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Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Berlin, September 27th, 2007

RE:

Release Nos. 33-8818; 34-55998: Acceptance from foreign private issuers of financial statements prepared in accordance with International Financial Reporting Standards without reconciliation to U.S. GAAP – File S7-13-07

Dear Ms. Morris,

we highly appreciate the opportunity of providing our view on the U.S. Securities and Exchange Commission ("SEC") proposed rule, release nos. 33-8818 and 34-55998. This letter represents the view of the Accounting Standards Committee of Germany ("ASCG") and the German Accounting Standards Board ("GASB").

The ASCG is registered as a not-for-profit organisation. In an agreement with the German Federal Ministry of Justice the ASCG has been recognised as the official standard-setting organisation for Germany. Simultaneously, it has been charged with establishing and financing an independent standard-setting board and delegating the role of standard-setting to that board, the GASB. Beside setting national accounting standards, it is one of its objectives to comment on accounting matters dealt with by international bodies.

As a standard-setter we are strongly convinced of the comprehensive benefits to all parties involved such as preparers, auditors, users and regulators by applying one set of high-quality financial reporting standards globally.

Conceptually, the SEC's proposal 33-8818/34-55998 is around the question whether a country should require foreign issuers listed on the country's stock exchanges to provide financial data under an accounting regime other than the regime to be applied under the foreign company's home legislation. We believe that this question can be answered both, from a rather technical or a rather political perspective. The technical perspective looks at whether not requiring reconciliations to United States generally accepted accounting principles ("U.S. GAAP") would harm the investors. In contrast, the political perspective looks at the relationship between the U.S. and the home countries of the foreign companies with U.S. listings and in our case specifically at the efforts of the U.S. and the EU to improve transatlantic integration

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by lowering the hurdles of cross U.S./EU public listings. We would like to comment on the SEC proposal from both of these perspectives:

The SEC Proposal from the Technical Perspective

International Financial Reporting Standards (“IFRS”) are already accepted or required in most parts of the world and thus in the most important capital markets of the world, except for the U.S. capital markets. As the SEC itself states in the proposal, about 100 countries already permit or require the use of IFRS and many others are in process of replacing their national standards with IFRS. Hence, already today many investors, analysts and others in the world, including those in the U.S., deal with IFRS-based financial statements and therefore are familiar with IFRS. Neither users nor the interested parties in general have questioned the decision usefulness of information derived from financial statements prepared in accordance with IFRS.

Comparability of financial information implies equivalence of different sets of accounting standards and their respective consistent application.

Equivalence in terms of enabling users to take similar economic decisions in similar situations, which reflects a definition developed by CESR in 2005, does not require complete convergence of the reporting standards, but the same significant accounting principles, which was also confirmed by the SEC. The reaffirmation of the relevance of the roadmap by signing the Memorandum of Understanding (“MoU”) between the Financial Accounting Standards Board (“FASB”) and the International Accounting Standards Board (“IASB”) in February 2006 can be seen as the most important condition to meet those requirements. Taking into account the accounting areas in which IFRS/U.S. GAAP convergence has already been achieved and those where a reasonable degree of convergence can be expected due to the agreed work programme, we are satisfied with the progress and therefore consider U.S. GAAP and IFRS as equivalent and sufficiently similar. However, we would like to emphasise that the process of convergence has to be continued beyond achieving the goal of the MoU, i.e. a later divergence has to be avoided by continuously fostering the spirit of that memorandum. But we believe that the EU and the SEC are in a position strong enough to support the IASB and the FASB in continuing the convergence momentum.

The SEC in its proposal makes reference to certain observations regarding IFRS and asks the question whether these observations should impact the SEC’s decision to accept IFRS without reconciliation. Among these are the lacking guidance in certain areas, the influence of political interests on the standard setting process and the existence of accounting policy options. As the debate is around reconciliation from IFRS to U.S. GAAP, we believe that such observations need to be viewed in relative terms by comparing with regard to these observations IFRS with U.S. GAAP, rather than in absolute terms. We do not doubt that some accounting topics are not covered so far in IFRS. We also do not doubt that the development of IFRS is subject to certain influence in some degree. But we are nevertheless of the opinion that each of both, U.S. GAAP and IFRS, represent a set of high-quality financial reporting standards, developed under an equivalent, robust due process.



Concerning the identified potential risk of inconsistent application of IFRS, which would restrict comparability, we want to stress that there is a variety of measures contributing to consistent application of IFRS:

Firstly and mainly, IFRIC, the only authoritative body to interpret the IFRS, considers every input from the public in public meetings, observed by IOSCO and EU-representatives.

Secondly, the regulators themselves can contribute to consistent application of IFRS worldwide. In their August 2006 Work Plan SEC and CESR agreed about certain helpful procedures. In our view it is crucial that only the regulator of a reporting company's home country takes decisions on IFRS application and that all enforcers act closely together on a worldwide basis to avoid inconsistencies in their views on the appropriate accounting for identical transactions. Even more important, regulators should contribute to consistent application by providing IFRIC with issues at an early stage instead of preparing interpretations themselves. In any case, international databases on regulator's IFRS decisions (such as those recently established by IOSCO and CESR) should be made completely public.

Thirdly, all big audit firms have available and in use well developed mechanisms including international databases for all interpretative decisions to ensure consistent application of IFRS amongst their clients worldwide. Deep technical knowledge with regards to IFRS has been built up in the audit firms for many years, starting many years before IFRS became mandatory in the EU in 2005 via the "EU-IAS Regulation" No. 1606/2002.

