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Organización Internacional de Comisiones de Valores
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Organização Internacional das Comissões de Valore

28 April 2006

Dr. Alan Teixeira
Senior Project Manager
International Accounting Standards Board
30 Cannon Street
London
EC4M 6XH
United Kingdom

Re: Discussion Paper on Management Commentary

Dear Dr. Teixeira:

The International Organization of Securities Commissions (IOSCO) Standing Committee No. 1 on Multinational Disclosure and Accounting (SC1) appreciates the opportunity to provide our comments with respect to the International Accounting Standards Board's Discussion Paper on Management Commentary (MC), which is also commonly referred to as Management's Discussion and Analysis (MD&A) or Operating and Financial Review and Prospects (OFR).

IOSCO is committed to promoting the integrity of international markets through promotion of high quality accounting standards, including rigorous application and enforcement.[1] Members of SC1 seek to further IOSCO's mission through thoughtful consideration of accounting and disclosure concerns and pursuit of improved transparency of global financial reporting. The comments we have provided herein

[1] See IOSCO website, www.iosco.org. All IOSCO documents cited in this letter may be obtained from this website.

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reflect a general consensus among the members of SC1 and are not intended to include all the comments that might be provided by individual members on behalf of their respective jurisdictions.

General Comments

IOSCO and its members have long recognized the importance of MC-type disclosure and, as described later, have done extensive work on MC. Communicating with investors in a clear and straightforward manner is one of management's most vital responsibilities. MC is a critical component of that communication, as IOSCO noted in its *General Principles Regarding Disclosure of Management's Discussion and Analysis of Financial Condition and Results of Operations (IOSCO General Principles Regarding MD&A).* Many IOSCO members have had a national MC disclosure requirement in place for many years, and have extensive experience reviewing documents containing MC disclosure. We appreciate the opportunity to provide comments on the Discussion Paper based on our collective experience.

I. IOSCO has developed international standards on MC, and national disclosure requirements on MC exist in several IOSCO member countries as a result of securities regulations or company law.

Given the importance of MC disclosure, the development of high quality international standards on MC would help improve the disclosure that is provided by issuers. Recognizing this, IOSCO has already developed international disclosure standards for listed issuers, including disclosure standards on MC.

In 1998, IOSCO endorsed the *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (International Equity Disclosure Standards).* Item 5 of the *International Equity Disclosure Standards* establishes disclosure standards for MC (referred to therein as OFR) applicable to the information that foreign issuers should provide in documents used in initial offerings and listings of equity securities by foreign issuers. In its most recent disclosure project, the *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers (International Debt Disclosure Principles)*, IOSCO published for public comment in October 2005 guidance on the types of disclosures that foreign issuers should provide in documents used in public offerings and listings of debt securities. Item VIII of the *International Debt Disclosure Principles* also contains substantive guidance on the MC disclosure that foreign issuers should provide in such documents. The guidance provided in this project reflects regulators' consideration of additional disclosures that could be provided in MC in light of the recent financial frauds. In 2003, IOSCO published the *IOSCO General Principles Regarding MD&A* to explain the purpose behind MC and to note general precautions for issuers when preparing MC disclosure. IOSCO is currently working on a project to develop disclosure principles for issuers' periodic reports that will build on its previous work on MC.

The standards and principles established on MC by IOSCO are the culmination of thorough analysis and discussion over a period of years by the securities regulators of the most developed markets, several of whom have many years of experience in reviewing the MC disclosures provided by issuers in their jurisdictions. In particular, the *International Equity Disclosure Standards* are widely recognized as an international benchmark for non-financial statement disclosures, including MC, and have been adopted by many IOSCO jurisdictions into their prospectus requirements. For example, the SEC incorporated all of the *International Equity Disclosure Standards* into its Form 20-F, which is used as a registration statement and form of annual report by foreign private issuers. The prospectus disclosure requirements that were recently adopted by the EU in its Prospectus Directive are also based on these IOSCO standards.

II. Non-mandatory IASB guidance that is focused on MC disclosures linked to accounting standards could be a useful complement to the MC requirements and guidance set by securities regulators or company law, as long as the guidance does not conflict with national securities regulations and company law.

Although many jurisdictions have already implemented the IOSCO MC standards and principles, non-mandatory guidance by the IASB on MC disclosures linked to accounting standards could be a useful complement to the MC requirements and guidance set by securities regulators or company law. Securities regulators regularly review documents that contain MC disclosure and, in some jurisdictions, regulators are required to review every public company's filings on a periodic basis. This enables regulators to determine what MC guidance is needed as a general matter, as well as to detect when MC guidance needs to be updated. Indeed, over the years, many regulators have refined their MC requirements and interpretative guidance related to those requirements based on their review of documents filed with, or submitted to, them. However, we recognize that the IASB could provide valuable insights on how issuers can improve the portions of their MC disclosures that are linked to accounting standards.

