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September 24, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: Comments on Proposed Acceptance from Foreign Private Issuers of Financial Statements Prepared in accordance with International Financial Reporting Standards without Reconciliation to U.S. GAAP; File No. S7-13-07

Dear Ms. Morris:

We are submitting this letter in support of the comments of several European organizations on the Commission's proposal to accept from foreign private issuers financial statements prepared in accordance with International Financial Reporting Standards ("IFRS"), without reconciliation to generally accepted accounting principles as used in the United States ("U.S. GAAP"). The proposal is discussed in Release No. 33-8818; 34-55998; International Series Release No. 1302; File No. S7-13-07 (the "Release").

Like the European organizations, we strongly support the elimination of the U.S. GAAP reconciliation requirement for issuers that publish financial statements prepared in accordance with IFRS. We believe that IFRS today meets the Commission's long-standing test for the elimination of the reconciliation requirement: it is a high-quality body of accounting principles that is supported by an effective infrastructure, allowing it to be used by investors with a high degree of confidence to compare investment opportunities. We also believe that the market has shown itself to be indifferent to the substance of the U.S. GAAP reconciliation that is included, at great expense, by European issuers in their Commission filings.

By eliminating the reconciliation requirement, the Commission will substantially improve the perception of the U.S. capital markets for European companies and other foreign private issuers. European companies have been closely following the "roadmap" process, and they are eagerly anticipating the adoption of the Commission's proposal on the announced schedule, in 2009

(for calendar year 2008 financial statements). We encourage the Commission to make every effort to meet this timetable.

The elimination of the U.S. GAAP reconciliation requirement is a key step in a process that will continue for many years, and that may ultimately lead to a single set of global accounting standards used by companies worldwide, including U.S. companies.[1] As former Chief Accountant Nicolaisen said during his 2005 "Roadmap" speech, it is important to "get it right."[2]

We believe that the Commission has, for the most part, "gotten it right." The Commission should, however, improve the proposed amendments by extending them to issuers that publish financial statements in accordance with IFRS as adopted by the European Union, rather than limiting them to IFRS as published by the IASB. We agree with the Commission that having a single, global IFRS standard would be highly desirable, and should be the ultimate goal of regulators worldwide. Contrary to the Commission, however, we believe that a decision by the Commission to accept IFRS as adopted by the European Union will increase the chances of this goal ultimately being met, because it will encourage European companies to maintain or add U.S. listings, and will thus enhance the status of IFRS as a truly global accounting standard. We also believe that the Commission should extend the proposed amendments to other high quality jurisdictional variants of IFRS that meet the criteria described in this letter.

In the remainder of this letter, we explain in more detail why we believe the time is right for the Commission to adopt the proposed amendments, and why we think the Commission should modify them to accommodate IFRS as adopted by the European Union. We also provide comments on a number of other issues for the Commission's consideration.

1. It is appropriate to eliminate the U.S. GAAP reconciliation requirement, because IFRS constitutes a high-quality global financial reporting structure.

As the Commission is aware, IFRS is now the required accounting standard for thousands of European listed companies, including those that are listed in the United States. Those companies, along with regulators, the accounting profession and the European (and global) investment community, have made a remarkably smooth transition to IFRS. The transition process involved the publication by European companies of qualitative transition information for fiscal year 2003, initial quantitative transition information for fiscal year 2004 and full IFRS financial statements beginning with fiscal year 2005 (including 2004 comparative information). Substantially all European listed companies now have three years of audited IFRS financial information. By fiscal year 2008, they will have five years of audited IFRS financial information.

This highly successful transition process has made IFRS one of the most widely used and understood standards in the world. Difficult or novel concepts such as fair value accounting for certain assets, component-based depreciation, IFRS hedge accounting and concession accounting have been explained to the market by many of the largest and most widely followed companies in the world. The IASB and IFRIC have substantial experience dealing with new issues and have made strong progress in resolving the few points that remained outstanding at the time of the transition. The world's major auditing firms have established standards and principles for applying IFRS. European regulators, with their efforts coordinated through CESR, have made great strides to

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[1] See Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards, Release No. 33-8831, 34-56217, IC-27924 (corrected version, August 7, 2007) (the "U.S. Issuer IFRS Concept Release").

[2] Donald T. Nicolaisen, Statement by SEC Staff: A Securities Regulator Looks at Convergence, April 2005, available at http://www.sec.gov/news/speech/spch040605dtn.htm (the "Roadmap Speech").

encourage companies in the same industries to present their IFRS financial statements in a comparable manner.

The use of IFRS is also expanding internationally. As the Commission noted in the Release, Australia has already incorporated IFRS in its national accounting standard, and Canada and Israel are actively considering the use of IFRS. In addition, companies from emerging markets such as Russia, China and India are often embracing IFRS accounting as a mark of quality designed to inspire confidence from investors (much as they have traditionally done with U.S. GAAP), or to permit their securities to be offered and listed in the European market.

By any standard of measurement, IFRS meets the criteria for the elimination of U.S. GAAP reconciliation, as established by the Commission over the last decade:[3]

- IFRS constitutes a high-quality accounting standard, consisting of a comprehensive set of neutral principles that require consistent, comparable, relevant and reliable information that is useful for investors, lenders and creditors, and others who make capital allocation decisions.

