

AGENDA PAPER

IFRS® Foundation Trustees meeting – Due Process Oversight Committee

MUNICH 25 JUNE TO 27 JUNE

Agenda ref 1C

PRESENTERS Henry Rees and Richard Thorpe

Due Process issues around anonymous comment letters

Background

1. We have received a series of comment letters in recent months (on 12 Tentative Agenda Decisions and two Taxonomy Updates) from a commentator that uses an entity name but has chosen to remain entirely anonymous. Specifically, the person or persons providing the comments under the entity name, when contacted by staff, have declined to identify themselves to either the IFRS Interpretations Committee (Committee) or the IFRS Foundation staff. This level of anonymity is not prohibited by the Due Process Handbook (Handbook), but staff have concerns about implications for due process that are set out in this note.
2. The Handbook is clear about the importance of comment letters for the Board and the Interpretations Committee. They “play a pivotal role in ...deliberations because the letters provide considered and public responses to a formal consultation.” (DPH 3.67). They are also subject to the Board’s commitment to transparency. All comment letters are available on the Foundation’s website, but “portions of a comment letter may be withheld from the public if publication would be harmful to the submitting party” (DPH 3.68).
3. The Foundation’s website elaborates on this and indicates that
All comments will be on the public record and posted on our website at www.ifrs.org unless the respondent requests confidentiality. Such requests will not normally be granted unless supported by good reason, for example, commercial confidence. Please see our website for details on this and how we use your personal data.
4. The Handbook is also clear on how comment letters are used by the Board and Committee in assessing reactions to exposure drafts and other consultations. They focus on the “strength of the analysis provided in comment letters, and the evidence supporting the analysis” and “an analysis of the type of respondent and their geographical origin can help the Board” (DPH 3.69).
5. The usual practice followed for both the Board and Committee is that comment letters are submitted electronically to the Foundation and are posted on the website. It is clear who has written and submitted the letters. In circumstances where all or part of a letter is treated as confidential (if publication would be harmful to the submitting party, for example, a potential breach of securities disclosure laws) the identity of the sender is available to the staff, but the full comments are not made public. We have also had a recent example of a letter that was published in

full, but the sender's name was withheld as they had requested anonymity for understandable commercial reasons. In both cases the need for transparency and the staff's ability to provide analyses by sector and background were maintained.

Anonymous comments

6. An important element of the staff's analysis of comment letters is that staff should be able to identify some elements of the background of the submitter to help provide information about the types and geographical allocation of respondents. The recent completely anonymous comment letters do not meet these expectations. Staff have sought more information from the commentator/s but, while the submitters have responded to staff emails, they have not provided identifying facts, and staff have not been able to obtain specific identifying information. There is nothing available elsewhere. The letters have been posted to the website in accordance with normal practice, but staff have concerns, as follows:
 - a) A completely anonymous comment letter may not be consistent with the Foundation's commitment to transparency, particularly if it is routinely anonymous (i.e. not because of particular circumstances as described in paragraph 5 above). There is nothing in the Foundation's principles that requires stakeholders to be committed to transparency, but clearly such a commitment would contribute to better process and potentially better outcomes. In particular, the Handbook sets out the principles of the Foundation's due process requirements in the standard-setting process (DPH 3.1), and anonymous comment letters may not provide information that allows the staff to provide analysis in accordance with those principles. The Foundation's legitimacy as a standard setter depends to a large extent on its robust and transparent due process. It can be argued that stakeholders in the standard setting should be willing to engage with that due process by making a comparable commitment to transparency.
 - b) There is an expectation that the Board and the Committee will seek comments from a range of stakeholders across backgrounds and geography, and the ability to assess whether that expectation has been satisfied may be hampered if commentators are not identified.
 - c) There is a danger that a comment will not be given appropriate weight and analysis if staff and Board or Committee members are not apprised of or able to assess in any manner whatsoever the background and expertise of the commentator. Our comment letter process is essential as a foundation for understanding issues and developing high quality requirements. It is important to the efficient functioning of that process that we have a thorough understanding of the credibility of comments provided and their context (for example, are comments on the usefulness of information in fact being provided by a party with an understanding of how information is consumed in practice? Are the comments about operationality being provided by a party with working knowledge of implementing accounting requirements?)

- d) On the other hand, there is increasing recognition in legal and regulatory requirements, particularly in the recent evolution of thinking about whistle-blowers, that it is important to consider and assess information from stakeholders and other interested parties, whether they choose to identify themselves or remain anonymous.

Question for DPOC

- 7. There is no current issue regarding anonymous comment letters. While this issue was being considered in preparation for discussion by the DPOC and Trustees, the commenter that had sought to preserve its anonymity has indicated that it will not provide further comments until it has developed an infrastructure that might allow the resolution of the anonymity issue.
- 8. Nevertheless, there is a wider policy question that remains to be addressed: how should the Foundation treat contributions to the comment process that, whether or not they come from an entity with a name, are “anonymous” in that the identity of the source of the information or comment cannot be identified. Clearly the Foundation does not want to discourage commentators and comments from different perspectives. However, it may be important to the robustness and quality of the analysis and the transparency of the processes of the staff, the Board and the Committee, and even to the quality of outcomes, that at least some elements of information be available about the background, geography and other matters regarding the stakeholders providing comments.
- 9. The staff view is that
 - a) we should encourage all commentators to make open and public comments, and to make their identities available publicly, consistent with the Foundation’s, Board’s and Committee’s commitments to transparency;
 - b) where commenters are not willing to do so, staff should seek to obtain and provide publicly as much descriptive information about commenters as they can;
 - c) where a) or b) cannot be achieved, anonymous letters should still be accepted and publicly posted to the website as part of the comment process;
 - d) Staff should determine with the Chair of the Board and/or the Committee how to evaluate anonymous comment letters and whether and how to include such letters in staff analysis, and such determinations should be reported to the DPOC.

Does the DPOC agree with this approach?