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THE SEC'S (CHANGING?) STANCE ON IAS

I. INTRODUCTION

The events of May 2000 riveted the international accounting community.¹ On May 17, 2000, the International Organization of Securities Commissions ("IOSCO") recommended that its members adopt the International Accounting Standards ("IAS"),² as promulgated by the International Accounting Standards Committee ("IASC"), for cross-border filings by foreign issuers.³ On May 24,

1. See *infra* notes 3-7, 33 and accompanying text.

2. In this Note, "International Accounting Standards" and "IAS" refer only to the international accounting standards promulgated by the International Accounting Standards Committee ("IASC") and recommended by the International Organization of Securities Commissions ("IOSCO").

3. *IOSCO Endorses IASC's Core Standards*, at <http://www.iosco.org/iosco.html> (May 17, 2000). However, the recommendation comes with the caveat that:

[M]ultinational issuers . . . use the 30 IASC 2000 standards to prepare their financial statements for cross-border offerings and listings, as supplemented in the manner described below (the 'supplemental treatments') where necessary to address outstanding substantive issues at a national or regional level.

Those supplemental treatments are:

reconciliation: requiring reconciliation of certain requiring reconciliation of certain items to show the effect of applying a

2000, the IASC voted unanimously to restructure itself.⁴ These dynamic events impact the United States ("U.S.") because the U.S. Securities and Exchange Commission ("SEC") is a prominent member of IOSCO and a participant in the IASC.⁵ In these capacities, the SEC considered the IOSCO's recommendation and made many restructuring suggestions accepted by the IASC.⁶ As such, the SEC can be perceived as having created an affirmative expectation that, if the IASC received IOSCO's recommendation and complied with the restructuring regime, then the SEC would accept the IASC's standards: The IAS.⁷

To date, the SEC has not accepted the IAS.⁸ U.S. accounting standards and cross-border filing requirements remain status quo.⁹ The SEC continues to require

different accounting method, in contrast with the method applied under IASC standards;

disclosure: requiring additional disclosures, either in the presentation of the financial statements or in the footnotes; and **interpretation:** specifying use of a particular alternative provided in an IASC standard, or a particular interpretation in cases where the IASC standard is unclear or silent.

In addition, as part of national or regional specific requirements, waivers may be envisaged of particular aspects of an IASC standard, without requiring that the effect of the accounting method used be reconciled to the effect of applying the IASC method. The use of waivers should be restricted to exceptional circumstances such as issues identified by a domestic regulator when a specific IASC standard is contrary to domestic or regional regulation.

Id.

4. *IASC Member Bodies Approve Restructuring*, at http://www.iasc.org.uk/news/cen8_096.htm (May 24, 2000) [hereinafter *Restructuring*].

5. *Membership Lists, List of Ordinary Members*, at <http://www.iosco.org/iosco.html> (last visited Oct. 19, 2000).

6. See *infra* Section III.B. (discussing the changes implemented).

7. The SEC's acceptance of the IAS for cross-border filings would have the implicit effect of recognizing the IASC as an authoritative, international standards setter. This is the other major goal of the IASC. Therefore, the SEC's stance is of critical importance to the legitimacy of the IASC. See generally *Latest News From the IASB*, at <http://www.iasc.org> (last visited Oct. 19, 2000).

8. The SEC continues to require reconciliation to U.S. GAAP. See *supra* note 3 and accompanying text.

9. For an in depth discussion of the current requirements, see *infra* note 54 and accompanying text.

that foreign issuers, presenting financial statements in any comprehensive set of accounting principles, including the IAS, file a reconciliation to United States Generally Accepted Accounting Principles ("U.S. GAAP"), as promulgated by the United States Financial Accounting Standards Board ("FASB").¹⁰ The necessity of these requirements is being debated heavily in domestic and international fora.¹¹

In the wake of international change, the SEC has three choices. It can (i) opt to maintain the status quo domestically; (ii) adopt the IAS; or (iii) find some middle ground and make additional concessions to foreign issuers filing domestically. Each of these alternatives will displease certain constituencies.

The SEC has substantive reasons for refusing to accede to the IOSCO recommendation without critically analyzing its domestic impact.¹² In particular, its mission, to protect domestic investors,¹³ prohibits it from joining many other countries in accepting the IOSCO recommendation without due process.¹⁴ However, the SEC must react.¹⁵ This Note endeavors to transcend the debate as to the quality of the standards¹⁶ in order to identify and ana-

10. SEC Concept Release: *International Accounting Standards*, Exchange Act Release Nos. 33-7801, 34-42430, International Series No. 1215 (discussing the current and proposed financial accounting requirements), at <http://www.sec.gov/rules/concept/34-42430.htm> (last visited Feb. 16, 2000) [hereinafter Concept Release].

11. See *infra* note 16 (discussing the array of viewpoints expressed in comment letters on the SEC's Concept Release).

12. See *infra* notes 15-18.

13. See Concept Release, *supra* note 10.

14. *Id.*

15. The target date for the new structure's implementation is Jan. 1, 2001. See *Restructuring*, *supra* note 4.

16. This Note assumes that the IAS are high quality. If the IAS were not a high quality set of standards, the SEC would not even be considering them as a possible alternative to the current reconciliation requirements. See Concept Release, *supra* note 10. This is a reasonable assumption for several reasons. The IOSCO endorsement process and the resulting recommendation support the supposition that the IAS are high quality. See *IOSCO Endorses IASC's Core Standards* at <http://www.iosco.org/iosco.html> (May 17, 2000). Their high quality is assumed in parts of the SEC's International Accounting Standards Concept Release. See *generally* Concept Release, *supra* note 10. Many countries, stock exchanges, and companies worldwide have adopted the IAS. See http://www.iasc.org.uk/frame/cen1_11.htm (last visited Oct. 19, 2000); http://www.iasc.org.uk/frame/cen1_10.htm;

lyze the more substantive issues surrounding them, and determine the SEC's best course of action.¹⁷

Much is at stake. Today, business is conducted in a global market place that transgresses barriers of time and space.¹⁸ Corporations have become multinationals; continental unions have formed; and a World Trade Organization has been created.¹⁹ These catalysts, and other recent market developments, have fostered economic expansion, and significantly increased demands for capital resources.²⁰ In turn, competition for these finite resources has intensified.²¹ To meet increasing capital resource demands, corporations now look outside their own countries and engage in cross-border filings.

