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Organización Internacional de Comisiones de Valores
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February 25, 2008

Exposure Draft: ED 9 Joint Arrangements
International Accounting Standards Board
30 Cannon Street
London EC4M 6XH
United Kingdom

RE: ED 9 Joint Arrangements

Dear IASB Members:

The International Organization of Securities Commissions (IOSCO) Standing Committee No. 1 on Multinational Disclosure and Accounting (Standing Committee No. 1) thanks you for the opportunity to provide our comments regarding the International Accounting Standards Board (IASB or the Board) Exposure Draft 9 on Joint Arrangements (ED 9 or the Exposure Draft).

IOSCO is committed to promoting the integrity of international markets through promotion of high quality accounting standards, including rigorous application and enforcement. Members of Standing Committee No. 1 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 reflect a general consensus among the members of Standing Committee No. 1 and are not intended to include all of the comments that might be provided by individual securities regulator members on behalf of their respective jurisdictions.

General Observation

Objectives of the draft IFRS and Role of Convergence

The Exposure Draft explains in paragraph IN2 that the [draft] IFRS is part of the Short-term Convergence project undertaken by the Boards with the objective of reducing differences between IFRS and US generally accepted accounting principles (GAAP). Members of Standing Committee No. 1 believe that in a final standard, it would be helpful if the Board clarified (1) the convergence taking place with this standard and (2) in general, where the accounting for joint arrangements does not converge after the issuance of this standard.

More broadly, however, and as further highlighted in our responses to the Board's questions below, we have a general concern about whether the objective of the Exposure Draft is limited to short-term convergence efforts. We acknowledge that in paragraph IN1 the Board indicates that the objective of the draft IFRS is to enhance the faithful representation of joint arrangements that an entity provides in its financial statements. However, we believe the Board should express more clearly, both in the

Calle Oquendo 12
28006 Madrid
ESPAÑA
Tel.: (34.91) 417.55.49 • Fax: (34.91)
555.93.68
mail@oicv.iosco.org • www.iosco.org

Introduction and in the Basis for Conclusions, that the impact of the proposed changes is broader than eliminating options in accounting treatment in pursuit of convergence with US GAAP. In addition, and as we discuss further below in our response to Question 3, we believe the Board has not sufficiently made its case for why it is choosing the equity method of accounting over proportionate consolidation.

Responses to the Board's Questions

Definitions and terminology

Question 1: *Do you agree with the proposal to change the way joint arrangements are described? If not, why?*

General Framework

In the Exposure Draft, the Board acknowledges that joint arrangements can take place in a number of different forms and structures and has therefore classified joint arrangements into the following three categories: (1) joint operations, (2) joint assets and (3) joint ventures. The Board indicates in paragraph 4 that a party to such an arrangement "may have an interest in a joint operation or joint asset, and also have an interest in a joint venture". Although the Exposure Draft provides a description of the different types of joint arrangements in paragraphs 3-20, the document does not adequately articulate the framework to identify the components or elements of a joint arrangement. Appendix B provides a flowchart for such a framework that conveys the message that a party to a joint arrangement may have more than one element to account for. Members of Standing Committee No. 1 believe the framework for identifying the components of a joint arrangement should be more fully described in the body of the standard.

In addition, the Board provides what appear to be examples or indicators (rather than requirements) of a joint arrangement throughout paragraphs 3-20 of the Exposure Draft. In the final standard, it would be helpful if the Board clarified which of these are examples or indicators and which are requirements of a joint arrangement. For reference purposes we have provided some examples where the Board should consider clarifying this point:

- Paragraph 12 of the Exposure Draft indicates that parties to a joint asset arrange their own financing for their interest in the asset. We understand that the principle to consider might be that each party has established ownership of the asset. As such, one indicator of establishing ownership of an asset might be for a party to arrange its own financing for its interest. However, this might not be the only indicator to meet the overriding principle.
- Paragraph 17 of the Exposure Draft states that a joint venture, among other things, earns revenue. If this guidance were to be applied literally, development stage enterprises, which typically do not have any revenue-generating activities, would not qualify as joint ventures.
- Paragraph 18 of the Exposure Draft discusses the characteristics of a business. We believe the Board should clarify the intention of this paragraph, specifically whether an entity is required to meet the definition of a business to also be considered a joint venture.