- IFRS audits are conducted under high-quality auditing standards.[4]

- Audits are made by audit firms with effective quality controls. For filings with the Commission, this is ensured not only by applicable European requirements, but also by the requirement that auditors be registered with the Public Company Accounting Oversight Board.

- The accounting profession has in place profession-wide quality assurance for IFRS financial reporting.

- There is active regulatory oversight, including coordination among European regulators through CESR. For companies that file periodic reports in the United States, the Commission participates actively in this process through the review and comment process.

The quality of IFRS financial statements is also reflected by their wide acceptance by the global investment community, which has led investors to be effectively indifferent to the substance of the U.S. GAAP reconciliation provided by European issuers that are listed in the United States. As part of the process of preparing this letter, we asked a number of companies that are members of the European organizations we are supporting whether they receive questions from investors relating to the U.S. GAAP reconciliation. They uniformly responded that they never receive any such questions. In addition, we have analyzed the holdings of the ten U.S. mutual fund groups with the largest Western European exposure, updating a study that we initially did in connection with our comments on the Commission's originally proposed deregistration rule (Exchange Act Rule 12h-6).[5] We found that, as of June 30, 2007, the principal European funds of these groups held on average

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[3] See, e.g., SEC Concept Release: International Accounting Standards, Release Nos. 33-7801, 34-4230; International Series No. 1215 (2000) (the "2000 Concept Release").

[4] The proposed amendments would not affect the requirement that audits of IFRS financial statements in Commission filings be conducted in accordance with the auditing standards of the Public Company Accounting Oversight Board. We encourage the Commission to monitor the continuing development of International Auditing Standards and, at the appropriate time, to accept audits made in accordance with those standards or other high quality auditing standards.

[5] See Letter, dated February 28, 2006, from Cleary Gottlieb Steen & Hamilton LLP, available at http://www.sec.gov/rules/proposed/s71205/cleary022806.pdf.

51.5% of their Western European investments (by number of investee companies) in shares of companies that are not Exchange Act reporting companies (based on value, the figure is 40.2%). As we noted in the deregistration context, we believe that this is clear evidence that these investors do not view Exchange Act reporting (and thus U.S. GAAP reconciliation) as an essential factor in deciding how to invest their assets in Europe.[6]

At the Commission's March 6, 2007 Roundtable relating to the possible elimination of U.S. GAAP reconciliation for issuers publishing IFRS financial statements, the members of the "investor" panel clearly stated that they do not find the U.S. GAAP reconciliation to be useful as a substantive matter. They said that the U.S. GAAP reconciliation has in the past been useful primarily because it imposed a level of discipline that ensured the publication of quality financial disclosure.[7] If the Commission finds (consistent with our view) that IFRS and the surrounding infrastructure provide an appropriate level of rigor and quality control, then the U.S. GAAP reconciliation is no longer needed for this purpose.

In contrast, the cost to issuers of U.S. GAAP reconciliation is significant. While we are not aware of any authoritative study of the cost of U.S. GAAP reconciliation, we believe based on discussions with reporting companies that the annual cost (including the value of time spent by internal personnel) for a company that has been reconciling to U.S. GAAP for several years will typically amount to at least a few hundred thousand dollars, and possibly significantly more,[8] depending on the complexity of the reconciliation and on whether the company has recently undertaken significant acquisitions.[9]

For a company contemplating a new U.S. listing, the cost can be significantly higher, given the initial training and analysis that needs to take place. In our experience, when a large company prepares for a new U.S. listing, it is not uncommon to see a team of 20 or 30 internal professionals, plus dedicated external consultants, auditors and legal counsel, spending significant time on the listing project, which often can take a year or more to implement. By eliminating the U.S. GAAP reconciliation requirement, the Commission would dramatically reduce the cost of a new listing.

The Commission has noted in the Release that there are still some areas in which IFRS is developing. These include the development of uniform income statement presentation formats, accounting for insurance contracts and extractive industries, and common control business combinations. Like the Commission, we do not believe that the lack of comprehensive guidance or standards in these areas should delay the acceptance of IFRS financial statements without U.S. GAAP reconciliation. It is not surprising that IFRS is not "perfect" and that there are still areas in which work remains to be done. Even after these issues are completely dealt with, there will inevitably be new issues that will require the IASB and IFRIC to continue to adapt IFRS. The Commission should recognize the tremendous progress that has been made with IFRS, as well as the importance of meeting the 2009 deadline. It should treat the remaining issues by continuing its active participation

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[6] These figures have not changed significantly compared to the figures as of December 31, 2005, when we found that non-Exchange Act reporting companies represented 49.4% of the Western European assets of the funds by number and 41.4% by value.

[7] SEC Staff Roundtable on International Financial Reporting Standards "Roadmap," March 6, 2007, transcript available at http://www.sec.gov/spotlight/ifrsroadmap/ifrsroadmap-transcript.txt.

[8] One of the companies represented at the SEC Staff Roundtable estimated the annual cost of its U.S. GAAP reconciliation at $25 million.

[9] While it is not our practice to comment on the Paperwork Reduction Act sections of Commission releases, the estimated savings set forth in Section V.B of the Release seem to us to be quite low, particularly in respect of Forms F-1 and F-4.

in the development of IFRS through IOSCO, as an observer to IFRIC and the SAC, and more generally in its comments on IFRS.

