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Dear Mr Katz

**Proposed rule: First-time application of International Financial Reporting Standards  
File No. S7-15-04**

Thank you for the opportunity to comment on this proposed rule. We believe that it is an important and welcome accommodation. However we would like to make a number of observations on the Commission's proposals:

- Under the proposals, the accommodation would not be available to a company that adopts a set of accounting standards that deviate in any way from IFRS. In the event that the EU does not endorse an individual IFRS, by requiring issuers to implement all IFRS, the Commission would be compelling issuers to implement standards that are not mandated by local legislation. We urge the Commission to reconsider the proposed eligibility requirements to take account of the EU endorsement process.
- Section II.B.2 proposes that issuers that use the accommodation included in the proposed rule, present condensed US GAAP financial information for the three most recent financial years at a level of detail consistent with Article 10 of Regulations S-X. This exceeds the current requirements of Items 17 and 18 of Form 20-F for reconciliations between local and US GAAP, of net income, equity and balance sheet items. Under IFRS 1, issuers are already required to provide a reconciliation of Previous GAAP to IFRS. We believe that the inclusion of yet another set of financial statements, under US GAAP, as part of the first IFRS financial statements will be confusing to investors.
- Section II.E.2 provides no accommodation in respect of Industry Guide 3 – Statistical Disclosure by Bank Holding Companies on the incorrect assumption that these disclosures are not affected by GAAP changes. The proposed rule would effectively require restated Guide 3 disclosures for the earliest of three (or in the case of loan portfolio, the earliest three of five) years.
- Section II.F proposes that interim financial statements be filed during the transition year of 2005 and is particularly relevant for filers of shelf registration statements. The Commission's proposal would require both Previous GAAP and IFRS interim financials in 2005. We believe that most issuers would not want to and do not intend to issue both Previous GAAP and IFRS interims in 2005 for fear of creating investor confusion; the SEC's current proposal will therefore be unduly burdensome.

- As the IASB and FASB move towards convergence, we believe that the Commission should, as a matter of urgency, reconsider the requirement for reconciliation between IFRS and US GAAP in SEC filings.

Our responses to specific questions raised in the proposed rule are included in the Appendix.

Yours sincerely

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## Appendix

### II. DISCUSSION OF PROPOSED ACCOMMODATION TO PERMIT OMISSION OF IFRS FINANCIAL STATEMENTS FOR THE THIRD FINANCIAL YEAR

#### A. Eligibility Requirements

- *Will the conversion to IFRS for year 2005 make it difficult for issuers to recast year 2003 results accurately? What specific issues will be encountered and how difficult will they be to address? What additional information would first-time adopters need to provide IFRS financial statements for the third-year back that they would not already have in connection with their reconciliation to U.S. GAAP? What other difficulties might the application of IFRS create for first-time adopters? Will first-time adopters in earlier or later years face similar issues? Are the proposed amendments appropriate to address those challenges? If not, what issues are not addressed by the proposed amendments? Should they be addressed, and, if so, how?*

It will be significantly burdensome for issuers to recast 2003 results principally because many IFRS that will apply have only recently been finalised. In particular, implementation of the IFRS on financial instruments, which have a pervasive effect on financial institution issuers, require extensive system changes. Given the major differences in GAAP on the initial application of IFRS and that there is no requirement under IFRS for a third year back, the information to prepare IFRS financial statements for the third-year back will not necessarily be readily available.

Issuers applying IFRS for the first time in later years (2006 or 2007) are likely to face similar but perhaps less significant issues depending on the circumstances of their move to IFRS.

- *Will any first-time adopters be required by their home country to publish financial statements prepared in accordance with IFRS for the third year back? If so, should we require their inclusion in SEC filings? Why or why not? If a company publishes IFRS financial statements for the third year back but is not required to do so, should we require inclusion of those financial statements in SEC filings?*

We are not aware of any home country proposals to require financial statements prepared in accordance with IFRS for the third year back.

- *Is the proposed time frame, which provides the accommodation to companies that switch to IFRS for any financial year beginning no later than January 1, 2007, appropriate? Would this date create eligibility concerns for issuers that have a 52-week financial year? If so, how should we address those concerns?*

We believe that the proposed time frame is reasonable but would urge the Commission to reconsider the eligibility requirements under the proposal should the EU endorsement process be delayed in respect of a particular standard or standards.

