

AGENDA PAPER

IFRS Foundation Trustees' meeting—Due Process Oversight Committee

Washington DC 11 July 2012

Agenda paper 4C

To: Due Process Oversight Committee

From: David Loweth

Date: 25 June 2012

Re: **Draft Due Process Handbook: Feedback from the IFRS Advisory Council and the European Financial Reporting Advisory Group (EFRAG)**

Overview

1. The purpose of this paper is to inform the Committee of the initial feedback to the draft *IASB and IFRS Interpretations Committee Due Process Handbook*, which was issued for comment on 8 May, that has been considered by:

- the IFRS Advisory Council (AC) at its meeting on 18 June; and
- EFRAG, which has been developing a Draft Comment Letter (DCL) in response to the proposals.

IFRS AC

2. At the AC meeting, Alan Teixeira and I gave a presentation on the main features of the draft Handbook and set out the themes we wanted the Council members to discuss in breakout sessions, which covered the following four broad issues:

- the introduction of the sections in the draft Handbook dealing with oversight and the DPOC's responsibilities, including the protocol for handling perceived breaches of due process;
- the Due Process Protocol;
- the introduction of a separate research programme; and
- distinguishing between narrow-scope projects and comprehensive projects.

3. As Paul Cherry notes in his AC Chairman's report to the Trustees (Agenda paper 3), AC members support the importance of robust due process and the general direction of the

proposals. However, a number of suggestions were made to enhance and clarify the proposed amendments. My summary of the reports back from each of the breakout groups is set out in Appendix A.

EFRAG

4. As with all IFRS Foundation and IASB consultative documents, EFRAG is preparing a draft comment letter (DCL) on the proposals in the draft Handbook that will be published on its website (in July) in order to elicit feedback from European constituents. In developing its views, EFRAG has discussed the draft Handbook with:

- a. its Supervisory Board at its meeting on 22 May (which I attended);
- b. European National Standard Setters (NSS) at a meeting on 23 May – at which I gave a presentation;
- c. its Planning and Resource Committee (PRC) on 12 June; and
- d. its Consultative Forum of Standard-Setters (CFSS) and Technical Experts Group (TEG) on 20 June.

5. In terms of initial reactions (which are subject to change), my take is that EFRAG:

- supports the inclusion in the draft Handbook of the section on oversight and the responsibilities of the DPOC, plus the proposed Due Process protocol (which EFRAG agrees should be separate from the Handbook, but consistent with it);
- supports the principles of transparency, full and fair consultation and accountability, but with a need to be careful about the level of detail to be put into the Handbook to guard against due process merely resulting in a “ticking the box exercise”;
- acknowledges that the IASB is a global standard-setter, but wants a “positive discrimination” to take onto its agenda (where as a comprehensive or maintenance project) requests from constituents in those jurisdictions that already apply IFRSs;
- wants greater co-ordination and integration with regional bodies and NSS on outreach. EFRAG’s view is that if the consults in particular regions/jurisdictions it should not do so without seeking to co-ordinate with the relevant NSS and/or regional body to avoid the different organisations consulting separately with the same stakeholders on the same topics and to achieve a mutual understanding;
- wants to see field testing and effect analyses integrated throughout the due process cycle, with the results of any effect analyses being made publicly available prior to the IASB making decisions;
- recommends that review drafts should be made publicly available as systematic “fatal flaw” documents; and
- has a concern that the staff have too much influence and wants the responsibilities and roles of the Board members and staff to be clarified in the Handbook.

Next steps

6. The deadline for comments on the draft Handbook is 5 September. My plan is to bring a summary of the responses and the issues raised to the Committee's meeting in October. Jenn Jones has also contacted Committee members to arrange a number of conference calls in November and December for follow-up discussions and to finalise the new version of the Handbook.

Appendix A

IFRS Advisory Council: feedback from the break-out groups

Issue 1: Due Process Oversight

Do you agree with the inclusion and content of the section of the draft Handbook on oversight and the responsibilities of the DPOC? Why or why not?

Do you have any views on the protocols for the action that the Trustees can take in the event of a perceived breach of due process?

Do you have any further comments or suggestions for how the role and responsibilities of the DPOC are set out?

The group agreed that the draft Handbook should include a section on the oversight and responsibilities of the DPOC, and agreed that the content of the section should be wide-ranging and not restricted. The group also wondered whether this section should also refer to the Monitoring Board (MB) and its role (given that one of the MB's duties as set out in the Memorandum of Understanding with the Trustees was to review the Trustees' oversight of the IASB's standard-setting process, in particular with respect to its due process arrangements).

The group also agreed with the Trustees having a protocol for perceived breaches of due process, but expressed some concerns as to how it might operate in practice and whether it could become too bureaucratic. The group was concerned that, with the full transparency envisaged in paragraph 8.3 of the draft Handbook, the Trustees might lay themselves open to receiving vexatious complaints from attention-seekers. Once transparency is in place it was very difficult to pull back from that. It might be better to have less transparency in the first instance, and then review it.