Finally, we believe that the Commission's adoption of the proposed amendments, and its adherence to the 2009 timetable (for 2008 financial statements), could have a positive effect on a similar process that is taking place in Europe. As the Commission is aware, the European Commission and CESR are considering whether U.S. GAAP should be deemed to be equivalent to IFRS for purposes of offering documents and periodic reports filed in the European Union. An affirmative finding would permit U.S. companies to raise funds in the European markets without reconciling their financial statements to IFRS as adopted by the European Union. If the adoption of the proposed amendments improves the prospect of a positive decision in Europe, then the result will be to benefit U.S. companies by making it easier for them to access European markets.

2. The amendments should apply to issuers that use IFRS as adopted by the European Union.

As currently proposed, the U.S. GAAP reconciliation requirement would only be eliminated for companies that prepare financial statements in accordance with IFRS "as published by the IASB." Companies that prepare financial statements in accordance with a so-called "jurisdictional variant" of IFRS, such as IFRS as adopted by the European Union, would be ineligible unless they (and their auditors) were able to certify that the financial statements also complied with IFRS as published by the IASB. We believe that the Commission should change its position on this issue.

In the Release, the Commission explained its decision to limit relief to IFRS as published by the IASB as follows:

> We believe that the benefits of moving towards a single set of globally accepted standards as a long-term objective, including increased transparency and comparability of financial statements, are attainable only if IFRS represents a single set of high-quality accounting standards and not a multiplicity of divergent standards using the same name.[10]

We fully agree with the Commission's reasoning and its long-term objective. We also understand that, intuitively, it might seem that limiting the proposed amendments to IFRS as published by the IASB would be the best way of achieving this objective. We believe, however, that in reality the opposite is true.

The necessary assumption underlying the Commission's position is that, as a result of the elimination of the U.S. GAAP reconciliation requirement, dual-listed companies will seek to be in a position to publish financial statements in accordance with IFRS as published by the IASB, and will change their accounting if necessary to achieve this objective. This in turn will provide an incentive to the European Union and other regulators to converge their accounting standards around those published by the IASB.

This might be true in a world where companies felt a great need to be in the United States market regardless of the costs and burdens. While that might have been the case a decade ago, the Commission is aware that it is not the case in today's world where European and other international markets provide companies with substantial liquidity, with access to institutional investors that trade on a global basis.

As a result, if companies believe that the actual or potential burdens of publishing financial statements in accordance with IFRS as published by the IASB are too great, they will choose

[10] Release, at 40.

to raise capital outside the United States. Some Exchange Act reporting companies may deregister, and fewer companies will consider new U.S. listings. It is highly unlikely that companies will push the European Union (or other international regulators) to "converge" with IFRS as published by the IASB solely as a result of the Commission's elimination of U.S. GAAP reconciliation.

IFRS as published by the IASB suffers from a significant problem: there is no company anywhere in the world that is legally required to use this standard. If the proposed amendments are limited to IFRS as published by the IASB, then companies that are legally required to publish financial statements in accordance with IFRS as adopted by the European Union will have the burden of determining, as of each financial statement date, whether there is any material difference between their legally required standard and IFRS as published by the IASB.

Today, most European companies can meet this burden. According to the European organizations with which we have been working, there is no material difference today between IFRS as published by the IASB and IFRS as adopted by the European Union.[11] Nonetheless, having to confirm this at each financial statement date will be burdensome for companies taking advantage of the elimination of U.S. GAAP reconciliation.

The problem could become more serious if, in the future, there were to be a significant inconsistency between IFRS as adopted by the European Union and IFRS as published by the IASB. A company could find itself unable to publish financial statements that meet both of these standards. In such case, the company would be faced with three unattractive options. It could publish a second set of "IFRS" financial statements for its Exchange Act reports, potentially causing investor confusion. It could reconcile its primary IFRS financial statements to U.S. GAAP, incurring significant start-up expenses for a new U.S. GAAP reconciliation process. It could deregister. Even if the company would not otherwise wish to deregister, it might be forced to do so given the problems associated with the other two alternatives.

We are particularly concerned that this situation may arise solely as a result of a timing issue. Companies that publish financial statements as of a date between the adoption of an IASB standard and its endorsement by the European Union might find themselves in an impossible situation even where there is no substantive issue. While one can hope that the adoption and endorsement processes will be coordinated so as to avoid this circumstance, it is impossible to be certain that this will always be the case. It would be unfortunate if a company were forced to consider deregistration solely for this reason.[12]

We believe it is in the interest of U.S. investors for the Commission to encourage foreign issuers to report in the United States using IFRS financial statements (in addition to the reasons customarily cited by the Commission for encouraging foreign listings), for several reasons:

- It will allow U.S. investors to become more familiar with IFRS, giving them a better understanding of the concepts involved. This will allow them to make better-informed decisions regarding investments in IFRS-reporting companies.

- The familiarity of U.S. investors with IFRS will be particularly important if, in the future, the Commission decides to allow U.S. companies to publish IFRS financial statements in

[11] We understand that the sole difference is a hedge accounting option for banks, which is not used by a significant number of banks.

