

# SIEMENS

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Nancy M. Morris  
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Your letter of Our reference Date	September 26, 2007

Dear Ms. Morris,

Siemens Aktiengesellschaft very much appreciates the opportunity to comment on Release No. 33-8818, dated July 2, 2007 (the "Release") of the Securities and Exchange Commission (the "Commission"). The Release proposes changes to laws that require financial statements of foreign private issuers ("FPI") to be reconciled to U.S. generally accepted accounting principles ("U.S. GAAP"). It proposes to eliminate the reconciliation requirement for financial statements prepared using the English version of International Financial Reporting Standards ("IFRS"), as published by the International Accounting Standards Board ("IASB").

We are a stock corporation organized in the Federal Republic of Germany and employed an average of 475 thousand people in approximately 190 countries worldwide during fiscal 2006. As a European company required to comply with IFRS, we have a keen interest in the debate on achieving high-quality, global accounting standards and convergence in order to use a single set of financial statements for all capital markets.

Siemens strongly supports the proposal to eliminate the requirement that FPI presenting financial statements in accordance with IFRS reconcile them to U.S. GAAP. We consider the IFRS to be of high quality and to be globally accepted and IFRS, therefore, already lives up to the expectations of the capital markets. The proposal is also in-line with Annex 1 of the declaration of a "Framework for Advancing Transatlantic Economic Integration between the European Union and the U.S.," which has been signed by U.S.-President, George W. Bush, President of the European Council, Angela Merkel and President of the European Commission, José Manuel Barroso, and which we support without reserve.

The transition to IFRS has been completed for most European countries, however, the requirement to reconcile IFRS financial statements to U.S. GAAP is still very costly for FPI – and ultimately their shareholders – and at the same time of little benefit for users of financial statements, who, according to our experience, show little interest in the reconciliation.

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Therefore, the waiver of the reconciliation requirement would be a significant and durable solution for FPI and would greatly enhance the willingness to remain or become listed on the U.S. stock exchanges. Consequently, we urge the Commission to put the final regulation in place as soon as possible – preferably already for filings in 2008.

We also strongly support the path to mutual recognition between accounting standards of the European Union “EU” and the U.S. and welcome these developments wholeheartedly. As you know, EU companies cannot use IFRS for filings within the EU until it is endorsed, a process which can take up to a year. This endorsement process has created the misleading perception of a European body of IFRS, which is somewhat distinct and different from IFRS as promulgated by the IASB. However, except for one carve-out from IAS 39, *Financial Instruments: Recognition and Measurement*, both bodies are identical. Nevertheless, there may be instances in the future where the timing of the endorsement mechanism in Europe means that companies would, temporarily, not be able to comply with IFRS as promulgated by the IASB and IFRS as endorsed by the EU at the same time.

We are therefore seeking an exemption for IFRS as endorsed by the EU to be equally treated as IFRS as published by the IASB for the scope of the above mentioned Release. If the Commission feels unable to do so, we would propose that, in these instances, a qualitative reconciliation from EU IFRS to full IFRS (rather than U.S. GAAP) would be sufficient to enjoy the concession.

In an Appendix to this letter, we answer certain questions from the Commission in its Release. We hope our comments are helpful to the further process. We would be pleased to answer any questions that may arise. Please do not hesitate to contact Dr. Bernd Hacker (e-mail: bernd.hacker@siemens.com), at +49 89 63634991 or the signees to discuss any aspects of our comment letter.

Sincerely yours,

Siemens Aktiengesellschaft

/s/ Dr. Klaus Patzak  
Corporate Vice President Financial Reporting  
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/s/ Dr. Elisabeth Schmalfuß  
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## Appendix

## **Appendix to letter to Nancy M. Morris, Secretary U.S. Securities and Exchange Commission, Washington, D.C., U.S.A., dated September 26, 2007**

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### **Acceptance of IFRS Financial Statements from Foreign Private Issuers Without a U.S. GAAP Reconciliation as a Step Towards a Single Set of Globally Accepted Accounting Standards**

#### **A robust Process for Convergence (Question 1-2)**

The global use of one single set of accounting standards will lead to significant cost savings for companies – and ultimately their shareholders – throughout the world and would allow for a global comparability of companies thus benefiting all investors.

- Particularly in the EU, companies incorporated in one of the now 27 member states whose securities are listed on an EU-regulated market are required to report IFRS consolidated financial statements as endorsed by the EU in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards. As set forth by the SEC, based on estimates by the Committee of European Securities Regulators (“CESR”), this regulation affected approximately 7,000 companies. Besides Europe, IFRS are or will be used in South America, Australia, Asia and Africa. Hence, IFRS financial statements are widely used around the world outside the U.S.

