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Wayne Upton
Chairman of the
IFRS Interpretations Committee
30 Cannon Street
London EC4M 6XH

Berlin, xx January 2013

**12. Sitzung IFRS-FA vom 07.01.2013,
12_03a_IFRS-FA_Interpret_MTO**

United Kingdom

DRAFT

Dear Wayne,

IFRS 3 – Mandatory purchase of non-controlling interests in business combinations

On behalf of the Accounting Standards Committee of Germany (ASCG) I am writing to comment on the IFRSIC's tentative decision, published in the November 2012 *IFRIC Update*, to propose to the IASB amending IFRS 3 through Annual Improvements so that the initial acquisition of the controlling stake and the subsequent Mandatory Tender Offer (MTO) be treated as one single acquisition (linked transactions).

While we agree with the IFRSIC's decision, we would like to make the Committee aware of the fact that the term 'controlling stake' may be understood differently depending on whether reference is made to IFRS or to takeover bid law.

Based on IFRS 10 there is a clear definition as to what 'control in an investee' means. However, the term 'control' may be defined differently by takeover bid laws. As an example, according to section 3 of article 5 of the DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on takeover bids the following is stipulated:

'The percentage of voting rights which confers control for the purposes of paragraph 1 [of the Directive] and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office.'

In Germany, for example, the determination has been made as follows in section 2 of paragraph 29 of the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz, "WpÜG"):

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Präsidium:

Dr. h.c. Liesel Knorr (Präsidentin), Dr. Rolf Ulrich (Vizepräsident)



'Control is the holding of at least 30% of the voting rights in a target company.'

In light of the above we recommend that the IFRSIC and / or the IASB remain cognisant of the possibly differing definitions of 'control' when making the amendments to IFRS 3.

If you would like further clarification of the issue set out in this letter, please do not hesitate to contact me.

With best regards,

Liesel Knorr
President