- *Should the proposed accommodation be extended to apply in any other circumstances, such as for issuers that, either voluntarily or pursuant to a home country or other requirement, adopt IFRS for the first time for years after year 2007? Should the accommodation apply for an indefinite period? Are there other circumstances in which the proposed exception to the requirement to present three years of financial statements on a consistent basis should be considered? What are they?*

No comment.

- *Would extending the proposed accommodation to apply to issuers that adopt IFRS for the first time later than year 2007 encourage a broader use of IFRS? Why or why not?*

No comment.

- *If first-time adopters of IFRS were not able to avail themselves of the proposed accommodation, would they be likely to continue to include in their SEC filings financial statements prepared in accordance with Previous GAAP rather than preparing financial statements prepared in accordance with IFRS for the third financial year? What are the advantages and disadvantages of each approach?*

Even if first-time adopters were not able to avail themselves of the proposed accommodation, we do not believe that issuers would continue to include financial statements prepared in accordance with previous GAAP given the resulting administrative burden and potential for investor misunderstanding.

## **B. Primary Financial Statements**

- *Is the proposed amendment to permit two years of IFRS financial statements for foreign private issuers adopting IFRS through year 2007, coupled with the permitted exclusion of financial statements prepared on the basis of Previous GAAP, consistent with the best interests of investors? Will investors receive adequate information on which to base investment decisions if two rather than three years of statements of income, changes in shareholders' equity and cash flows are presented on a consistent basis?*

We believe investors will receive adequate information from two years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with endorsed IFRS, together with the disclosures as required by IG63 of IFRS 1 which explain the effect of transition from previous GAAP to IFRS.

- *Are there other alternatives that should be considered to address the challenges presented by the mandated use of IFRS? What are they?*

As indicated above, the mandated use of IFRS should be considered in the light of the local endorsement process, such as in the EU.

- *Would the presentation of three years of condensed U.S. GAAP financial information in a level of detail consistent with interim financial statements prepared under Article 10 of Regulation S-X create a significant burden to first-time adopters of IFRS? What would be the difficulties and costs of preparing that information? Would that level of information be useful to investors? What level of information would be useful to investors and not unduly burdensome to prepare?*

The presentation of three years of condensed U.S. GAAP financial information to a level of detail consistent with interim financial statements prepared under Article 10 of Regulation S-X would present a significant burden to issuers. They are currently not required to provide such information in their Form 20-F filings or initial registration statements. Presentation of such previously unpublished and unaudited information would not only be burdensome for preparers but may also be confusing to the readers of the financial statements, as the first set of IFRS financial statements will include aspects of three GAAPs, IFRS, Previous GAAP and US GAAP.

- *If a filing does not contain Previous GAAP financial statements or IFRS financial statements for the third year back, would the proposed requirement for three years of condensed U.S. GAAP information*

*adequately address issues related to the different starting points and reconciling items used in the reconciliations from Previous GAAP to U.S. GAAP and from IFRS to U.S. GAAP?*

We do not believe that the potential benefits to investors of three years of condensed U.S. GAAP information outweigh the significant additional burden of producing these data.

- *Do our proposals contain sufficient guidance on the form and content of the condensed U.S. GAAP financial information to be provided? Should we require financial information beyond income statements and balance sheets from companies that would be required to provide condensed U.S. GAAP information? If so, what further information? Should we require that they include notes to the financial information in addition to the required reconciliation?*

We believe preparation of condensed U.S. GAAP financial information to be a significant and unjustified burden. Any requirement for further information would increase that burden.

- *Should foreign private issuers that do not use U.S. GAAP to prepare their primary financial statements in their initial registration statements filed with the SEC be required to present the additional condensed U.S. GAAP financial information in addition to the two-year reconciliation to U.S. GAAP? Why or why not? Would this be unduly burdensome?*

Currently foreign private issuers that do not use US GAAP to prepare the primary financial statements included in initial registration statements are not required to present the additional condensed US GAAP financial information. We do not believe that this approach should be changed as a result of first time adoption of IFRS or first time presentation of IFRS in initial registration statements.

- *Should issuers be prohibited from including Previous GAAP financial statements, financial information and textual discussions based thereon in a registration statement, prospectus or annual report prepared in accordance with Form 20-F?*

We believe that issuers should be allowed to include Previous GAAP financial information in registration statements, as it may for example be helpful in explaining trends, provided it is accompanied by suitable explanations. In our view, investors and analysts in the home country and in the US would welcome such flexibility.

