

Date: 10 December, 2009

Via Email: constitutionreview@iasb.org

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Re: Comment Letter – IASC Foundation, Part 2 of the Constitution Review, Proposals for Enhanced Public Accountability

Dear Ms. Feldman & Trustees of the International Accounting Standards Committee Foundation:

We are writing on behalf of the International Corporate Governance Network (ICGN). The ICGN is a global membership organisation of institutional and private investors, corporations and advisors from 43 countries. Our investor members are responsible for global assets of U.S. \$9 trillion. The mission of the ICGN is to meaningfully contribute to the continuous improvement of corporate governance best practices through the exchange of ideas and information across borders. Information about the ICGN, its members, and its activities is available on our website: www.icgn.org.

The purpose of the Accounting and Auditing Practices Committee is to address and comment on accounting and auditing practices from an international investor and shareowner perspective. The Committee through collective comment and engagement strives to ensure the quality and integrity of financial reporting around the world.
http://www.icgn.org/organisation/committee_membership.php?name=AAP

The ICGN is pleased to provide comment to the International Accounting Standards Committee (IASC) Foundation on its request for comments on the review Part 2 of the Constitution Review, Proposals for Enhanced Public Accountability. The ICGN supports the primary objective to develop, in the public interest, a single set of high quality, understandable and enforceable global accounting standards that require high quality transparent and comparable information in financial statements and other financial reporting to help participants in the world's capital markets and other users make economic decisions.

General Comments

A series of developments occurred since the finalization of Part 1 of the current Constitution Review, including the European Commission's non-participation in the Monitoring Board; the FASB's revision in April 2009 of impairment rules in a manner that appeared uncoordinated with the work of the IASB; the publication by the IASB and FASB in July 2009 of diverging visions for the reform of financial instruments accounting; the publication in August 2009 by the Basel Committee on Banking Supervision of a document that signals an intent to interfere in the IASB's standard-setting on financial instruments; and the European Commission's announcement in November 2009 of a delay in considering the possible adoption of the IASB's recently published IFRS 9.

While each of these developments relates to a particular set of circumstances, together they form a challenging context for IFRS standard-setting in the months and years to come, in which the IASB's independence and dedication to setting standards of the highest quality for users of financial information will be of great importance. This is the specific context in which the IASCF Foundation has to envisage its decisions to come under Part 2 of the Constitution Review.

The IASC Foundation on 9 September 2009 published a document of "Proposals for Enhanced Public Accountability" and we outline below our response to specific issues raised in this document. In particular, whilst we do not object in principle, we highlight concerns with regards to the change in name of the IASC Foundation and the IASB; we agree, with qualifications, with the new criteria for the composition of the Trustees; and we agree with reservations with the suggested accelerated due process. In addition we comment on two additional issues that have emerged in the Round Table meetings in September and October 2009, to which we thank the Foundation for its kind invitation. On agenda-setting, we welcome the idea of a regular, periodic, public consultation. On the nature of standards, we warn against the inscription of a wholly "principles-based" nature of IFRS in the Constitution.

However, we feel these specific questions and comments are not enough given the magnitude of the challenges the IASC Foundation and IASB face in the context outlined above. From this perspective, we are disappointed by the second part of the Constitution Review, following a first part in which we felt the Review Committee had not included a mechanism that ensured that investors and other users were properly represented in the governance arrangements (our successive letters dated March 19, June 17 and September 20, 2008). **Our assessment is that the challenges faced by IFRS standard-setting warrant a significantly more proactive and forceful effort by the Foundation to enhance the sustainability of its public acceptance and its accountability to stakeholders.**

In particular, we believe the IASC Foundation and IASB need to establish much clearer channels of accountability to the global investment community than is currently proposed. Investors and shareowners are the primary users of financial information, and should be considered the priority stakeholders of IFRS standard-setting and those to whom the IASB is ultimately accountable. While we acknowledge that investor representation has improved somewhat with the reform of the SAC and there has been better outreach to the investor community, these improvements are not necessarily commensurate to what is needed to establish sustainable accountability.

More ambitious changes in governance are needed to restore the trust of the global investment community in IFRS standard-setting. We are especially concerned that recent developments of IFRS standard-setting signal a reduced focus on investors' needs than had been the case earlier, including IFRS 8 in 2006, and the reclassification standard adopted under short-term political pressure in October 2008.