[12] Even if the Commission decides not to accept IFRS as adopted by the European Union, we urge the Commission to modify the amendments to account for such timing differences, so that they alone do not push a foreign private issuer out of the U.S. market.

the documents they file with the Commission.[13] In contrast, if IFRS-reporting foreign companies choose to leave the U.S. market, any future transition for U.S. companies will be more burdensome for companies and more difficult to understand for investors.

- Maintaining a significant number of companies that report in the United States under IFRS will give the Commission staff better first-hand experience with IFRS. The Commission will continue to gain valuable insights on the details of IFRS reporting by reviewing and commenting on reports that incorporate IFRS financial statements. In the absence of those reports, the Commission's task will be more difficult.

- If there are a large number of dual-listed issuers, the Commission will have an opportunity to play a more direct (and probably more prominent) role in the dialogue among international regulators regarding the continued development of IFRS.

We also question whether it is appropriate for the Commission to adopt a rule that relies exclusively on the IASB, with no regulatory oversight. While we have the highest regard for the IASB, it is certainly conceivable that the IASB or IFRIC might in the future adopt a standard or an interpretation with which both the Commission staff and the European Commission disagree. In that case, a European company would not be able to apply the standard or interpretation in its home country financial statements, but would effectively be required to do so in its Exchange Act reports, despite the fact that the Commission staff disagrees with it.

This issue is the reason why no country in the world has adopted IFRS as published by the IASB as its definitive accounting standard. The European Union has an endorsement process.[14] In New Zealand, IFRS is incorporated into generally accepted accounting principles, which are developed by the Financial Reporting Standards Board of New Zealand institute of chartered accountants.[15] In Canada, the Accounting Standards Board has proposed to incorporate IFRS into Canadian GAAP, and has said that "in general" it expects to adopt IFRS without modification, retaining the power to modify or add to the requirements of IFRS (while making clear that it presently has no intention to do so).[16]

The Commission itself has not completely abandoned the process of setting accounting principles to an independent standard setter. In the 2000 Concept Release, in describing the historical role of the FASB, the Commission stated that its "willingness to look to the private sector … has been with the understanding that [it] will, as necessary, supplement, override or otherwise amend private sector accounting standards." Similarly, in the Release the Commission stated that it oversees the activities of the FASB as part of its responsibilities under the securities laws, and that it does not prohibit the FASB from choosing projects of its choice or dictate the

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[13] See U.S. Issuer IFRS Concept Release.

[14] The endorsement process involves consideration by the European Commission of whether the international accounting standards are contrary to certain EU Directives and are conducive to the European public good as well as whether they meet the criteria of understandability, relevance, reliability and comparability required of the financial information needed for making economic decisions and assessing the stewardship of management. Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001-0004.

[15] Letter, dated August 30, 2007, from the Financial Reporting Standards Board of the New Zealand Institute of Chartered Accountants, available at http://www.sec.gov/comments/s7-13-07/s71307-14.pdf.

[16] See "Implementation Plan for Incorporating International Financial Reporting Standards into Canadian GAAP," paragraphs 25-26 and 38-39, available at http://www.acsbcanada.org/client_asset/document/3/2/7/3/5/document_8B452E12-FAF5-7113-C4CB8F89B38BC6F8.pdf?sfgdata=4.

outcome of specific projects, "so long as the FASB's conclusions are in the interest of investor protection."[17] If the Commission takes a similar position for the future use of IFRS by U.S. issuers, and decides not to approve an IASB standard, it could face the anomalous situation of prohibiting U.S. issuers from applying the standard, while at the same time effectively requiring foreign reporting companies to do so.

Ideally, at some time in the future, the regulatory oversight role will be exercised in a coordinated manner among national regulators and standard-setters, so that there would be only one endorsement or adoption process worldwide. Today, no such coordinated process exists. As the Commission noted in its Concept Release relating to the possible future use of IFRS by U.S. issuers, "[t]he prospect of a single set of global accounting standards must occur within the reality that securities regulators all have national – as opposed to global – mandates for carrying out their work."[18] We believe that the proposed amendments should take into account this reality.

We believe that the Commission can introduce more flexibility into the proposed amendments while remaining faithful to the principle that IFRS should in the long term be a single, global set of accounting principles. We agree with the staff's view that it would be inappropriate to encourage the creation of "a whole host of new home country GAAPs that all just happen to go by the name of IFRS."[19] For this reason, we believe that the amendments should eliminate the U.S. GAAP reconciliation requirement for issuers using an accounting standard that meets the following criteria:

- The basis of the standard must be IFRS as published by the IASB. While a national regulator or standard-setter might approve or disapprove an IASB standard or interpretation (or decide whether to incorporate it into a national standard), it would not adopt its own accounting principles and borrow selected standards from IFRS as adopted by the IASB.

- The national regulator or standard-setter must approve the vast majority of IFRS as published by the IASB (or incorporate it into the national standard). Disapproval must be a rare occurrence.

- There must be a high-quality infrastructure in place in the relevant jurisdiction, including a well-trained auditing profession with appropriate quality controls.

- The accounting standard must be mandatory for publicly held companies, so that the IFRS financial statements are subject to home country regulatory review.

- The Commission must have a forum for discussion with the national regulator or standard-setter of any deviations from IFRS as published by the IASB. This could include an ongoing financial dialogue or participation in standing bilateral or multi-lateral bodies.

