Mr Gerrit Zalm
Chairman of the Trustees
IASCF – International Accounting Standards Committee Foundation
30 Cannon St.
LONDON, EC4M 6XH
United Kingdom

20 April 2010

Dear Mr Zalm,

BUSINESSEUROPE, Nippon Keidanren and the US Committee on Corporate Reporting of Financial Executives International represent businesses in Europe, Japan and the United States — geographies comprising more than 80 percent of the world's capital markets. We wish to share with the Trustees the concerns that we have relating to the active project of amending IAS 37 "Provisions".

The rapid and successful expansion of International Financial Reporting Standards (IFRS) worldwide mandates the International Accounting Standards Board (IASB) to comply with its due process in substance. While we are aware that the oversight responsibility of the Trustees does not encompass forming a view on whether the technical decisions made by the IASB are appropriate, one of its key responsibilities is to ensure compliance with the operating procedures, consultative arrangements and due process requirements. Therefore, the Trustees can consider the content of a project to ensure that constituents can have confidence in the standard setting process.

The project to amend IAS 37 started as part of a larger convergence project on Business Combinations. The aim presented at the time when the project was launched – i.e. the proposal on which the Trustees and the IFRS Advisory Council were consulted – was to bring convergence on how to account for restructurings. In addition, the purpose was to provide some clarifications on how to apply IAS 37 more generally. This included bringing the definition of contingent assets and liabilities in line with the definition of assets and liabilities in the framework.

No fundamental change in recognition or measurement was proposed. A fundamental change in scope was neither initially being considered nor subsequently brought to the attention of the Trustees and IFRS Advisory Council.

Nevertheless, the Exposure Draft (ED) published in 2005 would result in some fundamental changes, including recognition and measurement requirements, and this position has not been altered by subsequent developments in the project.

The project results in the following fundamental changes:

- the scope of the standard has been extended from "liabilities that are uncertain in their timing or amount" to all non-financial liabilities that are not covered by another standard;
- the "probability criterion" for the recognition of liabilities that is imposed by the conceptual framework has been removed; this is a fundamental change that should be considered at the conceptual framework level first and which, according to the IASB's due process, requires at least a Discussion Paper first;
- the measurement is being driven from a cost basis (the examples provided as guidance to the existing IAS 37 are quite clear) to a value basis, that is very similar to fair value for a majority of accounting outcomes; this is also a fundamental change that would have required proper consultations; the Board has characterised such a fundamental change as mere "clarifications";
- measurement on the basis of an expected value has been extended to single risk obligations without any debate on the relevance of such a measurement attribute taking place.

These fundamental changes in scope were not brought to the attention of the Trustees and IFRS Advisory Council. This is regrettable since consultation with the Trustees and IFRS Advisory Council before an agenda proposal is made is an important part of the IASB due process.

The consultation phase following the publication of the Exposure Draft in 2005 has triggered negative comments from many stakeholders, representing diverse interests and backgrounds.

During the post-consultation deliberation phase, the IASB had significant difficulties in reaching a decision on e.g.:

- how to identify and when to recognise an uncertain obligation; the decision made is likely to raise difficulties in practice; the IASB has substantially changed its 2005 proposals and decided that this would resolve the concerns expressed by constituents at that time, but it has decided not to give those constituents the opportunity to comment on whether it has in fact done so or on the merits and demerits of the appreciably different approach now proposed. Furthermore, it has had to take the further step of publishing further explanation of its new approach in the 7 April 2010 Staff Paper highlighting the fact that the Working Draft may be widely misunderstood by constituents or that the intention of the Board has not been clearly communicated;
- how to measure those liabilities; the decision reached is rejected by 6 IASB members out of 15;
- re-exposing only the measurement principle and guidance; we believe that measurement guidance cannot be assessed in *abstracto*, without assessing the whole standard.

BUSINESSEUROPE, Nippon Keidanren and the US Committee on Corporate Reporting of Financial Executives International therefore agree with the dissenting IASB members who believe that the IASB has not complied with its due process when deciding not to re-expose the whole standard.

In line with the vast majority of stakeholders we believe that the technical independence of the IASB is key if IFRS are to form the set of high quality standards capital markets deserve. While the IASB has ultimate authority on its agenda that can only be if the appropriate consultations take place and a strict due process is followed. This means that projects should be developed in the remit of the agenda proposals that are submitted.

As the United States debates the qualifications of IFRS and the US Securities and Exchange Commission (SEC) considers the acceptability of accounting for litigation contingencies within the United States, it is imperative that due process be followed and that all constituents fully understand the potential changes.

BUSINESSEUROPE, Nippon Keidanren and the US Committee on Corporate Reporting of Financial Executives International consequently believe that the IASB should bring to the Trustees and IFRS Advisory Council a revised project plan and re-expose the entire standard as part of a fundamental review of IAS 37. We therefore urge the Trustees to review the due-process aspects of this project and to strongly encourage the IASB to re-expose the revised proposals in their entirety.

In case you wish to obtain further information, please do not hesitate to contact us. We will send a copy of this letter to Sir David Tweedie, IASB chairman.

Yours sincerely,

Yasuhisa ABE

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