Companies have not yet been able to cross capital

http://www.iasc.org.uk/frame/cen1_12.htm; http://www.iasc.org.uk/frame/cen1_7.htm (last visited Oct. 19, 2000). FASB discussions of international accounting standards have conceded that, in some respects, the IASC's IAS are superior to U.S. GAAP. Note that this statement refers to the concept of international accounting standards generally and not the specific IAS. See THE IASC – U.S. COMPARISON PROJECT: A REPORT ON THE SIMILARITIES AND DIFFERENCES BETWEEN IASC STANDARDS AND U.S. GAAP (Carrie Bloomer ed., 2d ed. 1999) [hereinafter COMPARISON PROJECT]. This Note does not argue that there is no divergence of opinion as to whether the IAS standards are high quality. For an animated debate on the quality of the international accounting standards, see *International Accounting Standard Concept Release Comment Letters*, at <http://www.sec.gov/rules/s70400.htm> (last visited Oct. 19, 2000). However, there is enough substantiation that the IAS may be accepted as a high quality set of standards, to look past this baseline debate.

17. Paul Pacter, *The SEC and IOSCO Bite Into the Core*, IASC INSIGHT (Mar. 1999), at http://www.iasc.org.uk/news/cen8_139.htm (discussing the criteria the SEC will use to evaluate the standards). See also *infra* Part I.

18. For a discussion of significant developments that have made the market a global business place, see John C. Coffee, *Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation*, 53 Bus. L. 1195 (Aug. 1997). Many analogs may be drawn between securities and accounting regulation in this modern, revolutionary period.

19. Sir Bryan Carsberg, IASC Secretary-General, *The Role and Future Plans of the International Accounting Standards Committee*, Address to the Pannell Kerr Forster International Symposium, Paris (13 September 1997), at http://www.iasc.org.uk/news/cen8_109.htm. These developments underscore the globalization of the economy. *Id.* From such globalization flows a need for a uniform financial language. *Id.*

20. *Id.*

21. *Id.*

market borders seamlessly.²² They continue to encounter a financial accounting language barrier.²³ Companies that have surmounted time and space, to conduct business globally, enter a realm where they cannot efficiently and effectively communicate with each other.²⁴ Various international financial organizations have endeavored to deal with this long recognized problem and its resulting financial statement differences.²⁵ Seeking a collective solution to this problem, IOSCO formed an agreement with the IASC in 1995, wherein the IASC would promulgate a core set of accounting standards for use in cross border filings.²⁶ IOSCO agreed to recommend the IASC's core standards to its members,²⁷ for use when it was determined that they could be used to facilitate cross border listings.²⁸ In May 2000, after two years of review, the IASC's efforts came to fruition when IOSCO recommended that its members allow multinational issuers to use the IASC's standards, the IAS.²⁹ IOSCO's recommendation is expected to facilitate cross border offerings and transactions, as well as promote further development of the IAS.³⁰ This uniform, international, financial language is a step-

22. See Concept Release, *supra* note 10.

23. *Id.*

24. *Id.* This in turn creates an issue for users of the financial statements that the respective companies are trying to file in foreign jurisdictions. The U.S. is acutely sensitive to this issue and as a result, demands that U.S. GAAP be followed in lieu of a more uniform domestic language. Consequently, costs are expended to conform with this mandate which, in a universe with a uniform language, would be saved.

25. Stig Enevoldsen, Chairman IASC, IASC Current Trends and Future Perspectives, Remarks at the 50th Anniversary of the Japanese Institute of CPAs, Tokyo, at http://www.iasc.org.uk/news/cen8_126.htm (Oct. 23, 1998) [hereinafter Enevoldsen Remarks]. One problem with maintaining different financial languages is the great disparity of financial statement numbers the company may present. See, e.g., the Daimler Benz discussion, *infra* note 42.

26. See Enevoldsen Remarks, *supra* note 25.

27. For a discussion of the significance of the IOSCO membership, see *infra* notes 43-45 and accompanying text.

28. See Enevoldsen Remarks, *supra* note 25.

29. IOSCO Press Release on International Accounting Standards, at http://www.iasc.org.uk/news/cen8_168.htm (May 17, 2000). IOSCO recognizes that the standards need to be supplemented by national standards in some instances. See *supra* note 3.

30. IASC Standards Press Release, at <http://www/iosco.org/press/presscomm000517.html> (May 17, 2000).

ping-stone toward the ultimate goal of having one set of accounting standards for use domestically and internationally.³¹

Part II of this Note examines whether the SEC should react to the IOSCO endorsement of the IAS, as promulgated. Part III of this Note reviews the similarities and differences of the standard setters, the FASB and the IASC, in order to understand the different approaches of the financial accounting languages and the effect these differences should have on the SEC's ultimate decision on the core standards. As the SEC's Concept Release on *International Accounting Standards* suggests that the SEC is seeking to adopt an "international financial framework,"³² Part IV of this Note queries whether or not the thirty core IAS fit within this larger scheme.

II. THE SUBSTANTIVE IMPACT OF THE EVENTS OF MAY 2000³³

Market globalization is not a reversible trend. The SEC recently stated that it has "a dual objective of upholding the quality of financial reporting domestically, while encouraging convergence toward a high quality global financial reporting framework internationally."³⁴ With this recognition come several appendages.³⁵ First and foremost, the U.S. cannot continue, in perpetuity, to maintain a purely domestic financial language, U.S. GAAP, and demand that all companies conform or find another capital market.³⁶ Many foreign issuers now find other capital markets readily available.³⁷ If such issuers

31. See Carsberg, *supra* note 19.

32. See *infra* Part IV.

33. The phrase "events of May 2000" refers to the May 17th IOSCO endorsement of the IASC's standards, the IAS and the IASC's May 24th unanimous decision to restructure.

