

IASC Foundation
To the Trustees
FAO Tamara Oyre
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xx November 2009

DRAFT COMMENT LETTER
Comments should be sent to commentletter@efrag.org by 19 November 2009

Dear Ms Oyre,

Part 2 of the IASCF Review of the Constitution: *Proposals for Enhanced Public Accountability*

I am writing on behalf of the Supervisory Board of the European Financial Reporting Advisory Group (EFRAG) in response to the invitation to comment on Part 2 of the IASCF Constitutional Review: *Proposals for Enhanced Public Accountability* (the paper).

We think the periodic review of the IASCF Constitution is an important part of the IASCF's processes, and are pleased that the IASCF is seeking comments on the specific proposals it has made following its consideration of the responses it received on its earlier request for areas upon which to focus its review. Our detailed comments are set out in the appendix, but we wish to draw attention to the following areas:

- The Constitution should express commitment by both the IASB and the IASCF for principle-based standards;
- The convergence objective should be removed from the constitution at this stage, because IFRSs have now achieved a sufficient degree of acceptance and have been adopted widely enough for them to be fully independent of national standards. The emphasis needs to be on the adoption of high quality global standards;

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- We strongly believe that the IASB should have a public consultation on the IASB work plan. We do not think that the proposed amendment to introduce mandatory consultation about the agenda with the Trustees and the SAC goes far enough. We think that regular public consultation with a wider constituency is necessary to ensure that the IASB is fully aware of the range of views about the agenda and the prioritisation of projects.

If you have any questions about matters raised in this letter, please do not hesitate to contact me.

Yours sincerely,

Pedro Solbes
Chairman, EFRAG Supervisory Board

Appendix

EFRAG Supervisory Board's detailed comments on Part 2 of the Constitution Review: Proposals for Enhanced Public Accountability

Questions asked in the paper

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?

- 1 We note that it is proposed to change the names within the IASC Foundation in order to align with the term IFRS. . When jurisdictions adopt IFRS, they select IFRS as the set of **accounting standards** that defines how companies in their jurisdictions must prepare and present their **financial statements**. Other financial reporting requirements remain in the remit of the legislator and regulator of those jurisdictions. As a result, globally accepted **accounting standards** should remain set by an **accounting standards** board.
- 2 We acknowledge that the proposal by the Trustees would bring consistency with the choice made at some point in time to name the IASB's pronouncements "IFRS". We however believe that this choice of name has already brought confusion as to the substance of the mandate with which jurisdictions entrust the IASB. Keeping the existing names of "IASCF" and "IASB" serves the purpose, we believe, of not extending the confusion any further. The question raised by the Trustees is not a question of names, but rather a question of substance. The change in name should not pre-empt any wider debate on the objective and direction of the IASB beyond its existing mandate, as currently expressed in the Constitution of the Foundation.

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?

- 3 As indicated above in answer to question 1, we disagree that the IASCF and IASB should have any goal other than to set accounting standards. We therefore disagree with the proposed change.

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

The objectives of the IASC IFRS Foundation are:

(a) to develop, in the public interest, a single set of high quality, understandable, and enforceable and globally accepted accounting-financial reporting standards that require high quality, transparent and comparable information in financial statements and other financial

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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 emerging economies~~; and

(d) to bring about convergence of national accounting standards and ~~International 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?