- *If we were to prohibit issuers from including Previous GAAP financial statements and financial information in a document, should we require, permit or prohibit the issuer to make reference to other SEC filings or other documents that include such financial statements and information?*

As explained above, we do not believe that issuers should be prohibited from including Previous GAAP financial statements and financial information in a document. Consequently the Commission should not prohibit issuers from making reference to other SEC filings and other documents that include such Previous GAAP information.

- *Is it appropriate to permit issuers to include, incorporate or refer to Previous GAAP financial information and, if so, for what periods and to what extent? If issuers elect to include or incorporate Previous GAAP financial information, should we require operating and financial review and prospects disclosure pursuant to Item 5 of Form 20-F related to that information?*

We believe it is appropriate to permit issuers to include, incorporate or refer to Previous GAAP financial information for any periods provided that it is accompanied by suitable cautionary wording. Issuers should not be required to provide operating and financial review disclosure in accordance with Previous GAAP. They should be permitted to provide appropriate disclosures to aid understanding or explain trends.

- *Would Previous GAAP financial statements be useful to investors and should issuers be required to provide them? Should inclusion in previous annual reports filed with us on Form 20-F be sufficient in this regard? Would investors be likely to compare information based on IFRS with information based on Previous GAAP? If we require or permit financial statements and other information based on Previous GAAP, where should that information be located and how should it be formatted?*

We do not believe that issuers should be required to provide Previous GAAP financial statements in their first IFRS filing; previous annual reports filed on Form 20-F should be sufficient. Investors and analysts are likely to compare Previous GAAP and IFRS financial statements. IFRS 1 mandates explanatory disclosures. Issuers would be best placed to determine the appropriate level and location of Previous GAAP disclosures.

- *Is inclusion of Previous GAAP financial information likely to cause investor confusion regarding the basis of accounting used in preparing financial information? How could any confusion or comparison be minimised? Should we provide more specific guidance on the location or substance of disclosure stating that a filing contains financial information based on Previous GAAP that is not comparable to financial information based on IFRS?*

We believe that requirements of paragraph 37 of IFRS 1 and the guidance in the SEC proposals would provide sufficient information to investors to alleviate confusion. We do not believe the SEC should issue further guidance on this. Issuers are best placed to decide the format of disclosures corresponding to their use of Previous GAAP financial information.

- *Should Previous GAAP financial information be presented in a “side-by-side” format with IFRS financial information? What additional disclosure would be necessary, if any? Should it be accompanied by a legend stating that the information is not comparable to financial information based on IFRS? If so, where should the legend be located? Would a “side-by-side” format present difficulties relating to disclosure contained in audit reports relating to the different bases of GAAP used? Similarly, how would the notes to the financial statements be presented in a clear manner if different GAAPs were presented therein?*

We believe that the issuers are best placed to determine the most appropriate format of disclosures in respect of any previous GAAP financial information included in their first IFRS financial statements.

- *If issuers include, incorporate or refer to Previous GAAP financial statements or financial information in a disclosure document, should we require specific legends or other language? Should any Previous GAAP information included be presented in a separate section of the disclosure document?*

See responses above.

### **C. Selected Financial Data**

- *Should five years of selected financial data based on U.S. GAAP be required in a separate section of the document, rather than with the IFRS selected data?*

We do not believe that it would be necessary to require US GAAP selected financial data in a separate section of a document.

- *Should we require selected financial data based on Previous GAAP? If so, where should it be located? Should we expressly prohibit a “side-by-side” disclosure format for selected financial data based on Previous GAAP and IFRS? Conversely, should we permit or require such a disclosure format? Would inclusion of Previous GAAP selected financial data, whether presented in a “side-by-side” format or otherwise, be likely to cause investor confusion regarding the basis of accounting used? If so, how could any confusion or the likelihood of comparison be minimised?*

As noted in our response to questions in section B, we believe issuers should determine the format of presentation of information. IFRS 1 already addresses the issue of presentation of financial information under different GAAPs; therefore additional SEC rules are not required in this regard.

#### **D. Operating and Financial Review and Prospects**

- *Is there additional information that would be useful to investors that should be included in the disclosure of operating and financial review and prospects? If so, what is it?*

Issuers are best placed to decide if additional disclosures, such as Previous GAAP information, are required to aid investor understanding. We do not believe such information should be mandatory.

