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Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
By E-mail: rule-comments@sec.gov

File Number S7-13-07

Dear Sirs and Madams,

This letter comments 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 to be reconciled to U.S. generally accepted accounting principles (“US GAAP”), promulgated chiefly by the Financial Accounting Standards Board (“FASB”). It proposes to eliminate the reconciliation requirement for financial statements prepared using the English version of International Financial Reporting Standards (“IFRS”), published by the International Accounting Standards Board (“IASB”).

1. *Issues.* The Release ignores issues that arise from the following facts: (a) the Commission recognizes FASB as a US GAAP standard setter pursuant to the Sarbanes-Oxley Act (“SOX”) that requires FASB to be funded from public fees while (b) IASB would be recognized as an IFRS standard setter without that requirement and instead using funding from a small number of private donors.

2. *The Commission.* Congress vests the Commission with substantial authority to establish accounting principles.¹ The Commission exercises that authority through numerous means, including in regulations, Accounting Series Releases and official pronouncements. In general, however, the Commission has relied largely on FASB and its predecessors to set US GAAP. Since 1980, the Commission has required financial statements of foreign private issuers to be reconciled to US GAAP.²

3. *IASB.* Since 2001, IASB has promulgated IFRS (which include promulgations of its predecessor dating to 1973). The SEC has historically exercised some influence over IASB (and its predecessor) and currently is as an observer to IASB’s Standards Advisory Council. IASB is funded by voluntary contributions from a small number of

¹ See, e.g., Securities Act of 1933, 15 U.S.C. §§ 77g, 77s(a), 77aa(25) and (26).

² See Release, at p. 13 (n. 18).

donors (fewer than 200). Funding IASB is a significant policy concern of its Trustees.³ The Trustees emphasize the small number of donors that IASB attracts and express concern to avoid allowing contributors to make financial commitments that may be contingent on particular actions that would threaten IASB's independence.

4. *FASB*. Until 2003, FASB was funded entirely by voluntary contributions. Concern existed that FASB's reliance on such funding threatened its independence. In response, SOX designed a new funding system using fees levied on Commission registrants; SOX also granted the Commission special powers respecting recognition of accounting standard setters.⁴ SOX contemplates that standard setters have specified attributes, including a budget funded entirely from those fees—not from voluntary contributions.⁵ After SOX, FASB applied to the Commission for recognition as such a standard setter and the Commission granted its request.⁶

5. *The Release and IASB*. The Release does not suggest that IASB has applied to the Commission for such recognition nor does it state that the Commission is proposing to recognize IASB as a standard setter (and, in any event, IASB is not funded in the manner that SOX contemplates).⁷

6. *Recognition of IASB*. Despite this silence, it is essentially inescapable that the Release implicitly contemplates recognizing IASB as a standard setter. The proposed change applies only to accounting standards approved and published by a single identified standard-setter, namely IASB. The Release devotes extensive discussion to IASB and its attributes, including its organizational structure, leadership, procedures and funding.⁸ This underscores that a fundamental basis for the proposal is confidence that IASB will produce accounting standards warranting Commission recognition.

7. *Authority to Recognize IASB*. Even were the Release seen to propose recognizing IASB as a standard setter, however, it is possible that nothing in SOX prevents the Commission from doing so. SOX uses permissive language to grant the Commission special powers; the statute does not limit the Commission's general powers. The Commission's general authority to establish accounting principles for purposes of the federal securities law may suffice to authorize any implicit recognition of IASB contemplated in the Release.⁹

³ See www.iasb.org/About+Us/About+the+Foundation/Future+Funding.htm.

⁴ Sarbanes-Oxley Act, § 108(b)(1)(A)(iii), codified at 15 U.S.C. § 77s.

⁵ Sarbanes-Oxley Act, § 109, codified at 15 U.S.C. § 7219.

⁶ SEC, Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release No. 33-8221 (April 25, 2003).

⁷ In this comment letter, I do not examine whether IASB possesses SOX's other stated attributes.

⁸ Release, at pp. 15-23.

⁹ See Release, at p. 25 (n. 38): "Th[e Commission's general] authority [over accounting matters] was reaffirmed in the Sarbanes-Oxley Act, Section 108(c) of which states, 'Nothing in this Act, including this

8. *FASB-IASB Convergence.* Yet it remains relevant to consider how the foregoing factual and legal backgrounds bear on the question of public policy. The Release explicitly envisions and encourages cooperation between IASB and FASB to promote convergence toward a single international accounting system.¹⁰ When the two boards propose different treatments for a topic, a process of cooperation may forge a compromise or provide the basis for choosing. That process will be shaped in part by the relative negotiating positions of the two bodies. Those positions will be influenced by their respective incentives, which will hinge, in part, on funding sources.

9. *Reintroducing FASB to Conflicts.* A likely effect would be to reintroduce FASB to the funding conflicts from which SOX liberated it. IASB is not subject to the funding limits that FASB faces and IASB lacks an assured funding source that FASB enjoys (IASB can use private contributions while FASB cannot and IASB relies on contributions while FASB does not). These differences pose for the two bodies different incentives during standard setting processes that raise convergence issues. Albeit indirectly, FASB would be as beholden to IASB's donors as it was to its donors before SOX. That is not likely in the interests of investors, markets or the public.

10. *Suggested Considerations.* It may be desirable for the Commission to provide public reflections on these issues. It may be prudent to evaluate possible policy options to address them. As examples, consideration could be given to increasing the Commission's role in IASB and/or allocating some of FASB's budget from SOX's fees to contribute to IASB's budget. Given that convergence is an important Commission priority, using SOX's fees to fund both bodies may be prudent.¹¹

Very truly yours,

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section . . . shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.”

¹⁰ Release, at p. 36.

¹¹ The Release could be revised in two other ways. First, it states: “The FASB is overseen by the Financial Accounting Foundation (“FAF”), *which is responsible for funding the activities of the FASB . . .*” Release, at p. 23 (emphasis added). The Release never mentions SOX's funding provisions; the statement that FAF is “responsible for funding the activities of the FASB” is either outdated or misleading (even if in a certain technical way correct). Second, in summarizing the relationship between the Commission and FASB (Release, at p. 24), the Release says that the Commission oversees FASB activities, provides views on member selection and sometimes refers accounting issues to it, but never mentions that, under SOX, the SEC reviews FASB's annual budget. See Sarbanes-Oxley Act, § 109(e)(1), codified at 15 U.S.C. § 7219.