ATTACHMENT

IFRS Foundation Monitoring Board
Consultative Report on the Review of the IFRS Foundation's Governance
("IFRS Report")[1]
Comments of the Council of Institutional Investors ("Council")
April 11, 2011

Question 1:

- *Do you agree with the proposal to urge concrete efforts to deepen the pool of candidates for IASB membership from diverse geographical and professional backgrounds? Please provide reasons for your agreement/disagreement*.[2]

We do not disagree with the proposal to urge concrete efforts to deepen the pool of candidates for International Accounting Standards Board ("IASB") membership from diverse geographical and professional backgrounds *provided* that each and every candidate in the pool meets the following two criteria: (1) demonstrated technical expertise of financial accounting and reporting; and (2) demonstrated knowledge of, and commitment to serving, the information needs of investors.[3]

[1] IFRS Foundation Monitoring Board, Consultative Report on the Review of the IFRS Foundation's Governance 1 (Feb. 7, 2011), http://www.iosco.org/monitoring_board/pdf/Review_of_the_IFRS_Foundation_Governance_Report.pdf [hereinafter IFRS Report].
[2] *Id.* at 12.
[3] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Tamara Oyre, Assistant Corporate Secretary, IASC Foundation 8 (Sept. 25, 2008), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/September%2025%202008%20Council%20Letter%20to%20Oyre%20(final)(1).pdf [September Letter].

We note that the Council's membership approved policies include a Statement on Independence of Accounting and Auditing Standard Setters ("Statement").[4] The Statement indicates that the "standard–setting board . . . possess the technical expertise necessary to fulfill their important roles."[5] The Statement, consistent with the IFRS Report, reflects the view that in order to develop high quality accounting standards the members of the standard-setting board should have technical expertise in financial accounting and reporting.[6]

The Statement also indicates that members of the standard-setting board should "demonstrate[] a clear recognition that investors are the key customer of audited financial reports and . . . the primary role of audited financial reports [is] . . . to satisfy in a timely manner investors' information needs."[7] Finally, the Statement provides that the standard-setting board should have "significant, prominent and adequately balanced representation from qualified investors . . . ."[8]

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[4] Council of Institutional Investors, Statement on Independence of Accounting and Auditing Standard Setters 1 (Adopted Oct. 7, 2008), http://www.cii.org/UserFiles/file/Statement%20on%20Independence%20of%20Accounting%20and%20Auditing%20Standard%20Setters.pdf [hereinafter Statement].

[5] *Id*. at 2.

[6] *Compare* IFRS Report, *supra* note 1, at 12 ("Further, considering the ultimate objective of the standard-setter to develop a set of high quality accounting standards, the balance in the allocation of different backgrounds should not be pursued at the expense of losing technical expertise"), *with* September Letter, *supra* note 3, at 8, http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/September%2025%202008%20Council%20Letter%20to%20Oyre%20(final)(1).pdf ("In our opinion, the IASC Foundation should choose members of the IASB based, first and foremost, on their demonstrated technical competency and knowledge of financial accounting and reporting"). We note that the incoming Chairman of the International Accounting Standards Board ("IASB")—Hans Hoogervorst is not an accountant, and it has been reported that the incoming Vice Chair of the IASB—Ian Mackintosh, who is an accountant, was selected, in part, to "compensate for Hoogervorst's lack of accounting experience." *Non-Accountant to Replace Tweedie at IASB,* Compliance Wk. 3 (Oct. 12, 2010), http://www.complianceweek.com/non-accountant-to-replace-tweedie-at-iasb/article/188579/. We also continue to share the concern that the focus on diverse geographical and professional backgrounds may not only diminish the technical expertise of the standard-setting board but also create the perception that the individuals selected for the IASB are expected to represent the views of a geographical or professional constituency rather than their individual views. September Letter, *supra* note 3, at 8.

[7] Statement, *supra* note 4, at 2.