- The Commission must not otherwise find that it would be inconsistent with the protection of U.S. investors for companies to publish financial statements prepared in accordance

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[17] Release, at 18.

[18] U.S. Issuer IFRS Concept Release, at 34.

[19] See "Corporation Finance and the Foreign Private Issuer Community in 2007," Speech by John W. White, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, Practising Law Institute Conference "Foreign Issuers and the U.S. Securities Laws 2007: Strategies for the Changing Regulatory Environment" (May 2, 2007), available at http://www.sec.gov/news/speech/2007/spch050207jww.htm.

with the relevant accounting standard in Exchange Act reports without U.S. GAAP reconciliation.

We believe that IFRS as adopted by the European Union clearly meets the foregoing criteria, and thus should be accepted for purpose of the proposed amendments as a high-quality jurisdictional variant of IFRS.

By applying these criteria, the Commission would accommodate the reasonable needs of foreign private issuers, allowing them to take advantage of the proposed amendments while publishing the financial statements that they are legally required to publish in their home countries. The Commission would also provide strong incentives for regulators and standard-setters to minimize deviations from IFRS as published by the IASB, and support for an international dialogue that may one day result in complete convergence and the disappearance of jurisdictional variants.

As a matter of process, the Commission would from time to time designate the IFRS jurisdictional variants that meet the criteria outlined above.[20] The Commission could do so directly in the adopting release for IFRS as adopted by the European Union, and any other high quality jurisdictional variants that are currently in use. As other jurisdictions adopt IFRS, the Commission could consider whether their variants meet the quality criteria described above. It would also be appropriate for the Commission, after a period of time, to review the impact of its decisions to ensure that they remain consistent with the promotion of international accounting convergence and investor understanding (we are confident that this will be the case, at least for IFRS as adopted by the European Union).

While we recognize that the process of evaluating jurisdictional variants would impose somewhat of a burden on the Commission, we believe it is worthwhile given that it would significantly reduce the regulatory obstacles faced by foreign issuers in the U.S. market, while at the same time serving the goal of investor protection. This type of evaluation is likely to become more common if the Commission moves to adopt a "substitute compliance" system in the market regulation context.[21] We believe that it should also be favorably considered in the IFRS context.

Finally, we note that some of the issues described above could be resolved or mitigated if the Commission were to accept financial statements prepared in accordance with IFRS as adopted by the European Union, with a reconciliation to IFRS as published by the IASB, in a manner similar to paragraph (i) of General Instruction G to Form 20-F. While this would certainly be preferable to a U.S. GAAP reconciliation, we believe it would be significantly inferior to the acceptance of IFRS as adopted by the European Union (and other high-quality jurisdictional variants

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[20] From a practical perspective, the easiest way to do this would be to substitute a defined term "IFRS" in the proposed amendments, in place of "IFRS as published by the IASB." The term "IFRS" would be defined to mean IFRS as published by the IASB, and any other variant of IFRS that the Commission determines meets the criteria described in the adopting release. IFRS as adopted by the European Union would be designated from the outset as a variant that meets these criteria.

[21] See Ethiopis Tafara & Robert J. Peterson, *A Blueprint for Cross-Border Access to U.S. Investors: A New International Framework*, 48 HARV. INT'L L.J. 31 (Winter 2007). The notion of providing U.S. investors with access to foreign trading screens and brokerage services from countries with regulatory systems deemed "comparable" by the Commission has been widely discussed and received favorable comments in a number of public speeches by Commissioners. See, e.g., Address by Chairman Christopher Cox to the American Academy in Berlin and the American Chamber of Commerce in Germany, April 26, 2007, available at http://www.sec.gov/news/speech/2007/spch042607cc.htm; Remarks by Commissioner Annette L. Nazareth Before the ABA Section of International Law, May 4, 2007, available at http://www.sec.gov/news/speech/2007/spch050407aln.htm.

meeting the criteria described above), without any such reconciliation. There are two main reasons for our views:

- It is unlikely that investors would realize any significant benefit from the IFRS-IASB reconciliation. As we have noted above, investors are already essentially indifferent to the U.S. GAAP reconciliation. There is no reason to believe that they would be more interested in an IFRS-IASB reconciliation.

- It would increase costs for companies by requiring them to understand and quantify the impact of differences between IFRS as adopted by the European Union and IFRS as published by the IASB. In some cases, those costs could be significant. For example, if there were a difference regarding concession accounting, then a company with many concession contracts would have to evaluate all of its material contracts under two different standards in order to quantify the difference. Similarly, a difference on a depreciation method could require a company to maintain two databases on a vast number of assets in order to satisfy the quantification requirement.[22]

Rather than adopting such a reconciliation requirement, we believe that the Commission should maintain flexibility. If in the future the Commission staff were to become aware of an actual or proposed material difference between IFRS as adopted by the European Union or another variant used by a reporting company, and IFRS as adopted by the IASB, the first response should be to raise the issue with the appropriate regulator, standard-setter or international coordination body, with a view to resolving the issue without any impact on reporting companies. If such a resolution were impossible, then the Commission could require appropriate MD&A disclosure, including a qualitative discussion of the issue. If absolutely necessary and material, a quantitative reconciliation could be considered. We believe, however, that the Commission and its staff can take appropriate action as and when an issue arises, rather than imposing a burdensome reconciliation requirement that would automatically apply in all cases.