34. *Id.*

35. See *infra* notes 53-57.

36. See *infra* notes 51-52.

37. As global capital markets emerge, the prestige of a U.S. listing has diminished. Simultaneously, the emergence of the Internet has presented a viable alternative to a U.S. listing on a national exchange. Within certain parameters, it is now possible to electronically access the U.S. capital markets without a domestic listing. For a detailed discussion of foreign issuer listing options, see generally Roberta S. Karmel, *Will Convergence of Finan-*

choose other capital markets over the U.S. markets, this would have the untoward consequence of depriving the SEC of its traditional ascendancy on the domestic and international planes.³⁸ In addition, nationalism may cause foreign issuers to seek out other markets that do not require the use of U.S. GAAP.³⁹

The current U.S. requirements create inefficiencies for all parties except domestic financial statement users. Thus, a foreign corporation must perform a cost/benefit analysis to determine whether or not the cost of a U.S. GAAP reconciliation and audit, to come into compliance with U.S. independence requirements, is worth the benefits of maintaining a listing in the U.S.⁴⁰ As technology advances, the benefits begin to pale in comparison to the mounting cost of a U.S. listing.⁴¹ These considerations underscore why uniform standards that will further principles of comparability and transparency, and maintain financial statement user confidence, are essential.⁴² This

cial Disclosure Standards Change SEC Regulation of Foreign Issuers, 26 BROOK. J. INT'L. L. 485 (2000).

38. The SEC regulates the U.S. capital markets. If investors go outside the U.S., such investors will be beyond the SEC's traditional jurisdiction. At best extra-territorial jurisdiction is limited. For a further discussion of the SEC's jurisdiction outside the U.S., see generally *id.*

39. A KPMG survey of Europeans revealed that four out of five Europeans would object to global accounting standards that were set without European influence. KPMG News Release: *IAS v U.S. GAAP: Clash of the Titans - KPMG Survey Uncovers Issues Dictating Future Global Accounting Standards*, at http://www.iasc.org.uk/news/cen8_164.htm (Apr. 13, 2000) [hereinafter *KPMG*]. Therefore, U.S. GAAP are seen as undesirable; IAS are favored. See Carsberg, *supra* note 19. In sum, the survey discovered the ultimate truism. Global standards should be just that – global. See *KPMG*, *supra* note 39. While U.S. GAAP is a well developed system, it is important to recognize that it is a well developed *domestic* system. It is unlikely that U.S. GAAP can be accepted in a global arena because nationalism plays to great a role in the global financial language decision making process. Where the IAS are viewed as an equal, if not better global accounting language that includes myriad state concerns, the U.S. financial language will not fare well marketed as a global alternative with countries other than the U.S. *Id.*

40. Concept Release, *supra* note 10. See also *supra* note 39 (discussing viable alternatives to a U.S. listing).

41. *Id.* The SEC has made certain concessions to foreign issuers, altering requirements in certain areas. See *infra* note 54.

42. For example, in 1993 and 1994 respectively, Daimler Benz reported profits of DM 615 million and DM 895 million under German accounting principles. In the same years, using U.S. GAAP, the company reported a loss of DM 1,893 and a profit of DM 1,052. The reporting disparity, particu-

final statement begs the question whether the IAS meet these criteria.

The IOSCO recommendation announces that the IAS meet these criteria. To understand the potential impact of the IOSCO recommendation, it is necessary to appreciate the breadth and depth of IOSCO's membership.⁴³ Currently, IOSCO has approximately 135 members, including the securities regulatory agencies of over 100 countries.⁴⁴ These members include the most developed capital markets in the world.⁴⁵ If IOSCO's members heed the recommendation, acceptance of the IASC standards will be advanced greatly.⁴⁶ Many countries, stock exchanges and companies did not wait for the long anticipated IOSCO endorsement, before accepting the IAS.⁴⁷ Indeed, certain nations have already adopted the IAS as their national standards.⁴⁸

Despite the IAS's increasing global prominence, there is a looming question as to whether IOSCO's recommendation will be honored by all of its members.⁴⁹ In particular, there is a question as to whether the U.S. will comply with the recommendation.⁵⁰ In April 1996, the SEC stated that it would consider accepting the IAS for

larly in 1993, is staggering. How can any user of financial statements rely on either financial language? There is no way to tell which is correct. Thus, confidence in national reporting systems is eroded. It is essential that cases such as the one that arose with Daimler Benz, in 1993 and 1994, be avoided. See Carsberg, *supra* note 19.

43. See SEC, *Report on Promoting Global Preeminence of American Securities Markets*, at <http://www.sec.gov/news/studies/acctg.sp.htm> (last visited Sept. 23, 2000).

44. *Id.*

45. *Id.*

46. *Id.* Major capital markets would embrace the IAS. *Id.*

47. Among the exchanges to have adopted the IAS is the London Stock Exchange. See *supra* note 16 for a reference to a complete listing of stock exchanges that currently allow use of the IAS.

48. The IAS serve as a well-developed set of standards for emerging economies to use as a substitute for the creation of their own national standards. The ability to circumvent the creation of a standard setting process and development of national generally accepted accounting principles makes emergence into the global arena more efficient. See Carsberg, *supra* note 19. Moreover, some commentators have suggested that the IAS are a superior set of standards to many pre-existing national standards. *Id.*

49. See Concept Release, *supra* note 10.

50. *Id.*

use in cross-border listings in the U.S., upon their completion, if those standards satisfied the following criteria for acceptance: (i) the standards should include a core set of accounting pronouncements that constitute a comprehensive, generally accepted basis of accounting; (ii) the standards must be of high quality – they must result in comparability and consistency and they must provide for full disclosure so that investors are able to meaningfully analyze performance across time periods and among companies; and (iii) the standards must be rigorously interpreted and applied.⁵¹ The standards are now not only complete; they have received IOSCO's recommendation.⁵² However, the U.S. continues to maintain its own rigorous standards: U.S. GAAP.⁵³ In order to list in the U.S. and gain access to one of the most prominent capital markets in the world, foreign issuers must comply with stringent domestic reconciliation requirements.⁵⁴

51. See Pacter, *supra* note 17. See also Carsberg, *supra* note 19.

52. See IOSCO Press Release, *supra* note 29.

53. This position is particularly awkward because the SEC plays a major role in IOSCO and participates actively in the IASC's work. See Pacter, *supra* note 17. Thus, on the international plane, as a function of its membership in IOSCO, the SEC is heard to recommend the IAS. Domestically, it continues to proclaim the necessity of a U.S. GAAP reconciliation. This tension between its diametrically opposed positions, depending on the forum in which it finds itself, is coming to a head. See Pacter, *supra* note 17.

