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CITY BAR

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FINANCIAL REPORTING**

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VIA EMAIL TO [RULE-COMMENTS@SEC.GOV](mailto:RULE-COMMENTS@SEC.GOV)

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-3628

Subject: File Number S7-20-07

Ladies and Gentlemen:

This letter is submitted on behalf of the Financial Reporting Committee of the Association of the Bar of the City of New York (the "Committee") in response to Release Nos. 33-8831, 34-56217, IC 27924, *Concept Release on Allowing US Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards* (the "Concept Release").

The Committee is composed of lawyers with diverse perspectives on financial reporting matters, including members of law firms and counsel at major corporations, financial institutions, public accounting firms and institutional investors. A list of members of the Committee is attached as Annex A to this letter.<sup>1</sup>

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<sup>1</sup> This letter does not necessarily reflect the individual views of each member of the Committee or of the institutions with which they are affiliated.

**1. *The Commission Should Permit U.S. Issuers to Prepare Financial Statements in Accordance with IFRS.***

The Committee supports the proposition that U.S. issuers<sup>2</sup> should be permitted to file with the SEC financial statements prepared in accordance with IFRS without requiring a reconciliation to U.S. GAAP. We believe that IFRS is today a high-quality body of accounting principles that is supported by an effective infrastructure, allowing it to be used by investors with a high degree of confidence to compare investment opportunities. We believe that this should be permitted on a measured basis, after the Commission has had an opportunity to evaluate experience gained from initial utilization of its recently-adopted rules permitting foreign private issuers to dispense with U.S. GAAP reconciliations if they report under IFRS as adopted by the International Accounting Standards Board (“IASB”). We do not believe that the SEC need wait for the IASB to adopt accounting standards for insurance activities and extractive industries before permitting U.S. issuers to elect to adopt IFRS (with the exception of U.S. issuers primarily engaged in those industries).

Beyond these considerations, however, we do not believe that the Commission needs to delay this step to await further development of the general scope, quality, acceptance or application of IFRS. While these aspects of IFRS will continue to improve, we do not believe that these issues merit the imposition of affirmative milestones that must be achieved before U.S. issuers are permitted to adopt IFRS (other than as noted above).

We believe that permitting U.S. issuers to voluntarily adopt IFRS will be an important step in the Commission’s long-standing efforts to reduce the disparity in global accounting standards. We believe that this step will also foster and accelerate the development of expertise in this body of accounting in the United States by encouraging development of educational infrastructure in the United States to train accountants in IFRS. U.S. issuers will also be incented to invest in enhancing internal competence in this area. This will foster further convergence of U.S. GAAP and IFRS, and provide objective experience with the shift to IFRS that will inform subsequent deliberations as to the future role of IFRS in the reporting of U.S. issuers. We also believe that taking this step will enhance the Commission’s ability to contribute to the development of IFRS and the IASB.

Pursuing the Concept Release will also further signal to foreign private issuers, international securities regulators and the international accounting and auditing standard setting organizations that the Commission remains committed to the convergence of U.S. GAAP and IFRS, as well as to the active participation of the U.S. capital markets in global capital formation.<sup>3</sup>

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<sup>2</sup> In this letter, we use the term “U.S. issuer” as defined in footnote 12 of the Concept Release.

<sup>3</sup> As the Commission is aware, the European Commission and the Committee of European Securities Regulators are considering whether U.S. GAAP should be deemed to be equivalent to IFRS for purposes of offering documents and periodic reports filed in the EU. If this determination is still pending when the Commission is considering taking definitive action on the Concept Release, the Committee believes that permitting U.S. issuers to adopt IFRS would improve the prospect of a positive decision in Europe, which in turn will benefit U.S. companies by making it easier to access European markets.

**2. *The Commission Should Specify that U.S. Issuers Adopt the English-language Version of IFRS, as Adopted by the IASB***

The Committee believes that if U.S. issuers are to be permitted to report under IFRS, they should be required to utilize a single version of IFRS. We believe that the English-language version of IFRS as adopted by the IASB would be an appropriate standard to select for purposes of permitting U.S. issuers to voluntarily adopt IFRS in lieu of U.S. GAAP.

**3. *The Committee Does Not Believe that the SEC Should Mandate that All U.S. Issuers Adopt IFRS at this Time.***

We believe that U.S. issuers should be permitted, but not required, to report under IFRS at the outset. While the determination as to whether to take this step will be a business judgment for senior management, we would anticipate that U.S. issuers with significant offshore operations may find that the benefits of being able to report under a single global set of accounting standards will outweigh the costs of transitioning from U.S. GAAP to IFRS. Conversely, a U.S. issuer with little or no offshore operations may find that the cost of this shift, particularly at an early stage of the utilization of IFRS in the United States, will outweigh perceived benefits.