[8] *Id.* We note that only three of the fifteen current members of the IASB are from the investor community (Stephen Cooper, Patricia McConnell, and Patrick Finnegan). *See* IFRS, Members of the IASB (Apr. 11, 2011, 1:21 PM EST), http://www.ifrs.org/The+organisation/Members+of+the+IASB/Members+of+the+IASB.htm.

The basis for the provisions of our Statement relevant to the composition of the standard-setting board is generally consistent with the following conclusions of the United States Securities and Exchange Commission's ("SEC") Advisory Committee on Improvements to Financial Reporting:

> Board members should be selected from the most qualified individuals who possess a breadth of experiences that will ensure that the perspectives of investors are carefully considered and given pre-eminence when attempting to balance the perspectives of other constituents. However, increasing direct investor involvement on the Board would bring investor perspectives to the forefront of standards-setting and the process of issuing interpretive implementation guidance.[9]

Question 2:

- *Do you agree with the proposal to separate the roles of the IASB Chair and the CEO of the IFRS Foundation, and if so would you have suggestions on how to formalize this? Please provide reasons for your agreement/disagreement.*[10]

We agree with the proposal to separate the roles of the IASB Chair and the CEO of the IFRS Foundation. The proposal is generally consistent with our membership approved Statement requiring a "full-time standard-setting board . . . that [is] . . . free of bias and possess the technical expertise necessary to fulfill their important role[]. . . ."[11] The proposal is also generally consistent with our membership approved policy for corporate boards that provides that "[t]he CEO and chair roles should only be combined in very limited circumstances . . . ."[12]

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[9] Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission 59 (Aug. 1, 2008), http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf [hereinafter CIFR Report].
[10] IFRS Report, *supra* note 1, at 13.
[11] Statement, *supra* note 4, at 2.
[12] Council of Institutional Investors, Corporate Governance Policies *§* **2.3 Independent Board** (Updated Sept. 29, 2010), http://www.cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2009-29-10%20FINAL.pdf [hereinafter Policies].

The basis for the provisions of our Statement and policy relevant to the dual role of the IASB Chair is generally consistent with the following reasons cited in the IFRS Report:

> [C]onsidering that both roles require full-time commitment, and the fact that the Chair of the IASB needs to travel around the globe frequently to maintain close communications with stakeholders, it would be excessive for an individual to cover both functions effectively. Such a dual function could raise questions over the independence of the IASB, and may give rise to undue conflicts of interest between the overseer and the subject of oversight . . . .[13]

Question 3:

- *Do you agree that clearer division of responsibility between staff dedicated to the IASB operations and staff dedicated to the Foundation's administrative and oversight functions should be considered, and if so would you have suggestions on how to formalize this? Please provide reasons for your agreement/disagreement*.[14]

We agree that clearer division of responsibility between staff dedicated to the IASB operations and staff dedicated to the Foundation's administrative and oversight functions should be considered. Our membership approved Statement provides that "[t]he international standard setter [should have] . . . a full-time . . . staff that are free of bias and possess the technical expertise necessary to fulfill their important roles . . . ."[15] The basis for the provision of our Statement relevant to the function of the staff is generally consistent with the view expressed in the IFRS Report that having the staff supporting the technical activities of the IASB while also responsible for performing oversight functions for the IFRS Foundation could raise "conflicts of interest, real or apparent," that could impair the independence of the standard-setting process.[16]

Question 4:

- *Please provide comments on any aspects of Trustee composition or appointments that you believe the Monitoring Board should consider.*[17]

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[13] IFRS Report, *supra* note 1, at 12.
[14] *Id*. at 13.
[15] Statement *supra* note 4, at 2.
[16] IFRS Report, *supra* note 1, at 13.
[17] *Id*. at 14.