- 4 We agree with the change of emphasis represented by the replacement of “global standards” by “globally accepted standards” in section 2(a). We think that this implicitly reinforces the requirement for the standards to be of high quality as it recognises that IFRSs cannot be imposed but have to be adopted by the competent authorities.
- 5 We note that the Trustees have decided not to include a specific reference to principle-based standards. We regret this decision. We would have welcomed the expressed commitment by both the IASB and the IASCF for principle-based standards. Therefore we strongly support a specific reference to the principle-based approach in the Constitution. This could be achieved by changing paragraph 2(a) of the Constitution to refer to “high quality, principles-based, understandable, enforceable and globally accepted financial reporting standards”. As a separate matter, we believe the IASB should determine and set out the main attributes of principle-based standards. This would add to the credibility of the accounting standards as well as the IASB and give a clear indication to the market of the direction in which the IASB is heading when it expresses its support for principle-based standards.
- 6 We believe that the existing objective of convergence is no longer sustainable as in our view IFRSs have now achieved a sufficient degree of acceptance and have been adopted widely enough for them to be fully independent of national standards. The acceptance of IFRS by the US Securities and Exchange Commission for foreign registrants is a clear indication of the wide acceptance of IFRS. The emphasis needs to be on high quality global standards. We believe that the drive for convergence should be changed to the objective of promoting and facilitating national adoption of IFRS. New standards and improvements to existing standards should be developed by the IASB with the support of the best standard-setting resources available from national/regional standard setters and similar bodies. This should include active participation from users, preparers and accountants at a global level.
- 7 We note that the Trustees have not taken up our suggestion in our earlier comment letter that the Constitution be aligned with the new Conceptual Framework by addressing stewardship as well as economic decision-making. We reiterate our view that the Constitution should address stewardship amongst its objectives. We are convinced that the reporting of stewardship is a basic characteristic of accounting and financial reporting and that the accountability of management is important to enable users and existing shareholders to make

decisions about the management to generate economic value. Stewardship has been an important reason for producing financial statements in Europe.

- 8 Finally, we agree with the Trustees' decision not to widen the remit of the IASB to cover the public and not-for-profit sectors at present.

Question 4: The Trustees seek views on the proposal to amend section 3 of the Constitution as follows:

The governance of the IASB 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 endeavours to ensure that the requirements of this Constitution are observed; however, they ~~are empowered to~~ may make minor variations in the interest of feasibility of operation if such variations are agreed by 75 per cent of all the Trustees.

Do you support this clarifying amendment?

- 9 We believe that the link between the Trustees and the Monitoring Board is a necessary and appropriate measure to establish public oversight and enhances the credibility of both the IASB and the IASCF. The Trustees should receive guidance from and report on a regular basis to the Monitoring Board in order to discharge their responsibility.

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 IASB Foundation and the IFRS Board IASB 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 accounting 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; and*
- (d) one Trustee appointed from Africa;*
- (e) one Trustee appointed from South America; and*
- (f)(d) two ~~four~~ Trustees appointed from any area, subject to maintaining establishing overall geographical balance.*

Do you support the specific recognition of Africa and South America?

- 10 We agree with these changes.

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

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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?

and

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 IASB IFRS Board, who shall also be the Chief Executive of the IASC IFRS Foundation. ~~One~~ Up to two of the full-time members of the IASB IFRS Board shall may also be designated by the Trustees as a Vice-Chairman, whose role shall be to chair meetings of the IASB IFRS Board in the absence of the Chairman or to represent the Chairman in external contacts in unusual circumstances (such as illness). 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 individual member (or members) concerned is (or are) the Chairman-elect.

11 We agree that the appointment of one or two Vice-Chairmen would assist the Chairmen of the IASCF and IASB in the performance of their functions.

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.

12 As stated in our previous response, we are broadly satisfied with the Trustees' responsibilities with respect to oversight as set out in the Constitution. We do not believe that any major changes are required to that wording at present. Our concern is with how and to what extent the Trustees fulfil those responsibilities.

13 We therefore welcome the Trustees' stated intention to address the concerns referred to above "by way of enhanced accountability, consultation, reporting and ongoing internal due process improvements". We acknowledge that the Trustees have made several improvements to their governance process since 2005, as listed in the paper, but we think it would be helpful for the Trustees now to draw up and publish their plans for achieving the future enhancements mentioned in the paper. In particular, it would be helpful if the Trustees clarified to whom they owe the enhanced accountability. We believe that this should be the Monitoring Board.

Question 8: Section 28 would be amended as follows:

The IASB IFRS Board will, in consultation with the Trustees, be expected to establish and maintain liaison with national standard-setters and other official bodies ~~concerned 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 ~~International Accounting Standards and International Financial Reporting Standards~~ IFRSs.

Do you support the changes aimed at encouraging liaison with a broad range of official organisations with an interest in accounting standard-setting?