This is why we urge the IASC Foundation to keep its Constitutional debate active in 2010 and beyond the decisions that will conclude Part 2 of the Constitution Review. In other words **we call for the opening in early 2010 of a "Part 3" of the current Constitution Review, in which the Foundation would make proposals for significantly enhanced representation of the global investment community not only in its consultative proceedings, but also in its formal oversight and accountability mechanisms.** We feel such an effort, while certainly not devoid of risks and difficulties, would be essential to ensure the long-term sustainability of IFRS.

Specific Comments

***Question 1:** The Trustees seek views on the proposal to change the name of the organisation to the 'International Financial Reporting Standards Foundation', which will be abbreviated to 'IFRS Foundation'. The Trustees also seek views on the proposal to mirror this change by renaming the International Accounting Standards Board (IASB) as the International Financial Reporting Standards Board, which will be abbreviated to 'IFRS Board'. Do you support this change in name? Is there any reason why this change of name might be inappropriate?*

ICGN RESPONSE:

While we are not opposed to a name change we are not sure a case has been made. We believe there could be a loss of the IASB's and IASC Foundation's "branding". Also, we believe, the IASB is proposing changing words without exploring the true meaning. There is a view that the change from Accounting to Reporting is actually a limitation of scope, particularly relevant regarding the reliability and validity of transactions in audited accounts. "Accounting" as a word means validating transactions, "Reporting" merely takes them as read. The former is active, the latter is passive.

In short, Accounting incorporates stewardship (it is validating the use of resources), which Reporting does not. In this context, we believe that the Constitution should be aligned with the new Conceptual Framework by addressing stewardship as well as "economic decision making". Stewardship should be a basic characteristic of accounts, and the role it plays in the accountability to the members of the company is central to the proper functioning of corporate governance.

We note in particular that the IASB has recognised the legal position of the members of a company in that IFRS does not recognise dividends as a liability until the members have approved them in general meeting. It is therefore essential that the IASB via the Constitution recognises that shareholders can only discharge that function properly if the financial information they are given is fit for that purpose, by properly incorporating stewardship into the Constitution of the IASB.

***Question 2:** The Trustees seek views on the proposal to replace all references to 'accounting standards' with 'financial reporting standards' throughout the Constitution. This would accord with the name change of the Foundation, the Board and the formal standards developed by the IASB-International Financial Reporting Standards (IFRSs). Do you support this change?*

ICGN RESPONSE:

See response in Question 1.

***Question 3:** The Trustees seek views on their proposal to change section 2 as follows:*

The objectives of the IFRS Foundation are:

- (a) to develop, in the public interest, a single set of high quality, understandable, enforceable and globally accepted financial reporting standards that require high quality, transparent and comparable information in financial statements and other financial reporting to help participants in the world's capital markets and other users make economic decisions;*
- (b) to promote the use and rigorous application of those standards;*
- (c) in fulfilling the objectives associated with (a) and (b), to take account of emerging economies and, as appropriate, the special needs of small and medium-sized entities; and*

- (d) *to bring about convergence of national accounting standards and International Financial Reporting Standards (IFRSs, being the standards and interpretations issued by the IFRS Board) to high quality solutions.*

Do you support the changes aimed at clarity?

ICGN RESPONSE:

- (a) We suggest “acceptable” rather than “accepted”, as in our view this item should not include conditions on whether the standards are actually accepted or not in individual jurisdictions, which is the matter of item (b).
- (c) rather than “emerging economies” which is in many way an outdated term, we suggest “the diversity of the world’s economies”.
- (d) we do not believe convergence should be a stated objective in that the main objective should be to promote the use and application of a single set of high quality, understandable, enforceable and globally acceptable accounting standards. Identifying convergence at this level infers a middle ground of standards between U.S. GAAP and IFRS. Although we support the concept of convergence we do not believe that this should be one of the main objectives of the IASC Foundation.

Question 4: *The Trustees seek views on the proposal to amend section 3 of the Constitution as follows: The governance of the IFRS Foundation shall primarily rest with the Trustees and such other governing organs as may be appointed by the Trustees in accordance with the provisions of this Constitution. A Monitoring Board (described further in sections 18–23) shall provide a formal link between the Trustees and public authorities. The Trustees shall use their best endeavors to ensure that the requirements of this Constitution are observed; however, they may make minor variations in the interest of feasibility of operation if such variations are agreed by 75 per cent of the Trustees.*
Do you support this clarifying amendment?