54. Domestic issuers are required to file audited financial statements in accordance with U.S. GAAP. 17 C.F.R. §§ 210-4.01(a)(2), 210.2-02(b) (2000). Foreign issuers wanting full access to the U.S. capital markets, must comply with the same requirements, modified in some instances. The current requirements are contingent on the nature of the foreign entity. Regulation S-X governs financial statement disclosure requirements. It differentiates between foreign public companies, foreign private issuers and unregistered foreign companies. See Concept Release, *supra* note 10. Foreign public companies and foreign private issuers may prepare their financial statements in accordance with U.S. GAAP or another comprehensive body of accounting standards, including IAS. *Id.* However, such companies are required to reconcile their financial statements (net income and balance sheet items) to U.S. GAAP. *Id.* Moreover, pursuant to Rule 2-02(b) of Regulation S-X, all such financial statements must be audited in compliance with U.S. Generally Accepted Auditing Standards ("U.S. GAAS"), by an auditor in compliance with U.S. audit independence requirements. 17 C.F.R. §§ 210.2-01, 2-02(b) (2000).

Foreign private issuers are exempt from certain reconciliation requirements. Foreign private issuers may present the following financial statement information, in accordance with IAS standards, without a reconciliation: *Statement of Cash Flows* [IAS 7]; the method of accounting for *Business Combinations* and the determination of the amortization of goodwill and negative

Before accepting an international recommendation, the SEC must accord it due process to ensure that such a step would comport with its mission.⁵⁵ The SEC has an unwavering commitment to high quality financial reporting and a duty to protect U.S. investors, the ultimate users of financial statements.⁵⁶ The SEC has begun its process of determining whether and under what circumstances it should acquiesce in IOSCO's recommendation that the IAS be accepted, with its usual first step: The issuance of a *Concept Release on International Accounting Standards* ("Release").⁵⁷ The public comment period on the Release ended in May 2000.⁵⁸ After reviewing the pub-

goodwill [IAS 22]; and portions of *The Effects of Changes in Foreign Exchange Rates* [IAS 21]. For further detail of foreign private issuer exemptions from the U.S. GAAP reconciliation requirement, see Form 20-F, parts 17 and 18. See also COMPARISON PROJECT, *supra* note 16. Foreign issuers need not reconcile IAS 29 *Financial Reporting in Hyperinflationary Economies* to U.S. GAAP. Unregistered companies are not required to file financial statements with the SEC; therefore, they need not reconcile their financials. See *Concept Release*, *supra* note 10. Such companies access to U.S. capital markets is quite restricted. For a further discussion of listing requirements see Karmel, *supra* note 37.

55. *SEC News Release, Chairman Levitt's Statement, and Fact Sheet on the SEC Concept Release on International Accounting Standards*, at http://www.iasc.org.uk/news/cen8_158.htm (Feb. 16, 2000).

56. *Id.*

57. *Concept Release*, *supra* note 10.

58. After the comment period, the SEC will determine what course to undertake. As evinced in the excerpt below, the *Concept Release* outlines possible courses of action, leaving room for alternative suggestions.

The goal of the core standards project has been to develop a high quality set of generally accepted international accounting standards that ultimately would reduce or eliminate the need for reconciliation to national standards. Any Commission action could take several forms, including, for example:

Maintaining the current reconciliation requirements in all respects.

Removing some of the current reconciliation requirements for selected IASC standards and extending that recognition to additional IASC standards as warranted based on future review of each standard. Under this approach, when alternative treatments are specified (such as benchmarks and allowed alternatives), we may specify one treatment as acceptable, while retaining the reconciliation requirement to those financial statements that employ the unacceptable treatment. For example, we might require reconciliation if a company applies the allowed alternative treatment of periodically writing-up long-

lic reaction to the Release, the SEC will announce its next steps, if any.⁵⁹

The pressure on the international plane is more puffery than substantive urgency. While the SEC has not reacted expeditiously to the perceived urgency for international accounting standards on the international plane,⁶⁰ its methodical reaction is justified. The SEC's dominance will not be eroded overnight.⁶¹ Although the events of May 2000 represent an opportunity for the U.S. to join other IOSCO member countries and national stock exchanges in embracing the IAS to facilitate cross-border offerings and listings,⁶² IOSCO endorsement and the IASC restructuring are a beginning, *not* an end. Thus, in the short term, the SEC should not change its stance on the IAS. Rather, it should continue to require reconciliation to

lived assets to estimated fair value. Other items for which reconciliation might be required include unrecorded pension liabilities and costs capitalized for internally generated intangible assets.

Relying on the IASC standards for recognition and measurement principles, but requiring U.S. GAAP and SEC supplemental disclosure requirements for footnote disclosures and the level of detail for the line items in financial statements.

Accepting financial statements prepared in accordance with the IASC standards without any requirement to reconcile to U.S. GAAP.

There may be other approaches, or combinations of approaches, that would be appropriate. In determining what approach to take we will consider outstanding substantive issues noted by IOSCO in its report, the underlying work assessing the IASC standards performed by the SEC staff and other members of IOSCO, as well as responses we receive to this release. In addition, the approach we adopt initially may change in light of future modifications of the IASC standards or further development of the related infrastructure elements.

Concept Release, *supra* note 10.

59. *Id.*

60. The comment period ended May 23, 2000. *See id.* To date, no further Commission action has been undertaken.

61. *See infra* note 74 and accompanying text.

62. *See Stock Exchanges that Allow Companies to Prepare IAS Financial Statements*, at http://www.iasc.org.uk/frame/cen1_10.htm (last visited Oct. 19, 2000). *See also Companies Referring to Their Use of IAS*, at http://www.iasc.org.uk/frame/cen1_7.htm (last visited Oct. 19, 2000).

U.S. GAAP.⁶³ Although this is not the progressive stance that IOSCO, its members and others have implored the SEC to take, considering the SEC's mission,⁶⁴ the unembellished status of the IAS⁶⁵ and the ultimate goal of a uniform financial accounting language,⁶⁶ adopting the core standards would be detrimental to U.S. investors and to the ultimate goal of establishing uniformity. There is simply not sufficient guidance or existing empirical evidence of international comparability to justify the U.S. endorsing the IAS at the present time.⁶⁷

The SEC could, in form, adopt the IAS and then, in substance, require a U.S. GAAP reconciliation under the guise of "necessary supplemental information."⁶⁸ The language of the recommendation release makes this a plausible course of action.⁶⁹ But the SEC has elected instead to adhere to its domestic requirements until it deems a set of international accounting standards adequate for U.S. adoption.⁷⁰

However, there is widespread acceptance of the IAS.⁷¹ If the SEC wants to maintain its stature, both domestically and internationally, in the long term, it must consider the IOSCO recommendation and the IAS seriously.⁷² For example, KPMG's study of the IAS issue

63. SEC Regulation S-X states the current reconciliation requirements. See Concept Release, *supra* note 10. These should not be altered at the present time.