On July 25, 2007, the SEC voted to publish a Concept Release for public comment on allowing U.S. issuers, including investment companies, to prepare their financial statements using IFRS as published by the IASB. The Concept Release is evidence of the interest of globally operating U.S. companies in preparing IFRS financial statements.

We agree that IFRS are widely used and have been issued through a robust process by an independent and stand-alone standard setter. IFRS are high-quality accounting standards used in almost 100 countries (with rising tendency). Based on the foregoing, it is fair to say that IFRS are already global accounting standards.

The governance of the IASB as a standard-setting body for IFRS is in our view largely effective and transparent. Concerns raised by various parties in the past (such as the European Commission (“EC”)) have been addressed recently. As described by the SEC in much detail, the International Accounting Standards Committee Foundation (22 Trustees) oversees (i) the IASB, which is a stand-alone, privately funded accounting standard-setting body established to develop global standards for financial reporting (14 Board Members); (ii) the International Financial Reporting Interpretations Committee (“IFRIC”) (12 members); and (iii) the Standards Advisory Council.

In addition, we think that in order to reach the conclusion to waive the reconciliation requirement, the Commission should consider the recent efforts that have been made towards convergence.

Both, the Financial Accounting Standards Board (“FASB”) and IASB have been committed to convergence for quite some time. In September 2002, the FASB and the IASB issued their Norwalk Agreement in which they acknowledged their commitment to develop high quality, compatible accounting standards that could be used for both domestic and cross-boarder financial reporting. Since then, the two accounting standard setters have worked on making their existing financial reporting standards fully compatible and on coordinating their future work program to ensure that compatibility is maintained. To further foster their convergence project, the FASB and the IASB have signed a Memorandum of Understanding (“MoU”) with respect to “A Roadmap for Convergence between IFRS and U.S. GAAP – 2006-2008,” dated February 27, 2006.

As a result of the increasing use of IFRS, the convergence project of the FASB and the IASB has gained momentum. However, it will be a continuous project as both standard setters evolve new accounting standards over time.

The consideration of convergence should also take into account the different approaches that both accounting regimes historically use: a rules-based approach under U.S. GAAP versus a principles-based approach under IFRS. The different approaches reflect differences in the legal and regulatory environments which may make it unlikely to reach a convergence level that obtains identical standards. Nevertheless, convergence should be regarded as being achieved if the underlying principles are harmonized and not if the last rule is identical. As a result, we deem the already achieved convergence to be widely successful in this respect.

We think that convergence is not an end in itself, but should be used with caution and to the extent of achieving the best possible outcome. In our opinion, the current way to convergence – take the best of both worlds – is the best approach. Furthermore, we believe that the established close cooperation between the FASB and the IASB will secure that further convergence will be achieved even after waiving the reconciliation requirement.

## **Consistent and Faithful Application of IFRS (Question 3-7)**

Recently, many users, investors and analysts made clear that they do not need the reconciliation and actually do not use it. This has been made clear by users during the roundtables held by the SEC together with the EC in March. Also companies, including Siemens, receive little if any questions on their reconciliation.

IFRS are principles based rather than rules based and this fact leads to the perception that consistent and faithful application of IFRS can be circumvented. We do not agree with this assertion. Rather, we think that the principles-based nature of IFRS lead to a less complex environment and to more meaningful information to be given to the users.

We think the current developments in the cooperation between the Commission and other enforcement agencies around the world such as CESR will contribute to a high degree of comparability of financial statements and consistent application of IFRS. In Europe, the EC has initiated the EU Roundtable for consistent application of IFRS to foster consistent application in Europe.

However, it should be emphasized that there is only one official body to interpret IFRS, the IFRIC. Only IFRIC should be in charge of interpreting IFRS. Otherwise, IFRS will drift apart for different countries or regions. Neither the SEC nor other enforcement agencies or national standards setters should issue guidance or interpretations without consultation of IFRIC.

The Commission is proposing to accept from FPI their financial statements prepared in accordance with IFRS as published by the IASB without reconciliation to U.S. GAAP. Accordingly under the current Release, the U.S. GAAP reconciliation requirement would still be applicable to issuers reporting their financial statement under a nationally required variation of IFRS. As mentioned before, in various jurisdictions, local IFRS differ from the original IFRS issued by the IASB, either due to regional particularities, or due to timing differences in the endorsement process into local law. We are therefore seeking an exemption for IFRS as endorsed by the EU to be equally treated as IFRS as published by the IASB for the scope of the Release. If the Commission seems unable to do so, we urge the Commission to allow a qualitative reconciliation from EU IFRS to IASB IFRS if the two are different.