We also believe that the Commission should gain some experience with the use of IFRS by U.S. issuers before determining whether all U.S. issuers should adopt this standard. In addition, while great progress has been made toward convergence, the Committee does not believe that it is yet the time to shift from a model of convergence to a model of full transition from U.S. GAAP to IFRS. Whether such a step may be warranted at some future time should be determined only after the markets and the regulators have more experience with IFRS.

Finally, we note that certain issuers may face impediments to making this transition that are unique to them (e.g., loan covenants or similar contractual provisions requiring that financial statements be prepared in accordance with U.S. GAAP) or to their industry (e.g., regulatory requirements that mandate financial reporting to regulators other than the SEC in accordance with U.S. GAAP). For these reasons, we believe the Commission should adopt a less prescriptive approach that allows U.S. issuers to determine if and when a transition to IFRS makes sense for them.

**4. *The Choice of Accounting Regime is Properly a Business Decision for Management.***

In response to Question 30 in the Concept Release, the Committee does not believe that the Commission should mandate that shareholders must determine whether a U.S. issuer shifts from U.S. GAAP to IFRS. We believe that this is a business decision properly left to management and a regulatory matter that is properly the province of state corporate law.

**5. *The Commission Should Not Mandate a Time Frame Within Which a U.S. Issuer that Seeks to Shift to IFRS Must Do So.***

As discussed above, the Committee believes that the Commission should proceed on a measured basis to permit U.S. issuers to report under IFRS. In response to Question 33 in

the Concept Release, we do not believe it is appropriate to force U.S. issuers to take this step (or elect not to take this step) within, or at the conclusion of, any fixed time frame. Some U.S. issuers may elect to take this step promptly upon being allowed to do so, others may wish to adopt a "wait and see" posture. We see no harm in having two sets of accounting standards -- U.S. GAAP and IFRS -- available to U.S. issuers concurrently at this time.

**6. *It Might Be Appropriate for U.S. Issuers that Move to IFRS to be Allowed to Switch Back to U.S. GAAP.***

In response to Question 35 in the Concept Release, the Committee believes that the Commission should not adopt rules imposing conditions on, or otherwise limiting, the ability of U.S. issuers that have moved to IFRS to switch back to U.S. GAAP. We believe that this will be a costly step for a U.S. issuer to take, both to re-tool internal control procedures and accounting structures, as well as to re-create U.S. GAAP historical financial statements. We would also expect that the market would not react well to such a step absent clear justification by the U.S. issuer as to why it seeks to do so. Finally, auditing firms would expect clear Commission guidance on U.S. issuers' ability to revert to U.S. GAAP, as auditors otherwise may be reticent to sign an audit opinion if the reversion may be seen as an effort to engage in "accounting principles shopping." We believe that these factors should prevent a U.S. issuer from taking this step lightly even if the Commission does not formally regulate such a move.

**7. *The Commission Should Extend the Safe Harbor for Market Risk Disclosures.***

If a U.S. issuer adopts IFRS in lieu of U.S. GAAP, it would appear to lose the ability to avail itself of the safe harbor provided by Section 27A of the Securities Act and Section 21E of the Securities Exchange Act insofar as it would relate to market risk disclosures provided in notes to the financial statements pursuant to IFRS 7. The Committee believes that the Commission should expressly provide that these safe harbors would be available under IFRS to the same extent as they are currently available to market risk disclosures made under Regulation S-X.

We acknowledge that the Commission did not take this step in adopting rules permitting foreign private issuers reporting under IFRS as adopted by the IASB to dispense with U.S. GAAP reconciliations. We note, and support, the sentiment expressed by Commissioner Atkins at the Open Meeting at which these rules were adopted that this is an issue that needs to be addressed. We believe that this need will be all the more compelling should the Commission elect to propose to permit U.S. issuers to report under IFRS. If the Commission does not take this step, it would in effect force U.S. issuers that otherwise desire to shift to IFRS to absorb the loss of this safe harbor and take on the potential risk of litigation in the United States for making mandated market risk disclosures. This could create an artificial disincentive for U.S. issuers considering whether to adopt IFRS.

***Conclusion***

We commend the Commission for publishing the Concept Release and are grateful for the opportunity to comment. Members of the Committee would be pleased to answer any questions you may have concerning our comments.

Respectfully submitted,



Norman D. Slonaker, Chair  
Financial Reporting Committee  
Association of the Bar of the City of New York

cc: The Honorable Christopher Cox, *Chairman*  
The Honorable Paul S. Atkins, *Commissioner*  
The Honorable Annette L. Nazareth, *Commissioner*  
The Honorable Kathleen L. Casey, *Commissioner*

Conrad Hewitt, *Chief Accountant*  
Julie A. Erhardt, *Deputy Chief Accountant*  
John W. White, *Director, Division of Corporation Finance*  
Paul M. Dudek, *Chief of the Office of International Corporate Finance*  
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David Wagner  
Michael R. Young (Mr. Young dissents from the Committee position expressed in this letter)  
Prahbat Mehta – Secretary