64. See *supra* Part I.

65. There are only 30 core standards which, even where fully implemented require supplemental information. See *supra* note 3. Thus, they are not yet a developed financial language that transcends borders seamlessly. There is a real danger that financial statements prepared in different countries, in accordance with the IAS will not be comparable.

66. The ultimate goal of a uniform financial language necessitates maintaining investor confidence. If financial statement users discover that even cross border transaction statements are not comparable, serious doubt will exist as to whether a uniform financial language will ever exist. Thus, adopting core standards that require supplementing may impair the ultimate goal.

67. See *supra* note 55 and accompanying text.

68. See *supra* note 55 and accompanying text. See also *supra* note 3 (reciting the language that makes this course of action plausible).

69. See *supra* note 3.

70. Concept Release, *supra* note 10.

71. See *id.*

72. See *id.*

showed that European “corporates” were likely to reject any movement to supplant national and international standards with U.S. GAAP as a universal language. However, it also showed that 29% of respondent countries contemplating a change in their current financial language were considering U.S. GAAP.⁷³ Many exchanges that accept cross-border filings using IAS also accept U.S. GAAP financial statements.⁷⁴ In the long term, improving the quality of the IAS will be more beneficial than ignoring what the SEC perceives as flaws in the standards because of the IAS’s wide acceptance.

As an interesting aside, while the world may wait for the SEC to determine its course of action, both out of deference and a lack of viable alternatives, technology will not. U.S. investors are increasingly afforded the opportunity to invest in other markets both domestically and internationally, on the Internet.⁷⁵ Already, it is possible for U.S. investors to gain access to foreign markets in the U.S. through Tradepoint.⁷⁶ Therefore, U.S. investors are increasingly likely to have contact with foreign capital markets and consequently, with the IAS.⁷⁷ The SEC must ultimately decide to what extent it will facilitate this contact by endorsing a uniform financial language as a result of the events of May 2000, or at some point in the future.⁷⁸

73. Cf. KPMG, *supra* note 39. The same survey comments that “[a] vast majority of all respondents contemplating a change are considering IAS.” *Id.*

74. *Stock Exchanges that Allow Companies to Prepare IAS Financial Statements*, at http://www.iasc.org.uk/frame/cen1_10.htm (last visited Oct. 19, 2000).

75. For a discussion of the emergence of automatic trading systems (“ATS”), electronic communication networks (“ECN”), Tradepoint and the various ways that investors are now able to access global capital markets on the Internet, see Karmel, *supra* note 37.

76. For a detailed discussion of Tradepoint and its potential impact on domestic securities regulation, see *id.* Tradepoint is an electronic market maker that allows investors to trade on the London Stock Exchange. *Id.* In March 1999, the SEC granted the exchange an exemption to allow it to operate in the U.S. *Id.*

77. *Id.*

78. The Release represents the first step in this evaluation. See Concept Release, *supra* note 10.

III. COMPARING THE U.S. FINANCIAL ACCOUNTING STANDARDS BOARD AND THE *RESTRUCTURED* INTERNATIONAL ACCOUNTING STANDARDS COMMITTEE

To understand the SEC's stance on the IAS, this Note compares the FASB and the *restructured* IASC. This analysis highlights the similarities and differences between the standard setting bodies and their financial statement languages. Understanding the following intricacies and their significance aids in gauging the likelihood that the events of May 2000 will have a substantive impact on the SEC's stance on the IAS.

A. FASB

In the Securities Exchange Act of 1934, Congress granted the SEC statutory authority to establish financial accounting and reporting standards for public companies and to ensure the integrity of domestic capital markets.⁷⁹ In 1971, the SEC delegated its authority to promulgate financial statement accounting and reporting standards to the FASB.⁸⁰ This delegation evinces the SEC's confidence in the FASB and its system.⁸¹

The SEC takes the position that the U.S. domestic financial accounting language, as promulgated by the FASB, meets the criteria it stated were necessary for it to consider acceptance of the IAS.⁸² That is, it believes that FASB promulgates accounting standards that are: (i) a comprehensive, generally accepted basis of accounting; (ii) high quality; and (iii) rigorously interpreted and applied.⁸³ In sum, the SEC has established confidence in the FASB, its processes and its work product, U.S. GAAP.⁸⁴ The SEC

79. 15 U.S.C. § 78(m) (1994). See also *The Financial Accounting Standards Board*, at <http://www.rutgers.edu/accounting/raw/fasb/facts/index.html> (last visited Oct. 4, 2000).

80. See *Financial Accounting Standards Board*, *supra* note 79.

81. See PATRICK R. DELANEY ET AL., WILEY GAAP 99 INTERPRETATION AND APPLICATION OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES 7 (1999).

82. See *infra* note 85; COMPARISON PROJECT, *supra* note 16.

83. Concept Release, *supra* note 10.

84. See *infra* note 85.

is now confronted with the question of whether or not it should place its confidence in the restructured IASC.⁸⁵

The SEC designated the FASB as the private sector organization responsible for establishing standards of financial accounting and reporting in 1973.⁸⁶ Under the auspices of its authority, FASB acts to: (i) improve financial reporting by focusing on relevance, reliability, comparability and consistency; (ii) keep standards current; (iii) improve deficiencies in standards; (iv) promote international comparability of accounting standards; and (v) improve the common understanding of the nature and purpose of financial reporting.⁸⁷ FASB achieves these goals through its established hierarchical processes.

An overview of FASB's processes illuminates the justifications for the SEC's confidence in FASB. It may also function as a blueprint for the IASC. FASB is an independent organization comprised of a Board of Trustees, FASB members, staff, Advisory Council and others.⁸⁸ FASB's Oversight Board, the Financial Accounting Foundation ("FAF"), is responsible for selecting FASB members and the Advisory Council.⁸⁹ The trustees are chosen from two pools, nominees of organizations that sponsor the FASB and trustees at large.⁹⁰ The FASB members are seven full-time individuals, each of whom serves for a five-year term.⁹¹ The FASB support staff is a diverse

85. Critics have suggested that the IASC's standards cannot be accepted, regardless of their quality, before confidence can be placed in the IASC. Its former structure and processes made it impossible to instill any confidence in the organization, according to these critics. *See* COMPARISON PROJECT, *supra* note 16, at 15. The restructuring may be viewed as the answer to this criticism.