Description of Joint Arrangement

The definition of a "joint arrangement" in Appendix A is an arrangement where the parties "share decision-making" and undertake an "economic activity together". In regards to the shared decision-

making referenced in the definition, we believe the Board should clarify the types of decision-making that are required to be shared among the parties to the arrangement. For instance, does the Board believe these shared decisions should be participating or protective in nature (such as the types of participating or protective rights discussed in the Financial Accounting Standards Board (FASB) Emerging Issues Task Force (EITF) Issue No.'s 96-16 and 04-5) or should there be shared decision-making for all decisions affecting the success of the entity?

We believe the current scope of a joint arrangement might be broader than what the Board intended and could potentially scope in a significant number of contractual arrangements, including normal supply contracts. For example, assume Entity A enters into an agreement with Entity B such that Entity B will produce a part for Entity A and Entity A provides the specifications for that part. In this example, it would appear that Entity A and B share in the decision-making and are undertaking an activity together concerning the production of that part. While the accounting for these arrangements might not be any different than what is currently required (that is, recognition of the contractual rights and obligations), the incremental disclosures required by this standard would presumably apply.

In addition, some of the illustrative examples, such as the first variation in Example 3, incorporate the concept of a "right to use" under lease arrangements and the recognition of this "right to use" as a separate asset. We understand that some of the preliminary discussions in the IASB and FASB joint project on leasing involve the potential recognition of a "right to use" asset. We believe that incorporating the recognition of a "right to use" pre-judges the outcome of the joint project on leasing.

Description of Joint Venture

The Exposure Draft describes a joint venture as a joint arrangement that is jointly controlled by the venturers. The definition of "joint control" in Appendix A includes the notion of "contractually agreed sharing of power". We believe the Board should clarify whether such power should be "equal" or whether the sharing of power requires the unanimous consent of the parties to the arrangement as included in the definition of "joint control" in paragraph 3 of International Accounting Standard No. 31 *Interests in Joint Ventures* (IAS 31). If the Board does not intend on incorporating an equal sharing of power or unanimous consent of the parties to the arrangement, we believe that this results in a significant change to the meaning of "joint control" which should be debated outside of this project which is intended to only focus on short-term convergence with US GAAP.

Accounting for joint arrangements

Question 2: *Do you agree that a party to a joint arrangement should recognise its contractual rights and obligations relating to the arrangement? If so, do you think that the proposals in the exposure draft are consistent with and meet this objective? If not, why? What would be more appropriate?*

Members of Standing Committee No. 1 agree with the Board's core principle in paragraph 1 that "Parties to a joint arrangement recognise their contractual rights and obligations arising from the arrangement." However, we have general concerns over the application of this principle when contractual rights and obligations exist but do not contain the characteristics of the three types of joint arrangements described by the Board. In these instances, there may be a perceived limitation in applying the core principle in paragraph 1 when distinguishing between and giving accounting recognition to only rights and obligations related to a joint asset, operation or venture.

The model developed by the Board seems to assume that all contractual rights and obligations to which a party to a joint arrangement may be entitled or subject contain characteristics of one of the three categories: (1) joint operation, (2) joint asset or (3) joint venture. We question whether all contractual rights and obligations contain the characteristics of one of these three types of joint arrangements. For

instance, as part of the formation of a joint venture, the joint venture agreements may contain negotiated terms that create additional rights and obligations on the part of the joint venture partners. These additional rights and obligations negotiated by the venture partners may result from inequality in the assets contributed as part of the formation of the joint venture or other uncertainties about the assets contributed (such as in "earn-out" arrangements). It is possible that these additional rights and obligations do not represent joint assets or joint operations that require separate accounting and recognition under the proposed model.

The Board should further develop the model and explain how the core principle in paragraph 1 is applied to the extent parties to a joint arrangement have contractual rights and obligations under the arrangement that do not contain the characteristics of a joint asset, operation or venture.

Question 3: *Do you agree that proportionate consolidation should be eliminated, bearing in mind that a party would recognize assets, liabilities, income and expenses if it has contractual rights and obligations relating to individual assets and liabilities of a joint arrangement? If not, why?*

Members of Standing Committee No. 1 agree, in principle, with eliminating the optionality afforded in IAS 31 to account for interests in a joint venture using either the proportionate consolidation or equity method of accounting due to the improved comparability that such elimination provides and in the interest of furthering convergence between IFRS and US GAAP. However, we believe the Board has not sufficiently made its case for why it is choosing the equity method of accounting over proportionate consolidation and thus the Exposure Draft is incomplete in this respect. Considering that proportionate consolidation is widely used, and, as a consequence, a change in accounting method could result in a significant financial statement impact for many issuers, we believe the IASB needs to further develop its basis for such a change. If, upon redeliberation, the Board affirms its position, it should explain in the final standard its basis for concluding that the equity method of accounting better reflects the substance of an investment in the joint venture than proportionate consolidation.

