therefore a wording for rejection claiming that IFRS are clear as it is suggested is completely unacceptable.

We therefore remind IFRIC of the recommendation we had expressed in April. In our view IFRIC should issue a wording for rejection justified by the fair value measurement project being active on the IASB's agenda. Since April, the IASB has decided to publish a discussion paper on this project instead of issuing an exposure draft directly. If the IFRIC is of the view that the identification of market participants relevant in a fair value measurement requires more timely guidance or has, in itself, sufficiently wide relevance, it should, in our view, decide to undertake an interpretation. To help IFRIC make its final decision on this issue, we are happy to indicate that there is no existing divergence in practice in France.

If you would like further clarification of the points raised in this letter, please do not hesitate to contact us.

Yours sincerely

ACTEO
PATRICE MARTEAU
Le Président

MEDEF
AGNES LEPINAY
La Directrice des Affaires Economiques, Financières et Fiscales

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Le Président
AB/
n°671

Paris, le 22 Septembre 2006

Mr Robert P. Garnett
IFRIC
30 Cannon Street
LONDON EC4M 6XH
United Kingdom

IFRS 2 *Share-based Payment* – Fair Value measurement of post-vesting transfer restrictions

Dear Bob,

In December 2004, the Conseil national de la comptabilité issued a guidance on how to account for « Plans d'Epargne Entreprise » a French legal scheme under which employees can purchase shares issued by their companies, with restrictions as to the subscriber, and transfer rights (five year non transferability).

By the end of 2005, the IFRIC started looking at the issues raised by the CNC in its guidance. It published a tentative agenda decision by early 2006. This tentative decision was withdrawn. At its June meeting, the IFRIC came up with a new tentative decision.

We believe the new IFRIC tentative decision is still flawed, both in the way it describes the conclusions reached by the CNC, as well as on its own conclusions.

Description of the CNC's guidance :

- when quoting the CNC's guidance, the tentative IFRIC decision refers to the notion of « synthetic market » : the CNC itself did not refer to synthetic markets. That terminology is not used in IFRSs. In the absence of a definition, we are not sure of the concept to which it refers.

Conclusions reached by the IFRIC :

General :

- no divergence in practice : if it is true that there is currently no significant differences in practice this is due to the CNC's guidance. Prior to this, companies as well as major audit firms held drastically different views with regards to the accounting for PEE;

- the requirements of IFRS 2 are clear : we recognise that, when applying the criteria to take an item to its agenda, the IFRIC must use judgement and, therefore its decisions are partly subjective. We note that it took IFRIC more than one year debates to come up with its tentative decision.

On the substance :

- IFRIC due process handbook is currently under revision. On this matter, it is my personal view that, if it wants to issue high quality interpretations, and, therefore enhance the world-wide acceptability of its decision, it is of the utmost importance that the IFRIC follows a strict due process. In particular, rejections are often implicit interpretations.

- On this issue, we note that the IFRIC uses undefined words/concepts that are not part of IFRS2, or even of IFRSs, to justify its tentative agenda decision :

- « actual or hypothetical » transactions,

- « actual or potential » market participants

- « had been or might be offered to them ».

By doing that, we believe the IFRIC is actually interpreting IFRS2,

- We cannot support this breach in the IFRIC due process, all the more that it is unclear how the current IFRIC tentative decision articulates with another IFRIC decision : in IFRIC 8, the discount on the granted shares has to be measured taking into account « the fair value of the restricted shares » (paragraph 5 of IFRIC 8). In our opinion, such a conclusion cannot be reached if the references for the valuation model for the pricing of the restricted shares are « hypothetical » transactions and « potential » market participants as the current wording for rejection seems to indicate. We kindly remind IFRIC that we specifically referred to the issue in our first comment letter to the IFRIC first tentative decision. We have not received any answer to the issue yet.

As a conclusion, we cannot support the IFRIC current wording for rejection, which we believe contains elements of interpretation, which is unclear, and does not take into account the specific conditions under which such shares are issued. The rejection, which is in effect an interpretation, does not reflect the substance of this individual transaction.

Antoine BRACCHI