The group felt that it would be preferable for the handling of any complaint to be dealt with by staff of the Foundation, rather than the IASB. The DPOC should sign off any IFRS before it was issued (perhaps with a certificate of compliance), and the Committee's consideration should include a summary of any complaints received, the assessment of whether or not those complaints were valid, and – if so – how they were dealt with.

The group also felt that there should be a time limit for constituents to raise complaints about the mandatory elements of due process on any particular project. In its view, any perceived breach should have a complaint lodged within 120 days of its perceived occurrence (also the group acknowledged that it might be difficult to ignore a complaint that came in after 120 days). The group wanted to avoid any due process challenge being lodged after the issue of an IFRS and any legal challenges coming in particular for those jurisdictions where IFRSs became law.

Issue 2: Due Process Protocol

Do you agree that a reporting protocol should be maintained on the website for each project? Why or why not?

Do you have any views on the protocols as set out in appendix 4 accompanying the draft Handbook, in particular on the reporting metrics to demonstrate the steps the IASB has taken in meeting its due process obligations?

Do you have any further comments or suggestions for how the reporting protocol might be enhanced?

The group had split views on whether or not the protocol should be maintained on the website for each project. The majority felt strongly that it should; at least one member took the view that this was an internal tool for reporting to the DPOC.

If the protocol was available publicly, there was a need to protect the integrity and objectivity of the thinking of the IASB. There was a need to guard against those who might be sceptical and want a great deal more detail. For example, if the Protocol described a step as ‘meetings with stakeholders’ and the evidence was ‘held 100 meetings’, was that meaningful? Some would then push for far more information: with whom were the meetings held; what was discussed there; why 100 meetings and not more or less? In addition, what was the difference between what was set out in the Basis for Conclusions and what was in the protocol tables?

The tables in Appendix 4 of the draft Handbook implied the recording of statements of fact, without any sense of conclusion. Should there be some form of sign-off throughout the process and, if so, by whom? Should the IASB conduct a self-assessment review against the steps in the protocol towards the end of the standard-setting cycle, ie just before an IFRS was published?

What was the role of the DPOC/Trustees in this process? The group felt that as part of the reporting protocol process, the Trustees needed to understand the often strongly divergent views with which the IASB was grappling during the development of an IFRS. The DPOC needed to be made aware of the likely negative reactions on any particular project and their source.

Issue 3: Research programme

Do you agree with the introduction of a separate research programme that will likely become the development base from which potential standards-level projects will be identified? Why or why not?

Do you have any comments or suggestions for how the description of the research programme might be enhanced?

The group felt that there needed to be greater clarity as to how the IASB planned to use the research programme and a view that it was not really ‘separate’. The group believed that there needed to be clarity on why research was being done, criteria for prioritising research projects and adding them to the research agenda, the potential outcomes (together with milestones) for it being carried out, and clear criteria for what happened when research ended. This included moving items from research to standards-level projects.

It was important not to leave research projects ‘hanging’ for a long time.

The group also felt that there were two types of research. The first flowed from the Board’s thinking of issues for the longer-term. The second, and more issue-specific, from issues that were of important to particular constituents, for example, the research report presented to the current AC meeting by the Korean Accounting Standards Board (KASB) proposing an amendment to IAS 21 on foreign currency accounting.

The group agreed on the need to build a better evidence base, but had some fundamental questions, on which it felt guidance was needed. What was research? What was acceptable research? Did it encompass research at the company/industry/national level? What about capital market research? What degree of rigour needed to be applied? The IASB needed to be careful about whether or not this proposal could rebound on it, with negative consequences, and the Board needed to think carefully about managing expectations.

Issue 4: Implementation and maintenance**Do you agree with the distinction between narrow-scope projects, which come under the heading of maintenance, and comprehensive projects, which come under the heading of development of IFRSs? Why or why not?****Do you have any comments or suggestions for how the description of the implementation and maintenance of IFRSs might be enhanced?**

The group felt that the distinction between narrow-scope and comprehensive projects suggested a clear-cut bifurcation that did not exist. The Board needed the information to make an informed judgement as to where a project might be allocated, and to clearly articulate the reasons for its judgement. There needed to be very active due process oversight over the allocation decision.

Co-ordination of IASB and IFRS Interpretations Committee activities was important, with clarity needed as to why either the IASB or the Interpretations Committee was taking forward a project. Issues should be identified and dealt with on a timely basis.

Some concern was expressed as to whether ‘maintenance’ was too general a term. However, there was also a view expressed not to get too hung up in the labelling of where a project fell. The distinction between maintenance and major projects was a useful tool. However, judgement would be required. Some issues might be very narrow and affect relatively few, but very large, entities, for whom it could have very significant effects and hence would be considered by most stakeholders to be a major issue.