Finally, we understand that EITF Issue No. 00-01 allows for the use of proportionate consolidation for unincorporated entities engaged in either the construction industry or extractive industry, as defined in the EITF, where there is a longstanding practice of its use. Since the objective of this project is to reduce differences between IFRS and US GAAP, we believe the Board should acknowledge the exception provided in EITF Issue No. 00-01 and explain whether it believes the model described in the Exposure Draft, that is the recognition of contractual rights and obligations, will result in convergence for unincorporated entities within these industries.

Disclosures

Question 4: *Do you agree with the disclosures proposed for this draft IFRS? If not, why? Are there any additional disclosures relating to joint arrangements that would be useful for users of financial statements?*

We agree with the disclosures proposed in the Exposure Draft. In addition to the disclosure concerning capital commitments discussed in paragraph 37, the Board should consider requiring disclosure for all other commitments. In general, improved disclosure of an entity's obligations to provide on-going funding or resources (in whatever form) to a joint arrangement will be useful to investors.

Question 5: *Do you agree with the proposal to restore to IAS 27 and IAS 28 the requirements to disclose a list and description of significant subsidiaries and associates? If not, why?*

We are supportive of the proposed disclosure requirement in paragraph 39(a) of the Exposure Draft to disclose a list and description of interests in significant joint ventures and the proportion of ownership interest held as well as the Board's proposal to restore this disclosure in IAS 27 and IAS 28. We believe it is useful for investors and other users of financial statements to understand the interests held in significant subsidiaries and associates in addition to those held in significant joint ventures.

Question 6: *Do you agree that it is more useful to users if an entity discloses current and non-current assets and liabilities of associates than it is if the entity discloses total assets and liabilities? If not, why?*

We are supportive of the Board's proposed disclosure requirement and believe such disclosure will provide further insight into the current financial position and liquidity of material associates and joint ventures.

Other Comments

1. Contribution of Non-Monetary Assets

Paragraph 27 indicates that a party to a joint venture should recognize a gain or loss on the contribution of non-monetary assets following the guidance in International Accounting Standard No. 28 *Investments in Associates* (IAS 28). In the final standard, we believe the Board should incorporate the criteria in paragraph 5(a-c) of SIC Interpretation 13 *Jointly Controlled Entities – Non-Monetary Contributions by Venturers* (SIC 13), since the Board did not intend on changing the existing guidance in SIC 13, as indicated in paragraphs BC20-21. As an alternative, the Board could amend paragraph 22 of IAS 28 to incorporate the guidance in SIC 13.

2. Loss of Joint Control

The Exposure Draft provides guidance in paragraph 30 when accounting for an interest in an investee upon the loss of joint control when the investee is then accounted for in accordance with International Accounting Standard No. 39 *Financial Instruments: Recognition and Measurement* (IAS 39). Paragraph 31 also provides guidance on accounting for the loss of joint control similar to the guidance provided in paragraph 19 of IAS 28. In the final standard, we believe the Board should clarify the intent of providing the additional guidance in paragraph 31 and, if retained, we believe the Board should also consider aligning this paragraph to be consistent with paragraph 19 of IAS 28.

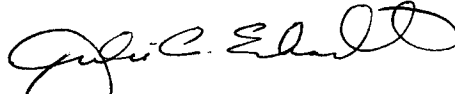
3. Illustrative Examples

- A number of examples involve the use of both a joint asset or operation and a joint venture. In some of these examples, it's clear that substantially all of the accounting recognition is given to the joint asset or operation with very little attributed to the equity interest (as is discussed in paragraph IE8). To provide clarity in the other examples, we believe the Board should consider stating this fact where it is clear that very little would be attributed to the equity interest.
- In the second variation to Example 5, paragraph IE49 suggests that joint control exists since the four shareholders each have a seat on the Board. Although representation on the Board may be one factor to consider, other factors might limit the ability of each party to share the power to govern the financial and operating policies of a venture. In addition to our comment in response to Question 1 with respect to the definition of "joint control", we believe the Board should consider providing additional facts to clarify how joint control has been demonstrated in this example.

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We appreciate your thoughtful 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,

A handwritten signature in black ink, appearing to read "Julie A. Erhardt". The signature is fluid and cursive, with a large initial "J" and "E".

Julie A. Erhardt

Chair

IOSCO Standing Committee No. 1