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Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
By E-mail: rule-comments@sec.gov

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Dear Sirs and Madams,

This letter comments on selected questions posed in Concept Release No. 33-8831 dated August 7, 2007 (the "Concept Release") of the Securities and Exchange Commission (the "Commission"). The Concept Release discusses allowing US issuers to choose whether to file required financial statements using U.S. generally accepted accounting principles ("US GAAP"), promulgated chiefly by the Financial Accounting Standards Board ("FASB"), or the English version of International Financial Reporting Standards ("IFRS"), as published by the International Accounting Standards Board ("IASB").

I provide these comments in several capacities: (a) as a private investor with a sizable portfolio and skepticism about efficient market theory so that I personally use reported financial information; (b) as an active scholar interested in the role of accounting information in capital markets, securities disclosure and corporate governance; and (c) as a university professor who has taught accounting to law students for 15 years and written two books on accounting for law school instruction (one of which is the most widely-adopted book for this purpose).

1. *Do investors, U.S. issuers, and market participants believe the Commission should allow U.S. issuers to prepare financial statements in accordance with IFRS as published by the IASB?*

It would amount to a leap of faith. The Commission seeks comparability through uniformity globally. The Concept Release emphasizes comparability between US enterprises and their non-US competitors.[1] The Concept Release expressly recognizes that the price of pursuing this goal is increased non-comparability that will arise from

[1] Concept Release, p. 7 ("certain U.S. issuers may compete for capital globally in industry sectors in which a critical mass of non-U.S. companies report under IFRS") & p. 12 (if so, "there may be pressure for U.S. issuers in that industry or sector or market to likewise report in accordance with IFRS to enable investors to compare U.S. issuers' financial results more efficiently with those of their competitors").

increased non-uniformity domestically.[2] One class of US issuers would report using IFRS and another class using US GAAP.

The unstated but possibly serious price would be a false sense of global comparability from a veneer of nominal uniformity—uniformity in written standards could disguise considerable diversity in actual practice. Comparability requires not only uniform standards but their uniform application. It would be surprising if participants in the 100 countries endorsing IFRS actually achieved uniform application, considering the varying political, economic and cultural environments that exist throughout the world and the absence of any global enforcement authority that could overcome them.

9. *Would giving U.S. issuers the opportunity to report in accordance with IFRS affect the standard setting role of the FASB? . . .*

In the short-term, FASB would cede considerable standard setting power to IASB. The longer term prospects depend on which of two eventual directions markets follow: most likely, a two-standard model would arise, with IASB setting global standards and FASB setting domestic US standards; less likely, if an actual single set of standards emerged, IASB would rule and FASB would dissolve.

Either way, FASB's diminished role would require changing how it is funded. At present, it is funded by all US-listed companies. If IASB began to set the standards, affected companies should not be required to contribute to FASB's budget. If that occurs, consideration must be given to the consequences for the Governmental Accounting Standards Board (GASB). It is now funded through reallocations from FASB. Reducing FASB's activities and budget would threaten GASB's survival.

13. *Do investors, issuers and other market participants believe giving U.S. issuers the choice to prepare financial statements in accordance with IFRS as published by the IASB furthers the development of a single set of globally accepted accounting standards?. . .*

Yes, if the phrase, "a single set of globally accepted accounting standards," means a set of written standards that are uniform and extensively used by large multi-nationals across the world. But there are two qualifications. First, that is not the same as a single set of standards used in the US. The likely result would be two sets in the US. Second, there is a difference between a "single set of written standards" and a "single set of accounting applications in practice." Allowing the choice would almost certainly further developing the single set of written standards; it can have no effect on how those are applied in practice because neither the Commission nor any authority in the world has the power to enforce standardized applications.

14. *Are investors, U.S. issuers and other market participants confident that IFRS*

[2] Concept Release, p. 13 ("not all U.S. issuers will have incentives to use IFRS"; "investors and market participants would have to be able to understand and work with both IFRS and U.S. GAAP when comparing among U.S issuers").

have been, and will continue to be, issued through a robust process by a stand-alone standard setter, resulting in high quality accounting standards? Why or why not?

It is impossible say whether IFRS "will continue to be" issued in the manner described. The IASB and its parent Foundation are only five years old. They rely on private donations and are not subject to oversight by any authority. They could dissolve at any time. Please also refer to comments to questions 15 and 16 below.