3. The amendments should not be limited to issuers that use the English language version of IFRS.

We believe it is a mistake to condition the elimination of the U.S. GAAP reconciliation requirement on the use of the "English language version" of IFRS by an issuer. While we understand that the Commission's work relating to IFRS will be conducted in English, and will generally be based on the English language version, we believe that it is not necessary to make the English version effectively the "official version" for purposes of Commission filings.

IFRS should be regarded as a set of principles relating to accounting. Those principles are initially reduced to writing by the IASB in the English language, and subsequently translated into other languages. It is possible that in some cases the original English language version might not reflect the underlying principle as well as the version that is written in another language. In the event that a discrepancy is discovered, it is altogether possible that the IASB will decide to modify the English version, rather than always modifying the version written in another language.

The English language requirement, if it is maintained by the Commission, will make it virtually impossible for a company from a non-English speaking country to publish identical financial statements in its home country and in the United States. It would be inconceivable for a

[22] We note that, as far as we are aware, in connection with first year IFRS reporting pursuant to General Instruction G to Form 20-F, not a single European company prepared a reconciliation of its financial statements between IFRS as adopted by the European Union and IFRS as published by the IASB.

German company to state in its German language annual report that it used the English version of IFRS. While this might seem like a mere nuisance, it could turn out to be important if, for example, there were a new development (for example, a new fact that might impact an impairment test) between the date of signature of the audit report on the German language financial statements and the date of signature of the audit report on the English language financial statements.

It is not necessarily desirable or consistent with the protection of investors to require a company to state that it used the English language version of IFRS. If the company's accounting staff or the external audit team are not native English speakers, then their use of the English language version of IFRS could increase the risk of error. Alternatively, if they start with the local language version, then they would be required to confirm on a detailed basis, after the financial statements are completed, that the English language version would not have produced different results. This is not a productive use of scarce accounting resources, and it is not necessarily the best way of discovering (or resolving) discrepancies.

We recommend that the final version of the amendments refer to IFRS, without any language reference. The Commission could make clear in the adopting release that it intends to be guided primarily by the English language version. If during the Commission comment process on an issuer's report an error is discovered that is the result of a translation problem, the Commission would raise the issue with the appropriate body at the IASB and, through international dialogue, seek an appropriate resolution.

4. Other Issues

In addition to the principal issues described above, we have a number of other comments on the proposed amendments and the issues raised in the Release:

- 20-F Filing Deadline. We do not believe that the Commission should shorten the deadline for a foreign private issuer to file its annual report on Form 20-F, even for issuers that are able to take advantage of the amendments to eliminate the U.S. GAAP reconciliation. Foreign private issuers that register their securities with the Commission invariably have home country filing requirements that require significant time and effort in addition to their Commission filings. European companies are required to publish reports in accordance with their home country legislation and the European Transparency Directive,[23] which requires them to publish annual reports within four months of their fiscal year end, and quarterly financial information within 45 days of the end of the first quarter. The people involved in preparing this financial information are often also responsible for the Form 20-F. For companies from countries where English is not the native language, the preparation of the Form 20-F requires time for the translation (and review of the translation) of significant portions of the home country annual report. For all companies, procedures specific to the Form 20-F need to be completed, including the Sarbanes-Oxley Section 404 internal control report, the review of the Form 20-F by the disclosure committee (and the incorporation of any comments) and the review of the document by the national office of a company's independent auditors. In addition, the Commission asked (question 14) whether the deadline for Form 20-F should be the same as the deadline for an issuer's annual report in its home market. As stated above, we believe the deadline should not be changed. At a minimum, however, there should be an

[23] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, Official Journal L. 390/38.

additional period of at least a month to allow translation for companies from non-English speaking jurisdictions.

- Applicability to all issuers. The Commission has asked (question 13) whether the proposed amendments should apply to all foreign private issuers, or only to those that are in a particular category, such as well-known seasoned issuers or large accelerated filers. We believe that the amendments should apply to all foreign private issuers. In many cases, the cost of U.S. GAAP reconciliation is disproportionately higher for smaller issuers than for larger issuers, so it would be unfortunate if smaller issuers were not able to benefit from the amendments. We do not believe that there are any particular investor protection issues that would warrant applying a different standard to smaller issuers.

- First-time issuers. The Commission has asked (question 17) whether an issuer should be able to include IFRS financial statements without U.S. GAAP reconciliation in its first filing that contains audited financial statements. We strongly believe that an issuer should be able to do so. As mentioned above, the greatest burden in terms of expense and internal resources resulting from the U.S. GAAP reconciliation occurs in the first year, as companies become familiar with U.S. GAAP concepts and establish reporting infrastructure. If the Commission were to require U.S. GAAP reconciliation for first-time filers, it would essentially eliminate the benefit of the amendments for such filers, and it would discourage new U.S. listings by foreign private issuers.