86. *See id.*, at 15. Previously, other private sector regulators were charged with the FASB's duty. *See id.*

87. *See id.*

88. *See id.*

89. *See id.*

90. *See* COMPARISON PROJECT, *supra* note 16, at 15. Sponsoring organizations are organizations with a vested interest in financial reporting. These include: The American Accounting Association; American Institute of Certified Public Accountants; Association for Investment Management and Research; Financial Executives Institute; Government Finance Officers Association; Institute of Management Accountants; National Association of State Auditors, Comptrollers and Treasurers; and Securities Industry Association. Such sponsors do not impinge upon the independence of the organization. *See id.*

91. *See id.*

group of forty professionals.⁹² The FASB Advisory Council has more than thirty members from all areas of the profession.⁹³ Others, including specialists, are consulted as new issues emerge.⁹⁴ Thus, the FASB is designed to encompass kaleidoscopic views from all vantage points of the profession.

FASB actions have a substantive impact in the financial world.⁹⁵ Therefore, the FASB Rules of Procedure require adherence to rigorous due process standards, for major issues and projects it undertakes, modeled on the Federal Administrative Procedure Act.⁹⁶ Its tenants include an open-door policy, maintenance of a public record, public participation and observation.⁹⁷ All of these procedures are used to ensure that when the FASB promulgates a final, authoritative statement it will have its intended effect.⁹⁸ The FASB also promulgates guidance in accordance with due process standards.⁹⁹ Guidance deals with implementation and practice problems and may take the form of a Board interpretation or a staff technical bulletin.¹⁰⁰

The final, authoritative statements and guidance discussed above constitute U.S. GAAP.¹⁰¹ U.S. GAAP has a hierarchical structure comprised of four levels of guidance; levels A, B, C, and D.¹⁰² Level A consists of official accounting principles promulgated by FASB.¹⁰³ These in-

92. *See id.*

93. *See id.*

94. *See id.*

95. *See* COMPARISON PROJECT, *supra* note 16, at 15.

96. *See id.* For a detailed discussion of the due process requirements followed when a major issue is undertaken, refer to the Major Projects discussion, herein.

97. *See id.* The FASB's due process requirements are largely concerned with conveying an open door, public access appearance. This is due to the impact that the FASB has on the public. There is also an underlying connotation to closed-door proceedings, that they are used to conceal things from the public. To circumvent this problem, FASB opens its proceedings and records for public inspection. *See id.*

98. *See id.*

99. *See id.*

100. COMPARISON PROJECT, *supra* note 16, at 15.

101. *See id.*

102. *See id.*

103. *See id.*

clude: Statements of Financial Accounting Standards, standard interpretations, Accounting Principles Board ("APB") Opinions, and AICPA Accounting Research Bulletins.¹⁰⁴ Level B consists of FASB Technical Bulletins and, if cleared by the FASB, AICPA Industry Audit and Accounting Guides and AICPA Statements of Position.¹⁰⁵ Level C consists of AICPA Accounting Standards Executive Committee Practice Bulletins cleared by FASB and consensus positions of the FASB Emerging Issues Task Force.¹⁰⁶ Level D consists of AICPA accounting interpretations and implementation guides by the FASB staff, and widely recognized general and industry practices.¹⁰⁷ Where there is no definitive guidance on an accounting issue, accounting literature is considered.¹⁰⁸ Together, U.S. GAAP levels A-D comprise the most developed financial language in the world.¹⁰⁹

B. IASC

The IASC began its mission, to create a set of core international accounting standards and to promote their use world-wide, in 1973, with professional representatives from ten countries.¹¹⁰ In the twenty-seven years since its inception, IASC membership has grown to include ninety-one countries, and all professional organizations that maintain membership in the International Federation of

104. Each of these categories is subdivided into detailed standards. For example, there are currently 134 standards at Level A. *See generally* DELANEY, *supra* note 81.

105. *See id.*

106. *See id.*

107. *See id.*

108. *See id.* IASC standards may be considered Level D guidance because it is a "widely recognized or prevalent accounting practice" under AU section 411. *See id.* at 9. However, there are few instances where the IAS contain a topic or standard not covered by U.S. GAAP. Thus, Level D is rarely reached to use an IAS. *See* DELANEY, *supra* note 81.

109. *See id.*

110. BARRY J. EPSTEIN & ABBAS ALI MIRZA, WILEY IAS 2000 – INTERPRETATION AND APPLICATION OF INTERNATIONAL ACCOUNTING STANDARDS 2000 9 (2000). The countries represented were: Australia, Canada, France, Germany, Japan, Mexico, the Netherlands, the United Kingdom, Ireland and the United States. *Id.*

Accountants ("IFAC"), which includes approximately 142 members in 103 countries.¹¹¹

In May 2000, the IASC voted unanimously to approve its proposed restructuring plan.¹¹² The IASC undertook restructuring to create a more formidable international standard-setting body.¹¹³ To achieve this goal, the IASC is implementing the IASC's Strategy Working Party recommendations, made in their November 1999 report, *Recommendations on Shaping IASC for the Future*.¹¹⁴ These recommendations include changes in the IASC's objectives and strategy, due process, standards implementation and enforcement, and funding mechanisms.¹¹⁵ The U.S., in its role as an IOSCO member, offered many suggestions for the IASC's restructuring.¹¹⁶ In accepting U.S. suggestions, the IASC could reasonably conclude that they were embarking on a path towards U.S. acceptance.¹¹⁷

Analogous to the SEC's delegation of power to the FASB, the recommendation signifies IOSCO's delegation of standard setting power to the IASC. However, conspicuously absent from any discussion of the IAS is any mention of its authority.¹¹⁸ The IASC has no mechanism with which it can compel compliance with its standards.¹¹⁹ This does not mean that the IAS lack credibility. Rather, it calls for an understanding of compliance on the international plane, where actual authority does not exist.¹²⁰ Arguably more powerful than a "rule," it is an organization of the world's securities commissions joined together in furtherance of a common goal, that is, acceptance of the IAS.¹²¹ Thus, if IOSCO's 100 plus members are in accord

111. *Id.*

112. *See Restructuring, supra* note 4. The members, professional accounting bodies in over 100 countries voted for the restructuring. *Id.*

113. *See id.*

114. *See id.*

115. *See id.*

116. *See supra* note 79.

117. *See supra* note 7.