15. *Would it make a difference to investors, U.S. issuers and other market participants whether the Commission officially recognized the accounting principles established by the IASB?*

"Officially recognize" presumably refers to formal anointment of IASB as a sanctioned standard setter for purposes of US securities laws. This implicates issues associated with the different relationships the Commission has with IASB and FASB. Some are highlighted in comments to question 16 below.

16. *What are investors, U.S. issuers and other market participants' views on how the nature of our relationship with the IASB, a relationship that is different and less direct than our oversight role with the FASB, affects the Commission's responsibilities under the U.S. securities laws?*

The Commission's relationships with these bodies are subject to various legal and prudential constraints. Apart from obvious constraints under such laws as the Administrative Procedure Act, potential constraints appear in the Sarbanes-Oxley Act of 2002 ("SOX"). It authorized the Commission to recognize bodies as accounting standard setters that meet stated criteria.[3] These include some that IASB clearly meets (such as being a private entity having trustees unaffiliated with public accounting firms); some it clearly lacks (such as simple majority voting to approve standards[4] and public funding); and some that it may or may not possess (such as prompt consideration of new standards[5] and protecting investors under US securities laws). It is possible that the Commission may recognize standard setters lacking attributes that SOX specifies but this is uncertain.[6] Moreover, the stated attributes express public policy values that would influence the prudence of the Commission recognizing bodies lacking them. Consider two examples.

First, as the Concept Release correctly notes, IASB is financed largely by

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[3] Sarbanes-Oxley Act, § 108(b), codified at 15 U.S.C. § 77s; Sarbanes-Oxley Act, § 109, codified at 15 U.S.C. § 7219.

[4] IASB standards must be approved by a vote of 9/14, not a simple majority as SOX contemplates. IASCF Foundation Constitution ¶30. http://www.iasb.org/About+Us/About+the+Foundation/Constitution.htm.

[5] IASB has set a self-imposed moratorium on any new standards until at least 2009. http://www.iasb.org/Current+Projects/No+new+major+standards+to+be+effective+before+2009.htm.

[6] US securities laws vest the Commission with authority to establish accounting standards on its own, but SOX narrowly addresses its power to delegate that authority to others.

voluntary contributions whereas FASB is funded by fees Congress levied under SOX. Private funding can create real or apparent conflicts, if donors contribute believing the board will return the favor by passing accounting standards that they prefer. SOX's funding provision eliminated that problem for FASB. Recognizing IASB despite that problem would reintroduce a concern that Congress sought to eliminate.

Second, SOX contemplates that standard setters should have the capacity to assist the Commission in its responsibilities by "improving . . . the protection of investors under the securities laws."[7] That determination is for the Commission to make and IASB might have the capacity. But, as an international organization with international members and constituencies, it could be difficult for IASB to commit to protecting investors under US law. Certainly it is harder for IASB to look out for US investors than it is for FASB to do so.

19. *What are the incentives and barriers relevant to the college and university education system's ability to prepare its students for a U.S. public capital market in which U.S. issuers might report under IFRS?*

Opining as author of two books on US GAAP for law school instruction, it should be possible for authors to prepare new versions of existing books featuring IFRS instead of US GAAP. It is possible to include both in a single book, but that would mean either more pages or reduced scope. The main costs are time and opportunity; royalties generally are modest.

A limitation of traditional textbooks is that they tend to elaborate standards as written with less attention to how they are applied in practice. Within the US, this has posed limited pedagogical concern for the variations are not overwhelming and students can be alerted to them. The concern may be acute with IFRS, however, given the likelihood of greater variation in application worldwide.

26. *How could global consistency in the application of IFRS be facilitated by auditors of U.S. issuers?*

The reference to "global consistency" is vital. It reflects, in part, the vacuum in enforcement that a move to worldwide IFRS otherwise poses. Absent an official global enforcement authority, relying on auditors is an appealing second best option. Counting on those firms for this function would also require a leap of faith, however. At minimum, it would require that those firms audit all the important companies in the world that report under IFRS—a feat that is far from certain.

27. *Do you think that the information sharing infrastructure among securities regulators through both multilateral and bilateral platforms will improve securities regulators' ability to identify and address inconsistent and inaccurate applications of IFRS?*

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[7] Sarbanes-Oxley Act, § 108(b)(1)(B), codified at 15 U.S.C. § 77s.

All important accounting decisions require judgments. People making those judgments—managers, auditors, investors, regulators, courts—do so in local, not global, environments. Judgments will differ across countries to reflect local political, economic and cultural realities, such as legal norms; financial market size and scope; relative ownership concentration, in families or industrial groups; the character and status of the auditing profession and the press; and a government's role in an economy.