- 14 We agree that the development of IFRS is a principal reason for the creation and maintenance of these relationships and so welcome this insertion.
- 15 We appreciate that the IASB cannot liaise with all organisations that may have an interest in financial reporting and therefore the text refers to national standard setters and other official bodies. We expect that EFRAG is such an official body that the IASB is expected to maintain liaison with.

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 IASB 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?

- 16 We agree with the proposed change in the length of terms in that we agree that the maximum length of service for board members should be 8 years except for the chairmanship. However, as the initial term may be for 'up to' 5 years, while a second term is for exactly 3 years the Trustees may not have the flexibility they intend. As the board members now have staggered terms the constitution should perhaps say that the two terms together cannot exceed 8 years, but leave the length of each term to the discretion of the Trustees.

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 authorise 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 IASB-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.

- 17 In our earlier response we stated that we believed that there was a risk of a fast-track procedure preventing the IASB's constituents from participating effectively in the due process, either because they work on a consultative basis or because of language difficulties..

- 18 It is the due process which gives the IASB, as a private-sector standard-setter, its legitimacy and contributes to ensuring that the standards are of high quality. It is therefore important that this process is not compromised. The amendment to the Constitution as drafted means that the period of consultation could be reduced (indeed, in the extreme, to one day) with the approval of the Trustees. We think that this is only acceptable in very rare cases and extreme circumstances and on the condition that the Trustees provide prior approval each time when the fast-track procedure is used. We agree that the period of public comment cannot be removed. The Trustees need to consider on a case by case basis how to secure appropriate transparency during an accelerated due process.
- 19 Should the Trustees decide to keep the fast-track procedure, we note that the text is formulated as a requirement "...the IFRS Board shall..." instead of in form of a permission.

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 IASB-IFRS Board shall:

~~(e)~~(d) have full discretion in developing and pursuing the technical agenda of the IASB-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 IASB-IFRS Board may outsource detailed research or other work to national standard-setters or other organisations;

- 20 Whilst we accept that the IASB must have the ability to determine its own technical agenda, we do not think that the proposed amendment to introduce mandatory consultation about the agenda with the Trustees and the SAC goes far enough. We think that a regular public consultation of the wider constituency is necessary to ensure that the IASB is fully aware of the range of views about the agenda and the prioritisation of projects. Once the Board has obtained those views it would have the information and the power to decide its agenda, but it should also have the obligation to explain to the Trustees, the SAC and other constituents the grounds for its decisions. We think that this degree of transparency and accountability would enhance the legitimacy of the Board's agenda decisions.
- 21 What is recommended in the preceding paragraph is that a regular public consultation should take place. We think that, when justified by exceptional circumstances, the Board should still have the discretion to modify its agenda and priorities without such wide consultation. Again, the Board should explain why the changes have been made and what the implications are for its agenda in general.

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.

- 22 In view of the recent changes to the composition of the SAC, we agree that it is premature to make further significant constitutional changes to the SAC at present. We encourage the Trustees in their proposal to monitor the SAC's operation and effectiveness in achieving its objectives.

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.

23 We have no objections to this amendment.

Other observations

24 In our earlier comment letter, one of our key points was the concern about how the process for decisions about the re-exposure of proposals could be made more transparent and how the Trustees could ensure that the process was followed. This point does not appear to have been taken up in the paper. While not wishing to introduce further levels of bureaucracy into the due process, we continue to think that it would be helpful to constituents to understand how and why the Board makes the decisions it does about re-exposure.

25 We wish to reiterate our concerns about the responsiveness of the IASB. Situations have arisen where a clear majority of significant commentators have expressed serious concerns about a proposed standard but their comments are rejected on the grounds that they have raised no new arguments and that these arguments have already been considered by the IASB during the development of the proposed standard. The fact that the comments have been raised by a substantial majority of significant commentators during every stage of the standard-setting process should, in itself, oblige the Board to address the concerns again, and to reconsider the impact assessment and needs analysis in order to assess whether all practical implications have been appropriately considered. Furthermore, any reassessment should be transparent and the results communicated to the commentators directly.