The timing of the acceptance of IFRS should be as soon as possible, preferably already for filings in 2008. We do not see the need nor the reason for further delay. We also do not think that the timing should be conditional on the number of listed companies preparing their financial statements in accordance with IFRS. On the contrary, we deem this counterproductive as companies recently refrain from listings due to high costs relating to the listing requirements, including the reconciliation to U.S. GAAP.

## **The IASB as Standard Setter (Question 8-9)**

With respect to SEC support in the IASB standard-setting process, we think it is important that all constituents, with the enforcement agencies prominent among them, should be engaged in the process. It is however important, as mentioned before, that equal weight is given to the input of various groups and regions to ensure that IFRS remain accepted around the world. It would be detrimental to the credibility of IFRS, if one participant in the due process is perceived by others as being dominant.

## **Discussion of the Proposed Amendments to Allow the Use of IFRS Financial Statements Without Reconciliation to U.S. GAAP**

### **Eligibility Requirements (Questions 11-17)**

In Europe, for a considerable amount of time there has been a coexistence of various accounting standards. For example, in Germany companies were allowed to use either German GAAP, IFRS or U.S. GAAP. Although more and more internationally operating companies chose to use either U.S. GAAP (prior to the EU requirement to prepare financial statements according to IFRS) or IFRS rather than German GAAP, to our knowledge, the capital markets and the investors did not raise major concerns about the comparability of financial statements.

When we published our first U.S. GAAP reconciliation with our first supplemental IFRS financial statements in fiscal 2006, we experienced that our investors focused on the financial statements and notes thereto (which are published on a quarterly basis), not the reconciliation. We also have not received many questions concerning the reconciliation in our talks with analysts. Therefore, from a cost benefit point of view we do not see a need to maintain the reconciliation.

The reason to us is straightforward, investors already have a sound understanding of IFRS and do not need reconciliation to U.S. GAAP, which also shows that IFRS are already regarded as high-quality standards and are widely accepted.

We also do not see any merit in maintaining the requirements for additional disclosures under U.S. GAAP. IFRS already requires a vast amount of disclosures and we do not deem it helpful for the investor to cope with even more (potentially contradictory) requirements.

As pointed out before, European companies must comply with IFRS as endorsed by the EU. Because deviations are currently minor and are mainly due to timing differences, we deem it burdensome for EU companies to comply with IASB IFRS for SEC filing purposes. In most cases, there are actually no material differences in the financial statements due to this. It is also difficult for auditors in some countries to issue audit opinions declaring that financial statements comply with IFRS as endorsed by the EU as well as IASB IFRS at the same time. Therefore, we urge the commission to allow EU companies to file financial statements according to IFRS as endorsed by the EU without reconciliation.

If the SEC finds it impossible to allow IFRS as endorsed by the EU, a qualitative reconciliation to IASB IFRS should suffice to comply with SEC regulation.

## **U.S. GAAP Reconciliation**

### **Interim Period Financial Statements (Questions 21-23)**

Generally, there seems to be no significant difference between Article 10 of Regulation S-X and IAS 34, *Interim Financial Reporting*, with respect to interim financial statements and notes thereto. IAS 34 prescribes only the minimum content of an interim financial report. The standard does not mandate which entities should be required to publish interim financial reports, how frequent, or how soon after the end of an interim period as this is principally regulated by national law and/or the rules and regulations of national stock exchanges. Companies listed on the Frankfurt stock exchange also have to follow Section 63 of the Exchange Rules for the Frankfurt Stock Exchange, which requires companies to publish German and English language quarterly reports under IFRS for the first three quarters after two months of the quarter end. The Accounting Standards Committee of Germany (Deutsches Rechnungslegungs Standards Committee e.V.) has published a near final draft of an accounting standard with respect to interim reporting, Deutsche Rechnungslegungs Standards ("DRS") 16, specifying interim reporting requirements for financial statements and management discussion and analysis (MD&A). In particular, the requirements set forth in DRS 16 relating to the MD&A disclosure are similar to the SEC MD&A requirements. In addition, companies applying for debt or equity listings in the EU are subject to the requirements of the Commission Regulation (EC) No 809/2004 of April 2004 implementing Directive 2003/71/EC of the European Parliament and the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements. With this regulation, the EU has harmonized the regulatory framework for registration statements between Europe and the U.S. and information required for registration statements within the EU regulated market is now very similar to the U.S. listing requirements.

As a result, any concerns relating to (i) difficulties of the issuer in preparing interim period financial statements that are in accordance with IFRS, (ii) comparability of these interim financial statements to Article 10 of Regulation S-X; and (iii) sufficiency of these interim financial statements are unwarranted.