Furthermore, the European Commission established a Roundtable on consistent application of IFRS in 2006, gathering views in Member States through audit firms, standard setters and other bodies. Issues with an identified risk of divergent application are forwarded to IFRIC. It should be underlined that the Roundtable does not issue any interpretations or guidance under IFRS. This is the task of IFRIC only.

Beside those mechanisms related to consistent application of existing standards, the IASB is in process of developing and implementing standards on all topics that are currently not dealt with and that were identified by SEC staff in its review of the annual reports of more than 100 foreign private issuers preparing their financial statements in accordance with IFRS in 2006.

Due to the equivalence of IFRS to U.S. GAAP in our opinion and the mechanisms to ensure consistent application, we regard a reconciliation to U.S. GAAP as not justifiable when filing financial statements in accordance with IFRS.

Furthermore and based on our strong belief that the IFRS as published by the IASB are of equal quality as U.S. GAAP, it should not matter whether financial statements under GAAP other than IFRS or U.S. GAAP are reconciled to U.S. GAAP or to IFRS as published by the IASB. Accordingly we propose to the SEC to change its current proposal to the effect that foreign private issuers will be allowed to reconcile financial statements prepared under GAAP other than U.S. GAAP or IFRS to either regime and not just U.S. GAAP. Such a move would also significantly reduce the burden for entities that are required by local law to follow a deviant of IFRS as published by the IASB, e.g. IFRS as adopted by the EU without conflicting with the overarching goal of applying one set of high-quality financial reporting standards globally.



Consequently speaking, we believe that the SEC should amend all references to U.S. GAAP by adding respective references to IFRS as published by the IASB in Form 20-F and all other requirements that foreign private issuers need to follow. No transitional disclosures should be required from foreign private issuers in their first Form 20-F including financial statements prepared (a) in accordance with IFRS as published by the IASB or (b) under other GAAPs together with a reconciliation to U.S. GAAP or to IFRS as published by the IASB. Simultaneously, we support the proposed amendments to the option under (f) (2) (B) (ii) in General Instructions G of Form 20-F for first-time IFRS users. According to our above mentioned proposal of allowing reconciliations to IFRS as published by the IASB from other GAAPs, we propose to amend the option under (f) (2) (B) (i) accordingly. To create a level playing field, the same safe harbour provisions should be provided to IFRS users as to U.S. GAAP users.

To sum up: From a technical perspective we support the SEC's proposal to accept financial statements prepared in accordance with IFRS as published by the IASB from foreign private issuers. But we urge the SEC to accept for financial statements prepared under GAAP other than U.S. GAAP and IFRS as published by the IASB, e.g. IFRS as adopted by the EU, reconciliations to IFRS as published by the IASB.

The SEC Proposal from the Political Perspective

Negotiations between the U.S. and the EU about access requirements to their capital markets have taken place over decades. The negotiations have recently reached their provisional peak at the U.S.-EU-summit in April 2007 by signing the "FRAMEWORK FOR ADVANCING TRANSATLANTIC ECONOMIC INTEGRATION BETWEEN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA". In this agreement the President of the United States of America George W. Bush and the President of the European Council Angela Merkel together with the President of the European Commission José Manuel Barroso agreed on promoting and seeking to ensure conditions for the U.S. Generally Accepted Accounting Principles and International Financial Reporting Standards to be recognised in both jurisdictions without the need for reconciliation by 2009 or possibly sooner.

It is the objective of the above mentioned U.S./EU agreement to allow U.S. companies to be listed in the EU and EU companies to be listed in the U.S. with financial statements prepared under the same GAAP that is required for their home country listings. The SEC's proposal, even if amended as proposed above to allow reconciliations to IFRS instead of to U.S. GAAP falls short of this objective. EU companies are required by EU law to prepare their consolidated financial statements under IFRS as adopted by the EU. Under the SEC's proposal such financial statements would not be accepted without reconciliation to U.S. GAAP. In contrast, the EU is currently making efforts to continue allowing U.S. companies listed in the EU capital markets to file financial statements in accordance with U.S. GAAP under the EU Transparency Directive which means that no reconciliations will be required.¹

¹ FIRST REPORT TO THE EUROPEAN SECURITIES COMMITTEE AND TO THE EUROPEAN PARLIAMENT on convergence between International Financial Reporting Standards (IFRS) and third country national Generally Accepted Accounting Principles (GAAPs), COMMISSION OF THE EUROPEAN COMMUNITIES, Brussels, 6.7.2007, COM(2007) 405 final.



At present, there is in fact only one issue, i.e. the carve-out in IAS 39, for which the IFRS as adopted by the EU differ from the IFRS as published by the IASB. As this difference concerns an accounting policy option, it does not result in an unavoidable difference in the financial statements. Although the EU Commission has generally committed itself to IFRS in terms of the IAS-Regulation 1606/2002, there might be other differences in future based on conflicting requirements affecting equity and profit or loss.

Therefore, from the political perspective we urge the SEC to contribute to a mutual recognition of financial statements prepared by U.S. companies in the EU and by EU companies in the U.S. by allowing EU companies to file without reconciliation financial statements prepared under IFRS as adopted by the EU. We fear that not taking such a step could result in the EU ceasing its current efforts to continue allowing U.S. companies to file U.S. GAAP financial statements without reconciliation to IFRS, which would lead to a scenario that cannot be desirable from anyone's point of view. On the other hand, mutual recognition would also help to increase the attractiveness for foreign private issuers from Europe to be listed at the New York Stock Exchange.

If you want to discuss any aspects of this letter in more detail, please do not hesitate to contact us:

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Yours sincerely,

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