- *Should we require that disclosure of operating and financial review and prospects based on Previous GAAP financial information, if included, refer to the reconciliation to U.S. GAAP? If so, why? How is that information likely to benefit investors? Would requiring that information create undue burdens for issuers?*

We do not believe the SEC should prescribe that discussions based on Previous GAAP, included in the disclosure of operating and financial review and prospects, be referred to in the reconciliation to US GAAP. We believe that reconciliations between Previous GAAP and IFRS, as mandated by IFRS 1, would be more useful, relevant and appropriate.

## **E. Other Disclosures**

- *Business and Derivatives Disclosure: comment on whether the proposed requirement, which clarifies that companies preparing their financial statements under IFRS should also base their Item 4 company information and Item 11 derivatives disclosure on IFRS, is sufficient. If the proposal is not sufficient, comment on what additional information related to business operations and the use of derivatives should be required.*

We agree with the proposal and believe it is sufficient.

- *Disclosure Pursuant to Industry Guides: comment on whether amendments would be appropriate to address the information required under Industry Guide 3 or Industry Guide 6 in the context of first-time adopters changing their basis of accounting to IFRS. We agree that no amendment is required to these Industry Guides and that issuers will be able to continue to present all essential and material information to investors under IFRS.*

Information required by Industry Guide 3 will be affected by the change in GAAP. It would, however, be an unreasonable burden to require the restatement of the earliest year of three (or earliest three years of five in the case of Loan portfolio) under IFRS. We consequently believe that the SEC should permit issuers to present only two years of the information required by Industry Guide 3 under IFRS, consistent with the presentation of their primary financial statements.

## **F. Financial Statements and Information for Interim Periods for the Transition Year**

- *To comply with these requirements, issuers may be required to maintain financial statements prepared in accordance with both Previous GAAP and IFRS for interim periods of the Transition Year. Would it be unduly burdensome to maintain books and records in accordance with both Previous GAAP and IFRS during this time? What costs and other burdens will this impose on issuers? Are companies that are mandated to switch to IFRS prohibited from continuing to publish financial statements prepared in accordance with Previous GAAP during their Transition Year? If so, who or what prohibits it?*

It would be extremely burdensome to maintain books and records in accordance with both Previous GAAP and IFRS during the Transition Year. We do not believe that such dual running of systems and resources is a viable option and consequently the SEC should not mandate this approach.

For EU regulated companies, resources will be focussed in 2004 and 2005 on moving from Previous GAAP to IFRS with financial information prepared under IFRS being the primary focus from 2005 onwards. Additionally, we believe that it would be significantly burdensome for an issuer's subsidiaries

and business units to maintain Previous GAAP as well as IFRS books and records, with the consequent resource and system requirements, during the Transition Year.

- *Will foreign issuers be likely to avoid registering securities under the Securities Act and the Exchange Act during the latter months of a Transition Year and early months of the year after in order to avoid being required to include interim financial statements in a disclosure document, and therefore be required to publish interim financial information in accordance with Previous GAAP? How can we reduce any impediment to foreign companies undertaking registered offerings during a Transition Year while ensuring that investors receive clear, sufficient, up-to-date information?*

We believe that, after considering the costs and benefits, companies may decide to postpone the registration of securities in order to avoid the production of interim financial statements prepared under Previous GAAP during the Transition Year. Allowing preparation of interim financial statements under IFRS, as indicated above, would reduce this impediment.

- *Are investors likely to be confused with the presentation of interim financial statements using two bases of accounting covering the same periods? If so, what steps could be taken to minimise this confusion?*

*We believe that the following circumstance may be confusing to investors:*

- *a company, with a calendar year-end, filing a Report on 6-K for the six-month period to 30 June 2005 prepared under IFRS; followed by*
- *the filing of a prospectus in November 2005 presenting financial information prepared under Previous GAAP (which had not previously been published) for the six months to 30 June 2005.*

We believe the optimal solution would be for SEC filings to contain unaudited IFRS financial statements for interim periods in both the transition years and the prior financial year.

- *As proposed, an issuer must include in its SEC filings both IFRS financial statements and Previous GAAP financial statements for current and prior year interim periods, when both are available. Should we provide issuers with a choice of whether to provide interim financial statements prepared under Previous GAAP or under IFRS, when both are available?*

We believe issuers should be given the choice of providing interim financial statements for both years prepared under IFRS or Previous GAAP in order to minimise investor confusion and provide useful trend information.