Our comments on the composition of the IFRS Foundation Trustees remain unchanged from the views we expressed in our November 30, 2009 letter to the then International Accounting Standards Committee ("IASC") Foundation in response to "Part 2 of the Constitution Review—Proposals for Enhanced Public Accountability ("November Letter")."[18] In the November Letter we explained:

> The Council's Policy, . . . contemplates at least two criteria for selection of Trustees to an oversight board of an independent private sector international accounting standard setter. First, that the Trustees as a whole include significant representation from qualified investors—the primary consumers of financial reports. Second, that each individual Trustee candidate is required to show a firm commitment and the skill set necessary to effectively support and protect the independence of the accounting standard setting process to ensure, to the extent possible, that the process meets the needs of those it is primarily intended to serve.[19]

It is our understanding that currently five Trustees of the IFRS Foundation could be considered from the investor community.[20] Five out of a total of eighteen Trustees, however, is insufficient, in our view, to correct the existing imbalance in accounting standard setting and ensure that investor views are given pre-eminence in the Trustees' decision-making process.[21]

Question 5:

(1) Do you agree with the proposal to provide increased transparency into the process for Trustee nominations? Please provide reasons for your agreement/disagreement. To what extent should the Monitoring Board be involved in the nomination process?

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[18] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Tamara Oyre, Assistant Corporate Secretary, IASB Foundation 8 (Nov. 30, 2009), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/Attachment%20doc%20(final).pdf (Attachment) [hereinafter November Letter].

[19] *Id.* (footnotes omitted).

[20] *See* IFRS, Trustees (Apr. 11, 2011, 1:41 PM EST), http://www.ifrs.org/The+organisation/Trustees/Trustees.htm (It is our understanding that the IFRS Foundation considers Trustees' Scott Evans, Antonio Vegezzi, Jeff van Rooyen, Oscar Fanjul, and Dick Sluimers from the investor community).

[21] *Id.*; *cf.* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Tamara Oyre, Assistant Corporate Secretary, IASC Foundation 10 (Mar. 26, 2009), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2009/March%2026%202009%20Letter%20to%20Oyre%20(final%20with%20letterhead).pdf (Commenting on the imbalance in the composition of the Standards Advisory Committee).

(2) Do you agree that further clarification of criteria for the Trustees' candidacy would help support confidence of the stakeholders? Please provide reasons for your agreement/disagreement.[22]

We agree that further clarification of criteria for the IFRS Foundation Trustees' candidacy would help support confidence of investors *provided* that, as indicated in response to Question 4, that the criteria includes: (1) that the Trustees as a whole include significant representation from qualified investors; and (2) that each candidate be required to show a firm commitment and the skill set necessary to effectively support and protect the independence of the accounting standard setting process to ensure, to the extent possible, that the process meets the needs of those it is primarily intended to serve.[23]

The first criterion is consistent with our membership approved Statement that provides that the oversight board have "significant, prominent and adequately balanced representation from qualified investors . . . ."[24] The second criterion is consistent with the Statement's requirement that the "structure [of the organization] . . . adequately protect[] the standard setter's technical decisions and judgements . . . from being overridden by government officials and bodies."[25]

The basis for both of our criteria is generally consistent with the views recently expressed by the SEC Staff that an important element for a set of high-quality global accounting standards is a governance structure that supports the independent development of accounting standards for the ultimate benefit of investors.[26]

Question 6:

(1) Should the membership of the Monitoring Board continue to be confined to capital markets authorities responsible for setting the form and content of financial reporting in respective jurisdictions?

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[22] IFRS Report, *supra* note 1, at 14-15.
[23] *See, e.g.,* November Letter, *supra* note 18, at 8.
[24] Statement, *supra* note 4, at 2.
[25] *Id.; cf.* CIFR Report, *supra* note 9, at 59 (Recommending that the oversight board of the U.S. Financial Accounting Standards Board include more investor representation to enhance the "consideration of investor perspectives, thereby improving the overall investor focus of financial reporting").
[26] Office of the Chief Accountant, Division of Corporation Finance, United States Securities and Exchange Commission, Progress Report, Work Plan for the Consideration of Incorporating International Financial Reporting Standards into the Financial Reporting System for U.S. Issuers 15 (Oct. 29, 2010), http://www.sec.gov/spotlight/globalaccountingstandards/workplanprogress102910.pdf ("The 2010 Statement noted that '[a]nother important element for a set of high-quality global accounting standards is whether the accounting standard setter's . . . governance structure support the independent development of accounting standards for the ultimate benefit of investors'").