- Rule 701. We support the proposal of the Commission to eliminate the U.S. GAAP reconciliation requirement in Rule 701, which should benefit employees of foreign private issuers by making stock ownership and option plans more readily available to them. We note that, even if the Commission decides (contrary to our recommendation) not to accept IFRS as adopted by the European Union for purposes of Commission filings, it would be appropriate to do so for purposes of Rule 701. It is not realistic to expect a foreign private issuer that does not have securities registered with the Commission to adapt its financial reporting to comply with (or even to assert compliance with) IFRS as published by the IASB.

- Regulation S-X, Rule 3-05 and Rule 3-09. The proposed amendments provide that the financial statements of an acquired entity or an equity investee that are prepared in accordance with IFRS as published by the IASB do not need to be reconciled to U.S. GAAP, regardless of the significance of the acquired entity or equity investee. We believe that this should be extended to high-quality jurisdictional variants of IFRS, such as IFRS as adopted by the European Union, regardless of whether the Commission decides to accept such variants more broadly (once again, we believe the Commission should do so). In many cases, the reporting issuer has little ability to influence the preparation of the financial statements of the acquired entity or equity investee, and does not have access to information permitting it to prepare modified, audited financial statements. With respect to acquired entities, the financial statements are often prepared before the issuer makes the acquisition, adding to the potential burden associated with making changes. In addition, in cases where the financial statements of the acquired entity or equity investee are prepared in accordance with a comprehensive body of accounting principles other than IFRS (or U.S. GAAP), we believe that a foreign private issuer that presents its own financial statements in accordance with IFRS should have the option of reconciling the financial statements of the acquired entity or equity investee to IFRS, rather than to U.S. GAAP.

- Interim Financial Statements. We believe that a foreign private issuer should be allowed to omit the U.S. GAAP reconciliation from a registration statement where interim financial statements are prepared in accordance with IAS 34. The Commission's proposal to require compliance with Article 10 of Regulation S-X is inconsistent with its insistence that issuers comply strictly with IFRS as published by the IASB. While we support adding flexibility to the Commission's position by accepting high-quality jurisdictional variants (as discussed above), we believe it would be a mistake, and that it would establish an unfortunate precedent, for the Commission to add requirements on top of IAS 34 simply because Regulation S-X calls for a bit more detail in interim financial statements. We believe it is important that deviations from IFRS as published by the IASB occur only in exceptional circumstances, and that they should be subject to international dialogue among regulators before they are adopted. We note as well that, regardless of whether the requirements of Article 10 of Regulation S-X were to apply, an issuer would be required to provide all information necessary to ensure that its registration statement is complete and not misleading.

- Continuous offerings. If the Commission decides to eliminate the U.S. GAAP reconciliation requirement for all purposes for issuers publishing financial statements in accordance with IFRS, then the issue of whether to eliminate the reconciliation requirement for shelf registration statements will be moot. If the Commission were to decide not to eliminate the reconciliation for annual reports, we would recommend eliminating the reconciliation requirement for interim period financial statements, so as to permit continuous offerings. In addition, if the Commission were to decide not to accept IFRS as adopted by the European Union (and other high-quality jurisdictional variants) for purposes of annual reports, we believe that the Commission should do so for interim financial statements, so as to reduce the burden on issuers that use such standards in their home country interim reports and that seek to conduct continuous offerings.

- Safe Harbor for Forward-Looking Statements. We believe that the Commission should adopt a rule to the effect that disclosure relating to financial instruments under IFRS 7 would be subject to the safe-harbor for forward-looking statements in Section 27A of the Securities Act and Section 21E of the Exchange Act. Each of these sections provides that the safe-harbors will not apply to (among other things) information in the financial statements, "[e]xcept to the extent otherwise specifically provided by rule, regulation or order of the Commission." It seems to us that this is an appropriate case for the adoption of such a rule.

- Joint Ventures. We believe that the Commission should modify the last sentence of Item 17(c)(2)(vii) of Form 20-F to provide that companies preparing financial statements in accordance with IFRS would not be required to present summary financial information for joint ventures that are accounted for using proportional consolidation in accordance with IAS 31. At a minimum, the Commission should limit this requirement to joint ventures that exceed an appropriate threshold of significance for purposes of the consolidated financial statements.

- Technical Issues. We have set forth in Annex A a number of technical points relating to the text of the proposed amendments and other Commission forms.

5. Conclusion

It is certainly intuitively logical to consider that the best way to promote the emergence of IFRS as a single, global accounting standard is for the Commission to accept only one version of IFRS in connection with the present initiative. Since it would be difficult for the Commission to favor one jurisdictional variant over another, the Commission's reasoning leads necessarily to the selection of IFRS published by the IASB as a "neutral" version, which also has the benefit of being conceived by a respected, independent standard setter.

Despite the appeal of this reasoning, the success of the Commission's initiative depends to a large extent on how companies will react. The Commission recognized this a decade ago, when it expressed a different primary objective for the development of a high-quality, comprehensive set of international accounting standards:

> Issuers wishing to access capital markets in different jurisdictions must comply with requirements that differ in many respects, including accounting principles to be used in the preparation of financial statements. These differing requirements are believed to increase compliance costs for registrations and create inefficiencies in attempts to access multiple capital markets.[24]

If the Commission adopts a final version of the proposed amendments that allows companies to reduce their costs and otherwise to improve their efficiency, then companies will have a strong incentive to take advantage of the amendments. More companies that are currently in the U.S. market will stay there, and some companies may decide to seek new U.S. listings.