ICGN RESPONSE:

We do not see this as a clarifying amendment, rather as adding to the confusion as to which is the Foundation’s highest body. In our view the Monitoring Board is now de facto the body with which “the governance of the Foundation rests primarily”, and therefore it should be brought unambiguously within the framework of the Constitution.

Question 5: *The Trustees seek views on the proposal to amend section 6 of the Constitution as follows to include one Trustee from each of Africa and South America:*

All Trustees shall be required to show a firm commitment to the IFRS Foundation and the IFRS Board as a high quality global standard-setter, to be financially knowledgeable, and to have an ability to meet the time commitment. Each Trustee shall have an understanding of, and be sensitive to, the challenges associated with the adoption and application of high quality global financial reporting standards developed for use in the world’s capital markets and by other users. The mix of Trustees shall broadly reflect the world’s capital markets and diversity of geographical and professional backgrounds. The Trustees shall be required to commit themselves formally to acting in the public interest in all matters. In order to ensure a broad international basis, there shall be:

- (a) *six Trustees appointed from the Asia/Oceania region;*
(b) *six Trustees appointed from Europe;*
(c) *six Trustees appointed from North America;*
(d) *one Trustee appointed from Africa;*
(e) *one Trustee appointed from South America; and*

(f) two Trustees appointed from any area, subject to maintaining overall geographical balance. Do you support the specific recognition of Africa and South America?

ICGN RESPONSE:

We agree with these changes but also think the Foundation should clearly outline, and perhaps include in the next changes to the Constitution, what principles should drive the weight of different regions within the Trustees, which have until now been set and updated on an entirely ad hoc manner. Moreover, the paramount consideration in appointing trustees should be competence, integrity and qualifications to serve as a Trustee.

Question 6: *The Trustees seek views on the proposal to amend section 10 of the Constitution as follows to allow up to two Trustees to be appointed as vice-chairmen of the Trustees.*

The Chairman of the Trustees, and up to two Vice-Chairmen, shall be appointed by the Trustees from among their own number, subject to the approval of the Monitoring Board. With the agreement of the Trustees, regardless of prior service as a Trustee, the appointee may serve as the Chairman or a Vice-Chairman for a term of three years, renewable once, from the date of appointment as Chairman or Vice-Chairman.

Do you support the constitutional language providing for up to two Vice-Chairmen?

ICGN RESPONSE:

We have no objection to these changes.

Question 7: *The Trustees seek views on the proposal to make no specific amendments to sections 13 and 15, but to address the valid and important concerns raised by commentators by way of enhanced accountability, consultation, reporting and ongoing internal due process improvements.*

ICGN RESPONSE:

No comment.

Question 8: *Section 28 would be amended as follows:*

The IFRS Board will, in consultation with the Trustees, be expected to establish and maintain liaison with national standard-setters and other official bodies with an interest in standard-setting in order to assist in the development of IFRSs and to promote the convergence of national accounting standards and IFRSs. Do you support the changes aimed at encouraging liaison with a broad range of official organisations with an interest in accounting standard-setting?

ICGN RESPONSE:

We have no objection to these changes, which in our opinion have limited practical impact if at all.

Question 9: *The Trustees seek views on the proposal to amend section 30 of the Constitution as follows to permit the appointment of up to two Board members to act as vice chairmen of the IASB.*

The Trustees shall appoint one of the full-time members as Chairman of the IFRS Board, who shall also be the Chief Executive of the IFRS Foundation. Up to two of the full-time members of the IFRS Board may also be designated by the Trustees as a Vice-Chairman, whose role shall be to chair meetings of the IFRS Board in the absence of the Chairman or to represent the Chairman in external contacts. The appointment of the Chairman and the designation as Vice-Chairman shall be for such term as the Trustees decide. The title of Vice-Chairman would not imply that the member (or members) concerned is (or are) the Chairman-elect.

ICGN RESPONSE:

We have no objection on the substance of these changes. However, we believe the main point is about expanding the skill-sets, diversity and experience on the IASC Foundation. We believe there should be a self-evaluation of the Foundation to ensure it has the appropriate skill-sets, diversity and breadth of experience. However, we do believe the role of the Chair of the Trustees should be strengthened, ensuring the separation of the Trustees and Board members' roles.