(2) *Do you agree with the proposal to expand the Monitoring Board's membership by adding a mix of permanent members ([four]) representing primarily major emerging markets and rotating members ([two]) from all other markets? Please provide reasons for your agreement/disagreement. How should the major markets be selected? Should a jurisdiction's application of IFRSs and financial contribution to standard-setting play a role?*

(3) *Do you agree that rotating members should be selected through IOSCO? Please provide reasons for your agreement/disagreement.*[27]

We continue to believe that membership of the Monitoring Board should be expanded to include qualified investors.[28] As indicated, our membership approved Statement provides that the standard setter's monitoring group include "significant, prominent and adequately balanced representation from qualified investors."[29]

The basis for our view on the composition of the Monitoring Board was explained, as follows, in the November Letter:

> We note that despite our previous suggestions, and those of other commentators, sections 18-23 of the [then IASC Foundation] Constitution were written in such a manner that not a single qualified investor is permitted to be on the Monitoring Board or even to serve as an observer. Thus, it is highly unlikely that the Monitoring Board will remain sufficiently motivated and effective in protecting the independence of the international standard setter, particularly since its listed duties fail to expressly provide for that function. More likely, over time the Monitoring Board will simply become another organization that attempts to unduly influence the international accounting standard setting process in pursuit of short-term political interests that, more often than not, are detrimental to the short and long-term interests of investors.[30]

Question 7:

- *Do you agree that the Monitoring Board should continue to make its decisions by consensus? Please provide reasons for your agreement/disagreement. Are there any types of decisions taken by the Monitoring Board for which voting other than by consensus (for example, by qualified majority) may be appropriate? If so please describe why and suggest an appropriate voting mechanism.*[31]

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[27] IFRS Report, *supra* note 1, at 17.
[28] *See, e.g.,* November Letter, *supra* note 18, at 6.
[29] Statement, *supra* note 4, at 2.
[30] November Letter, *supra* note 18, at 6 (footnotes omitted).
[31] IFRS Report, *supra* note 1, at 17.

We agree that the Monitoring Board should continue to make its decisions by consensus. While the Council's corporate governance policies generally support majority voting,[32] we would strongly oppose the Monitoring Board voting other than by consensus on *any* decision unless and until its membership is expanded to include "significant, prominent and adequately balanced representation from qualified investors . . . ."[33] The basis for our view was described in our response to Question 6.

Question 8:

- *To ensure increased involvement of public authorities and other international organizations in Monitoring Board activities, do you support the Monitoring Board (a) expanding the number of Monitoring Board observers, (b) holding more formalized dialogue, or (c) establishing an advisory body, and on what basis? What should be the criteria for selecting participants?*[34]

We do not support increasing the involvement of public authorities and non-investor based international organizations in Monitoring Board activities. As indicated in our response to Question 6, during its formation there were multiple requests from the Council and other parties to increase the involvement of qualified investors in the composition of the Monitoring Board. Those requests were denied.

We are surprised and disappointed that the Monitoring Board is now considering potentially increasing the involvement of organizations such as the "the FSB, the IAIS, the IMF, and the World Bank,"[35] without appearing to give any consideration to increasing the involvement of investors. As we explained in our September 25, 2008 letter to the then IASC Foundation in response to the "Discussion Document—Proposals by the Trustees of the International Accounting Standards Committee Foundation to amend the Constitution":

> We . . . are not confident that the Monitoring Group [as currently contemplated] would achieve its stated purpose of "complement[ing] and enhanc[ing] confidence in the governance of the organization, while still safeguarding the independence of the standard-setting process."
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> . . . .