In any case, if the IASB decides to develop MC guidance, it should not assume that its guidance would be made mandatory. Indeed, if the IASB tries to develop a mandatory standard on MC with which issuers must comply in order to assert compliance with International Financial Reporting Standards (IFRS), and this standard is inconsistent with the MC disclosure requirements contained in the securities regulations of these jurisdictions, this would be highly problematic. Moreover, for those jurisdictions in which the IASB has convergence projects with the national accounting standard-setter and in which MC disclosure requirements have been set by securities regulators, mandatory MC guidance by the IASB may complicate convergence efforts if this guidance were to be labeled IFRS.

If the IASB decides to take on a project to develop guidance on MC, any guidance that it issues should be consistent with national securities regulations and company law, and cannot preempt or override legal requirements set by regulators with respect to MC and material disclosures generally. A dialogue between the IASB and securities regulators would be useful in assuring that any guidance developed by the IASB is consistent with the standards developed by IOSCO and by securities regulators.

III. MC disclosure is most appropriately solicited through disclosure provided outside the financial statements or the notes to the financial statements.

According to the proposed placement principles contained in paragraph 169 of the Discussion Paper, any information that is deemed essential to an understanding of the primary financial statements and its elements should be disclosed in the accompanying notes, rather than in the MC. However, MC disclosure is valuable precisely because it provides information that is viewed as essential to understanding the financial statements. We are concerned that the placement principles will not result in consistent disclosure of MC information, and may well result in some information that is normally viewed as MC disclosure in the notes to the financial statements.

If MC disclosure is provided through a variety of discrete disclosures in the notes to the financial statements and in the disclosures that are provided outside of the financial statements, this could easily lead to investor confusion and could tempt reporting companies to obfuscate rather than clarify. In addition, the notes to the financial statements do not lend themselves well to the type of nuanced presentation that would optimize MC disclosure. As businesses have grown larger and complex and become ever more globalized, the MC disclosures provided by issuers have become similarly larger and complex. Some IOSCO members have published guidance on matters of presentation, such as suggesting a layered approach to disclosure overall, and encouraging the use of tables, headings and an overview. These issues of presentation could not be addressed as easily if the MC disclosure is divided between the notes to the financial statements and the disclosures that are provided outside of the financial statements.

Moreover, if MC information is disclosed in the notes to the financial statements, we are concerned that this would suggest that MC disclosure could or should be audited, as it is rare for information contained in the notes to the financial statements to be exempt from audit requirements. MC at its best will contain management's judgment and predictions about the company's future, as well as management's views of the company's strategies and challenges. It is hard to see how any auditor would be able to audit this type of "soft" information. More insidiously, if an auditor's assurance mechanism is applied to MC, there may very well be a tendency to omit much of this "soft" information that constitutes the essence of good MC because it is less susceptible, or not susceptible, to numeric certainty and will thus make auditors applying their assurance mechanisms uncomfortable.

In some IOSCO jurisdictions, a voluntary auditing procedure for MC exists. However, we believe that the audit procedure has been used in these jurisdictions only very rarely, less than a handful of times, and that the reasons include not only expense and apparent lack of market demand, but also the unintended consequences of the process. Based on anecdotal evidence, we believe that the risk of these unintended consequences is a real one. We would therefore urge the Board not to accept as self-evident the premise that an audit of MC would be easily accomplished and would not have adverse consequences (see paragraph 192).

Finally, we note that the Discussion Paper, as a means of illustrating how the placement principles could be used, suggests that critical accounting estimates should be disclosed in the notes to the financial statements, rather than in the MC (see paragraph 176 and Appendix E). Some securities regulators encourage such disclosures to be contained in the MC, and not in the notes to the financial statements, because they believe that the less technical language that is customarily used outside the financial statements may be conducive to a clearer explanation to investors of the effect of estimates, assumptions, methodologies and the adoption of policies to a company's financial presentation.

For all of these reasons, we believe that if the IASB decides to develop guidance on MC, it should solicit this MC disclosure through disclosure that is provided outside of the financial statements or the notes to the financial statements. We also believe that if the IASB decides to develop such guidance, the views of securities regulators and preparers should be considered by the other relevant entities that would be tasked with assessing what auditing standards, if any, should apply to MC.

Closing

We appreciate your consideration of the comments raised in this letter. If you have any questions or need additional information on the recommendations and comments that we have provided, please do not hesitate to contact me at (202) 551-5300.

Sincerely,

Scott Taub

Scott Taub
Chairman
IOSCO Standing Committee No. 1