We believe strongly that the cost reduction objective can be achieved without sacrificing the goal of convergence. By extending the elimination of U.S. GAAP reconciliation to IFRS as adopted by the European Union, and other jurisdictional variants of IFRS that meet the quality and infrastructure criteria outlined in this letter, the Commission can take what we believe will be a significant step towards the long-term objective of achieving high-quality international accounting convergence.

We appreciate the opportunity to participate in this process, and we look forward to its successful conclusion.

Very truly yours,

Andrew A. Bernstein — Nicolas Grabar

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[24] Report on Promoting Global Preeminence of American Securities Markets Pursuant to Section 509(5) of the National Securities Markets Improvement Act of 1996 (October 1997), available at http://www.sec.gov.news/studies/acctgsp.htm.

cc: The Honorable Christopher Cox, *Chairman*
The Honorable Paul S. Atkins, *Commissioner*
The Honorable Roel C. Campos, *Commissioner*
The Honorable Annette L. Nazareth, *Commissioner*
The Honorable Kathleen L. Casey, *Commissioner*

Conrad Hewitt, *Chief Accountant*
Julie A. Erhardt, *Deputy Chief Accountant*
John W. White, *Director, Division of Corporation Finance*
Paul M. Dudek, *Chief of the Office of International Corporate Finance*
Ethiopis Tafara, *Director*, *Office of International Affairs*

Commissionner Charlie McCreevy, *European Commission*
Pierre Delsaux, *Director, Free movement of Capital, Company Law and Corporate Governance, DG Internal Market*
David Wright, *Director, Financial Markets, DG Internal Market*
Eddy Wymeersch, *Chairman, Committee of European Securities Regulators*

Annex A

Technical Issues

- Technical Issues on Forms F-4 and S-4. In the text of the proposed amendments, the Commission has proposed to amend various parts of Items 10 and 12 of Form F-4 by adding the phrase "or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB." This wording is a qualification of the U.S. GAAP reconciliation requirement. As currently drafted, it could be read to mean that for such an issuer, reconciliation is not acceptable, and full U.S. GAAP financial statements must be provided. In order to clarify this issue, we propose that the Commission use the following formulation (using Item 10(c)(2) as an example): "Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X (or prepared in accordance with International Financial Reporting Standards),[25] if there has been a change…." In the text of the proposed amendments, the Commission has also proposed to amend the instructions to paragraphs b(5) and b(6) of Item 17 of Form F-4 by adding the phrase "or International Financial Reporting Standards." To make the proposed amendment complete, this phrase should also be added to the end of the second sentence of the instruction. This same correction should also be made to the proposed amendment to Instruction 2 to Item 17 of Form S-4.

- Technical Issues on Form 20-F and in Regulation S-K. In order to clarify that the reconciliation to U.S. GAAP is not required for financial statements prepared in accordance with IFRS, we propose that additional changes be made to Form 20-F. In Instruction 1 to Item 4.B, we propose that the reference to "the U.S. GAAP reconciliation" be changed to "a U.S. GAAP reconciliation." We suggest that Instruction 12 to Paragraph 303(a) of Regulation S-K should be revised to read as follows: "If a reconciliation to United States generally accepted accounting principles is required, there shall be a reference to the reconciliation, and a discussion of any aspects of the difference between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes is necessary for an understanding of the financial statements as a whole." A similar change could also be made to Instruction 2 to Item 5 to Form 20-F.

- Technical Issues on Schedule TO and Schedule 13E-3. The Commission has asked (question 41) whether Schedule TO and Schedule 13E-3 should be specifically amended. We believe specific changes would be advisable to reflect that no reconciliation to or narrative discussion of differences with U.S. GAAP is necessary for IFRS financial statements. We suggest the following formulations:

    - Last sentence of Instruction 6 to Item 10 of Schedule TO and Instruction 1 to Item 13 of Schedule 13E-3: "If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or International Financial Reporting Standards, the summarized financial information must be accompanied by a reconciliation…."

    - First sentence of Instruction 8 to Item 10 of Schedule TO and Instruction 2 to Item 13 of Schedule 13E-3: "If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other

[25] We have used the term "International Financial Reporting Standards" here and in our other suggested formulations, without reference to the English language version or to the standards published by the IASB, consistent with our recommendation that the Commission broaden the proposed amendments. The language in our proposed revisions will need to be adapted to reflect the Commission's decision on this issue.

than U.S. GAAP or International Financial Reporting Standards, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F….”[26]

- Second sentence of Instruction 8 to Item 10 of Schedule TO: "At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP or International Financial Reporting Standards, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented."

- Technical Issues on Other Forms. Item 4A(b)(2)(iii) of Form F-1 states "Financial statements or information required to be furnished by this Item shall be reconciled pursuant to either Item 17 or Item 18 of Form 20-F, whichever is applicable to the primary financial statements." We suggest changing the formulation "shall be reconciled pursuant to" to "shall comply with." We suggest making this same change to the Instruction to Item 5 of Form F-3.

[26] We recognize that the proposed revisions to Item 17 should be sufficient to eliminate the reconciliation requirement, but we believe that our proposed modification would make the text more clear. We also believe that the other proposed modifications to these forms are necessary.