[32] Policies, *supra* note 12, § **3.6 Voting Requirements** ("A majority vote of common shares outstanding should be sufficient to amend company bylaws or take other action that requires or receives a shareowner vote").
[33] Statement, *supra* note 4, at 2.
[34] IFRS Report, *supra* note 1, at 18.
[35] IFRS Report, *supra* note 1, at 18.

> [W]e believe the membership [of the Monitoring Group] should include significant representation from qualified investors. We note that our views and related policy on this issue are consistent with the recent conclusions and recommendations of the United States Securities and Exchange Commission's Advisory Committee on Improvements to Financial Reporting . . . .
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> . . . .
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> We understand that the Monitoring Group is intended to address a specific perceived deficiency of participation from public authorities, but that perceived deficiency is not, in our view, a legitimate basis for denying significant representation on the Monitoring Group from the primary consumers of financial reports.[36]

Question 9:

- *Do you believe that the current arrangements for the standard-setting process adequately ensure the appropriate involvement of all relevant stakeholders and that all relevant public policy objectives are taken into account? Please provide reasons for your agreement/disagreement.*[37]

We do not believe that the current arrangements for the standard-setting process adequately ensure appropriate involvement by investors. As indicated, our membership approved Statement provides that the standard setter should have "significant, prominent involvement and adequately balanced representation from qualified investors on the standard setter's staff, standard-setting board, oversight board and outside monitoring group."[38]

While we acknowledge that considerable progress has been made in increasing investor involvement in the IFRS standard setting process, we understand that currently only eight of forty-seven individuals on the IFRS Advisory Council are from the investor community, *none* of the five individuals (and one observer) on the Monitoring Group are from the investor community, only five of eighteen individuals on the IFRS Foundation are from the investor community, and only three of fifteen individuals on the IASB board are from the investor community.[39]

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[36] September Letter, *supra* note 3, at 4 & 6.
[37] IFRS Report, *supra* note 1, at 19.
[38] Statement, *supra* note 4, at 2.
[39] *See* IFRS, About the IFRS Foundation and the IASB (Apr. 11, 2011, 3:09 PM EST), http://www.ifrs.org/The+organisation/IASCF+and+IASB.htm.

We simply do not believe that the current level of investor representation in the IFRS standard setting structure is sufficient to ensure that the views of investors will be given pre-eminence in the standard setting process.[40]

Question 11:

- *Do you believe that the current arrangements for Monitoring Board involvement in the IASB's agenda-setting are appropriate, or should the Monitoring Board have an explicit ability to place an item on the agenda, or would you consider other alternatives that would enhance the Monitoring Board involvement in the IASB agenda setting? Please provide reasons.*[41]

The Council does not believe the Monitoring Board should have an explicit ability to place an item on the IASB's agenda. We note that our membership approved Statement reflects "the view that the responsibility to promulgate accounting standards should reside with independent private sector organizations."[42]

We believe it is critical to the standard setter's independence that it have the ability to develop and pursue its own agenda.[43] We share the views of those described in the IFRS Report that providing the Monitoring Board an explicit (or even implicit) ability to place an item on the IASB's agenda would further weaken its independence and, thus, the legitimacy of the standard setting process.[44]

Question 12:

- *Do you have concrete suggestions on how the Monitoring Board or the Trustees could encourage a move towards a more stable and independent funding model?*[45]

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[40] *Cf.* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission 6 (Oct. 18, 2010), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2010/October%2018%202010%20Letter%20to%20SEC%20on%20IFRS%20doc%20(final)%20(3).pdf ("Three of fifteen board members, however, is simply insufficient to ensure that investor views are "given pre-eminence" in the accounting standard setter process").
[41] IFRS Report, *supra* note 1, at 21.
[42] Statement, *supra* note 4, at 1.
[43] November Letter, *supra* note 18, at 11.
[44] *Cf. id*. ("*Requiring* that the IASB consult with Trustees (who clearly are not independent) about its agenda weakens the independence and, thus, the legitimacy of the standard setting process").
[45] IFRS Report, *supra* note 1, at 21.