118. *See* Concept Release, *supra* note 10.

119. *See id.*

120. *See* Thomas M. Franck, *Legitimacy in the International System*, 82 A.J.I.L. 705, 706-07, 712-13 (1988).

121. *See supra* note 5 and accompanying text.

with the recommendation for the standards adoption, it can succeed.¹²² A clearer issue of authority arises where, as in the case of the U.S., a member is not in accord with the recommendation.¹²³ In such a case, a state can only be encouraged to comply.¹²⁴ In this instance, other prominent members of IOSCO have implored the U.S. to follow the recommendation.¹²⁵ To date such efforts have been ineffective; the U.S. has not wavered on its reconciliation requirement.¹²⁶ Thus, whether the U.S. will choose to follow the IOSCO recommendation and abdicate its stringent requirements remains an issue.¹²⁷ Although it can be pressured, the U.S. cannot be compelled to change on the international plane.¹²⁸

The IASC's restructuring is expected to become effective in January 2001.¹²⁹ For many, this is a welcome change.¹³⁰ The restructuring is the result of the IASC's desire to become a more formidable international standard setter.¹³¹ Therefore, independence, consideration of multinational accounting concerns and adequate funding are of immense importance in the IASC's new Constitution ("new Constitution").¹³²

The new Constitution establishes a framework for the IASC body including provisions for Trustees and a

122. *See id.*

123. *See infra* note 128.

124. *See infra* note 128.

125. *Institute Has No Reservations In Supporting International Accounting Standards*, at http://www.iasc.org.uk/frame/cen1_617.htm (last visited Oct. 19, 2000).

126. *See* Concept Release, *supra* note 10.

127. *See id.* The SEC explores whether it will change its stance and solicits comments as to an appropriate course of action herein.

128. This statement is particularly ironic in light of the prominent role the U.S. actually plays in IOSCO. Thus, the SEC is heard on the international plane to recommend the IAS and it is heard domestically to resist such a recommendation. *See* discussion *supra* Part II.

129. *IASC Nominating Committee Selects Initial Trustees of Restructured IASC*, at http://www.iasc.org.uk/news/cen8_095.htm (last visited May 22, 2000).

130. Critics of the IASC's old structure have suggested that no IAS standards could be accepted before confidence could be placed in their standard setter – the IASC. The old structure made any showing of confidence impossible. *See* COMPARISON PROJECT *supra* note 16, at 15.

131. IASC's Constitution (approved by Members of IASC on May 24, 2000), at http://www.iasc.org.uk/frame/cen4_1.htm [hereinafter Constitution].

132. *Id.*

Board, a Standing Interpretations Committee ("SIC") and Standards Advisory Council ("SAC").¹³³ New IASC Trustees must meet specific geographic and professional requirements.¹³⁴ The new Constitution calls for a fourteen member Board, with twelve members working full-time.¹³⁵ The new Constitution sets out clear criteria for board members in an appendix to the Constitution itself.¹³⁶ In contrast to the Trustee requirements, there is no geographic diversity requirement for Board members.¹³⁷ The requirements are primarily concerned with the technical

133. See *Restructuring*, *supra* note 4.

134. *IOSCO Endorses IASC's Core Standards*, at <http://www.iosco.org/iosco.html> (last visited May 17, 2000). The Constitution requires that:

The mix of Trustee's shall be representative of the world's capital markets and a diversity of geographic and professional backgrounds. The Trustees shall be required to commit formally to acting in the public interest in all matters. In order to ensure a broad international basis, there shall be: six Trustees appointed from North America; six Trustees appointed from Europe; four Trustees appointed from the Asia/Pacific region; and three Trustees appointed from any area, subject to establishing overall geographic balance. Five of the nineteen Trustees shall be nominated by the IFAC, subject to a process of mutual consultation between IFAC and the Nominating Committee or the Trustees Two of the five Trustees nominated by IFAC shall normally be senior partners/executives from prominent international accounting firms. Three of the other Trustees shall be selected after consultation with international preparers, users and academics for the purpose of obtaining one Trustee from each of those backgrounds Eleven *at large* Trustees shall also be selected. The *at large* designation indicates that such Trustees are not appointed through the consultation process with constituency organizations (IFAC, preparers, users or academics). *At large* Trustees are expected to bring to IASC strong public interest backgrounds which are complementary to those of Trustees nominated through the constituency process . . . Trustees shall normally be appointed for a term of three years, renewable once in order to provide continuity, some of the initial Trustees will serve staggered terms so as to retire after four or five years.

Constitution, *supra* note 131, §§ 9-12 (emphasis in original).

135. *Id.*

136. *Id.* § 25.

137. *Id.*

expertise of Board members.¹³⁸ The SIC would continue in its role under the old structure issuing guidance on the IAS.¹³⁹ The Advisory Council would enable geographically and functionally diverse groups to advise the Board and the Trustees when appropriate.¹⁴⁰ These changes are in sharp contrast to the old structure, under which participation in the IASC was ad hoc: Its Board members and employees were primarily volunteers that met sporadically.¹⁴¹ Under the new structure, there are substantive requirements for Board membership and to serve as a Trustee.¹⁴² A majority of employees and the Board serve full time.¹⁴³ The Board and Trustees meet regularly.¹⁴⁴

The IASC's objectives are: (i) the development of high quality global financial statements; (ii) promotion of the use and rigorous application of its standards; and (iii) to facilitate the convergence of national and international standards to high quality solutions.¹⁴⁵ Before the restructuring, the IASC did not seek to accomplish these objectives in the public for a.¹⁴⁶ Rather, because of time and budget constraints, the IASC met infrequently and worked behind closed doors.¹⁴⁷ The new structure abandons such formalistic secrecy in favor of more regular meetings, an open door policy and more developed due process requirements.¹⁴⁸ Moreover, under the restructur-

138. *Id.* § 24(6). In light of the technical expertise requirement, and "to achieve a balance of perspectives and experience," the Board must contain five practicing auditors, a minimum of three members with a background in financial statement preparation, three users of financial statements and at least one academic. *Id.*

139. *Shaping IASC for the Future: Board Takes First Step in Implementing Proposed Structure - Nominating Committee Approved*, at http://www.iasc.org.uk/news/cen8_081.htm (last visited Dec. 17, 1999). For an in depth discussion of the SIC's functions see also Constitution, *supra* note 131, § 42.

140. Constitution, *supra* note 131, § 42.

141. *See supra* Part III.B.