### **IFRS Treatment of Certain Areas (Questions 24-25)**

The Commission asks whether there are areas to be addressed before acceptance of IFRS is advisable. Currently, there are several convergence projects as laid out in the MoU to be addressed by the IASB and the FASB in the short and medium term. However, we think that convergence has already progressed quite far and could think of no subject matter areas that should be resolved before IFRS are fit for acceptance by the SEC.

Investors around the world are already familiar with IFRS as far as we can see. As mentioned before, we did not receive many questions on accounting treatments in our analyst presentations, at least not more than previously received for our U.S. GAAP financial statements.

Also, as convergence is a continuous process, such as the process of the pronouncement of new accounting standards within one accounting regime, it will be hard to determine a certain state of convergence that would make market participants and investors more comfortable than they would be now.

If an area is not addressed by a IFRS this could be either because there is a lack of guidance in IFRS or because IFRS are principles based. In neither case do we deem it advisable for the SEC to issue guidance or ask for additional disclosure that goes beyond the IFRS. This would thwart the whole idea of having worldwide standards. If IFRS lack guidance, there is always the possibility for the company to look to regulations of other standard setters according to IAS 8, *Accounting Policies, Changes in Accounting Estimates and Errors*. However, these regulations outside the IFRS are lower in the hierarchy than IFRS themselves and a mandatory fallback to U.S. GAAP is therefore not foreseen in IFRS nor should it be the rule for FPI.

## **Accounting and Disclosure Issues (Questions 26-34)**

Once issuers are permitted to omit a U.S. GAAP reconciliation, this should be applicable to all years presented in their Form 20-F or in their quarterly report on Form 6-K. If investors are interested in the reconciliation of the previous years, they can review the prior-year filings. If issuers would be required to present prior-year reconciliations, the burden remains of reviewing these reconciliations and of potential updates to these reconciliations as a result of prior-period adjustments or restatements.

The Commission proposes that issuers would continue to be required to respond to items of Form 20-F that make reference to FASs, FASB interpretations, or other specific pronouncements of U.S. GAAP for definitional purposes. However, the issuer would apply the corresponding IFRS notion of the principles embodied in the referenced U.S. GAAP pronouncement. If there is a general rule that issuers ought to use the respective IFRS to determine the appropriate non-financial statement disclosure, it would not be necessary to state the specific IFRS guidance. In addition, it should be clear that an issuer does not have to provide an analogous disclosure under IFRS if there is no similar standard under IFRS. In stead, it should become part of the convergence project to develop new IFRS guidance.

Independent of its decision on the U.S. GAAP reconciliation requirements in its Release, it would be essentially important to IFRS issuers to have a safe harbor for forward looking statements under IFRS 7, *Financial Instruments: Disclosure*. Accordingly, we would highly appreciate an action of the Commission to expand the safe harbor provided under Section 27A of the Securities Act and Section 21E of the Exchange Act to include information provided in the financial statements and notes thereto.

## **Quality Control Issues (Question 42)**

We do not think that the Commission should be concerned about the level of knowledge in accounting and auditing, especially for FPI, since FPI are usually audited by large international auditors who have gained considerable knowledge in IFRS. For example, in Germany, IFRS have been allowed for listed companies since 1998. During these almost ten years, a vast amount of knowledge has been gathered in the audit community.

We do, however, acknowledge that generally the IFRS know-how within the U.S. might not be as extensive as elsewhere in the world. We therefore very much appreciate the efforts of the Commission to gather IFRS knowledge particularly within the SEC staff well ahead of the Release.

## General Request for Comments (Questions 44-46)

We could not think of a reason why the progress towards implementing a single set of high quality globally accepted accounting standards should slow down. Given the various pronouncements by the bodies involved, especially the IASB, we think that the process is well under way and will even gain further momentum with the mutual recognition of accounting standards between Europe and the U.S.

## Summary

To draw a conclusion we think that:

- The Commission should strive to accept IFRS as soon as possible, preferably for filings in 2008;
- IFRS as adopted in the EU should be accepted by the SEC without reconciliation;
- If it is not possible for the SEC to accept IFRS as adopted by the EU, a reconciliation on a qualitative basis to "Full IFRS" (and not to U.S. GAAP) should suffice;
- In order to ensure consistent application, IFRIC should remain the sole body to interpret IFRS;
- Principles-based standards call for professional judgment and principles-based enforcement;
- The SEC should liaise with other enforcement agencies such as CESR and rely on home-country enforcement to avoid diverging interpretations by various enforcement agencies;
- Investors, auditors, etc. are already quite familiar with IFRS;
- Removal of the reconciliation requirement should be unconditional and irrespective of the size, the industry or other factors of the company;
- There should be no mandatory fallback to U.S. GAAP if IFRS lack guidance; and
- SEC should not issue guidance if IFRS are silent on an issue due to their principles based nature.