- *When the Transition Year is year 2004 or 2005, in lieu of requiring both Previous GAAP and available IFRS interim financial statements for two years, would it be preferable to require audited financial*

*statements prepared in accordance with IFRS for the last full financial year, with unaudited IFRS financial statements for interim periods in both years? This approach would not be in technical compliance with IFRS 1, which requires that first-time adopters include one year of comparative information under IFRS. Should we permit audit reports that are qualified as to this provision of IFRS 1? Should we make similar accommodations when an issuer's Transition Year is later than year 2005? Why or why not?*

See response to the next question.

- When the Transition Year is year 2004 or 2005, would it be appropriate instead to require three years of audited financial statements prepared in accordance with Previous GAAP and unaudited financial statements prepared in accordance with IFRS for interim periods in two years with the same level of disclosure as in annual financial statements? Would issuers be likely to prepare full IFRS financial statements for interim periods? If not, why not? Should an issuer's first set of IFRS financial statements filed with the SEC be audited if they are for two years of interim periods? Why or why not? How would issuers assess and prepare disclosure of their operating and financial review and prospects? What other specific issues would companies face in presenting financial statements under both Previous GAAP and IFRS? How could those issues be addressed? Should we make similar accommodations when an issuer's Transition Year is later than year 2005?*

We generally agree with the approach proposed above except that for the unaudited IFRS financial statements for interim periods, the level of disclosures should be in accordance with local regulatory requirements and any other reconciliations, such as those between Previous GAAP and IFRS as required by IFRS 1, with other disclosures to be what the issuer considers appropriate to aid investor understanding.

### **III. DISCLOSURES ABOUT FIRST-TIME ADOPTION OF IFRS**

#### **A. Disclosure about Exceptions to IFRS**

- Should first-time adopters be required to provide the additional information proposed under Item 5 of Form 20-F? Will this information be useful for investors, and will it be unduly burdensome for issuers to provide? In either case, commenters should provide supporting information relating to the utility of the information (or lack thereof) and the costs and difficulties associated with disclosing this information.*

We believe the discussion of the use of elective exemptions under IFRS 1, where material, would already be required under paragraph 38 of IFRS 1 on 'Explanation of transition to IFRSs'. We do not agree with the SEC proposals to mandate such generally duplicative disclosure in Item 5 of

Form 20-F. Additionally, Paragraph 44 of IFRS 1 already requires disclosures in respect of the use of the 'fair value as deemed cost' exemption for property, plant and equipment, investment property or intangible assets. We believe that issuers should determine whether Item 5 of Form 20-F should cross-refer to relevant disclosures and include any additional or summarised explanations or disclosures on the use of both elective and mandatory exemptions under IFRS 1. This approach would be consistent with the current approach to disclosures in Item 5 of Form 20-F.

- *Should issuers be required to disclose more information with respect to the mandatory or elective exceptions? If so, what information would that be, what usefulness would this information have to investors, and what burdens would be imposed on issuers to disclose this information?*

See comments above.

- *Have we given sufficient guidance with respect to the information to be disclosed under the proposed amendment to Item 5? Should there be greater specificity relating to the required information? Are the proposals regarding the information to be provided in Item 5 and in the notes to the primary financial statements about IFRS exceptions sufficiently clear so as to avoid duplicative disclosure? If not, what further clarification is necessary?*

As indicated above, we believe issuers should determine what disclosure is required depending on what is most useful to investors as in current filings by issuers.

## **B. Reconciliation from Previous GAAP**

- *Should we specify the form and content of the reconciliation from Previous GAAP to IFRS? For example, should we require that the information included in the reconciliation be similar in form and content to that in the example provided in IG63? Should we require a level of content different from that set out in IG63? If so, what level of information would be appropriate?*

We believe the issuer should determine the format of the reconciliations, as set out in IFRS 1. The form and content will be dependent on the number and complexity of the reconciling items. We agree with the approach in IFRS 1 where the example given in IG63 is described as being one way of satisfying the reconciliation requirements.

- *Would providing a reconciliation from Previous GAAP to IFRS that is substantially similar in form and content to the example set forth in IG63 as best practice be unduly burdensome to issuers? If so, what specific difficulties would issuers face in providing that level of information? How could they be addressed?*

We believe the provision of the level of information in IG63 would not be unduly burdensome; such information would be available to issuers as a result of the process of having determined the nature and amount of the reconciling items. However, as noted above, we believe the issuer should determine the format of the reconciliations.

- *Would investors find the reconciliation information as proposed more useful in comparing different registrants than information required under IFRS alone? If not, why not? What additional information should be required, if any?*

Generally, consistency of format is useful when comparing different issuers but we believe the choice of the format should rest with the issuer.