Even if all securities regulators in the world agreed on exactly what each IFRS provision meant and insisted that it be applied that way consistently by all enterprises subject to their respective jurisdictions (itself a dubious proposition), governments in each jurisdiction are unlikely to pride uniform accounting over other national priorities. It is not so much getting local securities regulators to agree on standardization—whether through partnerships like IOSCO or CESR—but getting their governments to do so. There is no conceivable global infrastructure capable of inducing sovereigns to relinquish control over financial reporting.

National interests can trump aspirations for global uniformity. When IASB proposed accounting standards for complex financial instruments, for example, French banks objected, saying the standards would cause too much volatility in their financial reports. The French government demanded and obtained an exception. Also, when accounting rules required Japanese banks to record substantial losses on large loans in the 1990s, the Japanese government intervened against doing so to avert a national financial crisis. Governments are unlikely to cede sovereign prerogatives in the name of global accounting uniformity and exceptions like these would stealthily destroy uniformity.

Many EU member countries are notorious for ignoring EU directives, especially Czech Republic, Greece, Italy, Luxembourg and Portugal. Both Italy and France have famously exercised national sovereignty to resist takeovers of domestic companies by foreign ones despite contrary EU standards. National variations in IFRS already appear within the EU, whose members include such diverse countries as Cyprus, Hungary, Malta and Slovakia. IFRS endorsers are an even more varied lot, including Armenia, China, Ecuador, Egypt, Korea, Kuwait and Nepal. It is naïve to believe that any uniform global accounting standards will be applied uniformly in all these places, whatever securities regulators may agree to.

30. *Who do commenters think should make the decision as to whether a U.S. issuer should switch to reporting in IFRS: a company's management, its board of directors or its shareholders? What, if any, disclosure would be warranted to inform investors of the reasons for the timing to implement such a decision? . . .*

Concerning the first query, it is difficult to imagine how, under state corporation law in the United States, any party other than a corporation's board of directors could make any such decision. Managers of corporations have limited inherent authority to do anything absent board authorization. It is hard to see why they would have the power to choose the standards of financial reporting to be used. It is possible that Congress would alter this basic principle of state corporation law by passing preemptive legislation but that does not seem wise or likely. Nor would current state law enable vesting this power in the shareholders of a public corporation. It also does not seem likely that Congress would be willing to alter this allocation of power, although the wisdom of such a course seems more apparent than in the case of allocating this power to managers.

Concerning the second query, the issuer should disclose all material considerations that enter into any such decision. More importantly, it should disclose, on an ongoing basis, any financial contributions it makes to IASB without regard to amount or timing (that is, it should be deemed material). Consideration should be given to whether an issuer should also disclose financial contributions that its outside auditor makes to IASB or otherwise to induce audit firm disclosure.

35. *Would it be appropriate for U.S. issuers that move to IFRS to be allowed to switch back to U.S. GAAP? If so, under what conditions?*

While the Concept Release emphasizes comparability between multi-national enterprises, it would be useful to emphasize equally the importance of comparability by an enterprise from period to period. Allowing reporting entities to shift between one set of accounting standards and another would undermine that basic principle of accounting. Absent restrictions, an enterprise would simply maintain records using both formats and switch at will as appearances dictated. Existing limitations on accounting changes that appear in such contexts as inventory accounting might be adapted to prevent such arbitrage.

Publishing the Concept Release seems prudent but pursuing the concept would amount to a leap of faith, rich with paradox and irony. One paradox is how moving to a single set of global standards means the US would have a double set of internal standards. One irony is how the Concept Release acknowledges, twice, that the whole notion is complex[8] while the Commission simultaneously says it is fighting against complexity in financial reporting![9]

Very truly yours,

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[8] Concept Release, at p. 7 (noting "complexity of permitting U.S. issuers to prepare financial statements" under either set of standards); *id*. p. 28 ("A move to a financial reporting environment in the U.S. public capital market in which U.S. issuers may provide investors with financial statements prepared in accordance with IFRS as published by the IASB *would be a complex endeavor*") (emphasis added).

[9] Speech of Christopher Cox, Commission Chairman (Aug. 2, 2007) (inaugurating Commission's Advisory Committee on Improvements to Financial Reporting by declaring an "all-out War on Complexity in accounting"). *See* http://www.sec.gov/news/speech/2007/spch080207cc.htm.