Question 10: *The Trustees seek views on the proposal to amend section 31 to allow for altered terms of appointment for IASB members appointed after 2 July 2009. The proposed amendment is to allow for Board members to be appointed initially for a term of five years, with the option for renewal for a further three-year term. This will not apply to the Chairman and Vice-Chairman, who may be appointed for a second five-year term. The Chairman or Vice-Chairman may not serve for longer than ten consecutive years. The proposed amendments to section 31 are as follows:*

Members of the IFRS Board appointed before 2 July 2009 shall be appointed for a term of up to five years, renewable once for a further term of five years. Members of the IFRS Board appointed after 2 July 2009 shall be appointed initially for a term of up to five years. Terms are renewable once for a further term of three years, with the exception of the Chairman and a Vice-Chairman. The Chairman and a Vice-Chairman may serve a second term of five years, but may not exceed ten years in total length of service as a member of the IFRS Board.

Do you support the change in proposed term lengths?

ICGN RESPONSE:

We have no strong views on these proposed changes.

Question 11: *The Trustees seek views on the proposal to insert in section 37 (to become section 38) of the Constitution an additional subsection as follows to allow the Trustees, in exceptional circumstances, to authorize a shorter due process period. Authority would be given only after the IASB had made a formal request. The due process periods could be reduced but never dispensed with completely.*

The IFRS Board shall:

(a) ...

(b) ...

(c) in exceptional circumstances, and only after formally requesting and receiving prior approval from the Trustees, reduce, but not eliminate, the period of public comment on an exposure draft below that described as the minimum in the Due Process Handbook.

ICGN RESPONSE:

We agree with this change but consider it vital that the Trustees evaluate the risk with any accelerated due process, give their prior approval and ensure that due process is only reduced and not eliminated.

Question 12: *The Trustees seek views on the proposal to amend section 37(d) (to become section 38) of the Constitution as follows to expressly provide that the IASB must consult the Trustees and the SAC when developing its technical agenda.*

The IFRS Board shall:

(d) have full discretion in developing and pursuing the technical agenda of the IFRS Board, after consulting the Trustees (consistently with section 15(c)) and the SAC (consistently with section 44(a), and over project assignments on technical matters: in organising the conduct of its work, the IFRS Board may outsource detailed research or other work to national standard-setters or other organisations;

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Assistant Corporate Secretary / IASC Foundation
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ICGN RESPONSE:

We agree with this change and with the subsequently aired proposal to organize a regular, periodic, public consultation on the technical agenda.

Question 13: *Trustees seek views on the proposal to make no amendment to sections 44 and 45 (renumbered as 45 and 46), which are the provisions relating to the SAC, at this time.*

ICGN RESPONSE:

No comment.

Question 14: *The Trustees seek views on the proposal to amend section 48 by removing specific staff titles and replacing it with the term 'the senior staff management team'. Accordingly section 49 should be deleted. The Trustees also seek comment on the proposal to update the Constitution by removing all historical references that relate to when the organisation was established in 2001.*

ICGN RESPONSE:

We have no objection to this change. However, the text of the constitution should include reference to 2001 as its date of initial adoption, as well as explicit indication of all dates in which it was subsequently amended.

Additional item on “principles-based” standard-setting

Subsequently to the publication of the document titled “Proposals for Enhanced Public Accountability” on 9 September 2009, the Foundation has signaled interest in stakeholders’ views on whether the Constitution should require a specific commitment to developing standards based on clearly articulated principles.

We believe that the end results should be high quality standards. All standards should be developed on clearly articulated principles with further guidance as necessary. However we think that the philosophy of IFRS standard-setting cannot and should not be captured in a single catchword, and that it is appropriately set in the conceptual framework, the revision of which is very important in our opinion. Therefore, we do not believe the inclusion of a reference to principles-based standard-setting in the text of the revised Constitution is necessary.

Thank you for the opportunity to contribute to the Audit Firm Governance Code. If you would like to discuss any of these points, please do not hesitate to contact Carl Rosen, our Executive Director, at +44 207 612 7098 or carl.rosen@icgn.org. Thank you for your attention and we look forward to your response on the points above.

Yours sincerely,



Christianna Wood
Chair of the ICGN Board of Governors

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Assistant Corporate Secretary / IASC Foundation
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Co-Chair, ICGN Accounting and
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