In our recent letter to the IFRS Foundation in response to the "Paper for Public Consultation, Status of Trustees' Strategy Review", we set forth the following suggestions for a more stable and independent funding model for the IASB:

> We believe that in order to ensure that the accounting standard setting organization operates effectively and efficiently it have a permanent and fully independent financing structure. As described in our membership approved Statement:
>
> > The international standard setter has sufficient resources—including a secure stable source of funding that is not dependent on voluntary contributions of those subject to the standards.
>
> We also agree with an observation of the Commission that a financing structure that would involve funding the organization through "direct Congressional appropriations," or an equivalent governmental process, could result in unnecessary "pressures on . . . standard setting" that would likely be inconsistent with operating effectively and efficiently to meet the needs of investors.[46]

Question 13:

(1) Do you believe that the Monitoring Board should have a more prominent role in the selection of the IASB Chair? Do you agree with the proposal that the role include involvement in establishing a set of publicly disclosed criteria for the Chair, and assessment of a short list of candidates against those criteria? Please provide reasons.

(2) Do you believe that the Monitoring Board should be given any further, specific role in the selection of the IASB Chair? In particular, should the Monitoring Board approve the Trustees' final selection? Please provide reasons.[47]

Question 14:

- *Do you agree that the Monitoring Board's responsibilities should explicitly include consultation with the Trustees as they further develop the framework to ensure proper balance in the composition of the IASB? Please provide reasons for your agreement/ disagreement.*[48]

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[46] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Trustees, IFRS Foundation 5 (Feb. 24, 2011), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2011/02-24-2011%20Letter%20to%20IFRS%20Foundation%20Trustees.pdf (footnotes omitted).

[47] IFRS Report, *supra* note 1, at 22.

[48] *Id.*

We do not believe that the Monitoring Board as it is currently constituted should be given any further role in the selection of the IASB Chair or in ensuring the proper balance in the composition of the IASB. As indicated in response to Question 11, the Council has consistently supported the view that the responsibility to promulgate accounting standards should reside with independent private sector organizations and that the structure of those organizations should be designed to adequately protect, to the extent possible, the technical decisions and judgments of the standard setter from being overridden by government officials or bodies.[49]

We believe increasing the Monitoring Board responsibilities in the selection of the IASB Chair or the composition of the IASB, whether characterized as a "direct" or indirect role, may infringe upon the independence of the IASB and potentially lead to further erosion of public confidence in IFRS.[50] We note that our views on the importance of protecting the independence of the private sector accounting standard setter are generally consistent with the following finding of the Investors' Working Group, a blue-ribbon task force co-sponsored by the Council and the CFA Institute to develop and report on recommendations in response to the financial crisis:[51]

> In order to create high quality accounting standards, it is critical that the process be independent and free from political pressure. This will ensure that such standards are neutral and faithfully represent economic reality. [An accounting standard setter lacking independence may produce standards that] . . . reduce the free flow of transparent and reliable financial information, [and] . . . undermine investor interests and weaken their ability to make sound investment decisions.[52]

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[49] Statement, *supra* note 4, at 1-2.
[50] IFRS Report, *supra* note 1, at 21 ("Such a role may appear to infringe upon independence and erode public confidence in the standard-setting body . . . .").
[51] For more information about the Investors' Working Group, please visit the Council's website at http://www.cii.org/iwgInfo.
[52] Press Release, CFA Institute and Council of Institutional Investors, Investors' Working Group Dismayed and Concerned With Threats to Financial Accounting Standards Board Independence 1 (Apr. 1, 2009), http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/IWG%20Press%20Release%2004-02-2009-2.pdf.