142. *See* Constitution, *supra* note 131.

143. *See id.*

144. *See id.*

145. *See id.*; Carsberg, *supra* note 19.

146. Constitution, *supra* note 131, § 18(f).

147. *See id.*

148. *See* Carsberg, *supra* note 19. Note however, that the new IASC Constitution allows for certain closed-door meetings, at the discretion of the Trustees. Constitution, *supra* note 131, § 18(f). The IASC has opened all Board meetings to the public. Enevoldsen Remarks, *supra* note 25. For a

ing, the IASC processes are geared toward a more open dialogue with the public.¹⁴⁹ The U.S. welcomes these changes in the IASC's processes. In the words of former SEC Chief Accountant Lynn Turner: "The IASC has taken an important step by supporting an approach that focuses on the public interest, especially the interests of investors in capital markets, as the lynchpin of its restructuring."¹⁵⁰ Overall, the restructuring has been reviewed quite favorably.

The IAS are a set of thirty "core standards" promulgated by the IASC.¹⁵¹ These standards have been recommended for use in cross-border filings by IOSCO.¹⁵² In promulgating these standards, the IASC expressly rejected the detail orientation that the FASB employs on promulgating standards.¹⁵³ Rather, the IASC employs a conceptual approach on promulgating standards.¹⁵⁴ In order to be a uniform financial language, the standards must encompass the needs of many financial statement users.¹⁵⁵ This is an impossible task, if the IASC becomes mired in detail.¹⁵⁶

Although, arguably, too much detail would impede multi-national use of the standards, there is a strong countervailing concern where too little detail fails to provide needed guidance for countries to implement the standards uniformly.¹⁵⁷ The "core standards" abandon the multi-level detail oriented approach that the promulga-

detailed discussion of due process under the new structure, see the Constitution, *supra* note 131, § 42.

149. For example, the SIC, the Committee responsible for interpreting how the IAS shall be applied, will publish draft interpretations and invite public comment for a reasonable period of time prior to determining their final interpretation stance. Constitution, *supra* note 131, § 41(a)-(c).

150. Lynn E. Turner, *IASC Board Decision to Support Restructuring Plan*, at http://www.iasc.org.uk/news/cen8_156.htm (last visited Nov. 17, 1999).

151. See generally COMPARISON PROJECT, *supra* note 16.

152. *IASC's Press Release*, *supra* note 30.

153. See COMPARISON PROJECT, *supra* note 16.

154. See *id.*

155. See *supra* Part II (discussion on nationalism).

156. See COMPARISON PROJECT, *supra* note 16.

157. See Concept Release, *supra* note 10.

tors of U.S. GAAP embrace.¹⁵⁸ Although this Note does not endeavor to explore the differences between U.S. GAAP and the IAS, much ink has been spilt on the subject.¹⁵⁹ There is substantial disagreement as to which form of guidance will prevail as the “better” approach.¹⁶⁰

C. FASB v. IASC, A Comparison

The IASC’s infrastructure changes are a positive step toward its goal of becoming a more formidable international standard setting body.¹⁶¹ There are now many similarities between the restructured IASC and the FASB structure.¹⁶² In particular, the IASC has made substantive changes to its Board Member and Trustee requirements.¹⁶³ The IASC’s new composition emulates the FASB’s commitment to cultivating diversity of experience and knowledge, and achieving “representativeness.”¹⁶⁴ In the past, the IASC was criticized for the lack of interpretive and technical guidance offered in conjunction with their core standards.¹⁶⁵ Under the new structure, the IASC will retain the SIC.¹⁶⁶ The SAC has been commissioned to engage in an open dialogue with the Board and Trustees to improve the public understanding of the standards.¹⁶⁷ The new IASC has improved its due process requirements.¹⁶⁸ The FASB maintains an open-door policy.¹⁶⁹ Under the new Constitution, IASC meetings will take place

158. See *supra* note 104 and accompanying text (discussing levels A-D of U.S. GAAP guidance).

159. See COMPARISON PROJECT, *supra* note 16.

160. See *supra* note 16 (reference to comment letters discussing the debate on U.S. GAAP v. IAS).

161. See *infra* note 171.

162. See *supra* Part III.A.-B.

163. See *supra* Part III.A.-B.

164. Lynn E. Turner, *IASC Board Decision to Support Restructuring Plan*, at http://www.iasc.org.uk/news/cen8_156.htm (last visited Oct. 1, 2001). Former SEC Chief Accountant, Lynn Turner heralded the changes in member requirements, coining the description “representativeness.” For a fuller description of the similarities in the new Board and Trustee membership requirements, see *supra* Part III.A.-B.

165. See *supra* Part III.B.

166. See *supra* Part III.B.

167. See Constitution, *supra* note 131.

168. See *supra* Part III.B.

169. See *supra* Part III.A.

in the public fora.¹⁷⁰ The SEC has indicated that this is a major step for the IASC. In particular, the SEC's former Chief Accountant, Lynn Turner, noted that the changes would enhance the IASC's independence and effectiveness substantially.¹⁷¹ In sum, the changes implemented under the IASC's restructuring create a "more FASB like" structure. This is not entirely surprising in light of the active role the SEC took in proposing changes.¹⁷² Despite these steps, however, these changes may not be substantive enough for the SEC to change its stance on the IAS.

While the SEC favors the changes in structure that liken the IASC to the U.S. FASB,¹⁷³ the remaining differences between the two standards setters raises the question of whether the IASC's substantive restructuring will have any impact on the SEC's stance on the IAS. The restructuring was effected largely to create a more formidable international standards setter.¹⁷⁴ In many ways, this required the adoption of a more "FASB like" process, including: A more structured organization, adequate staffing, regular meetings, more developed due process proceedings and a defined open door policy.¹⁷⁵ However, it is critical to understand that these changes affected only the IASC's infrastructure; not the underlying philosophy behind the standards. A major difference between the FASB and the IASC is their respective standard setting approaches.¹⁷⁶ The FASB favors detailed, specific standards,¹⁷⁷ while the IASC embraces a conceptual ap-

170. See *supra* Part III.B.

171. See Turner, *supra* note 164.

172. As both an active member of IOSCO and participant in the IASC, the SEC was able to exert significant influence over the restructuring. Indeed, former Chairman Levitt headed the [Trustee] Nominating Committee of the new IASC. See *supra* Part I.

173. See *supra* Part I.

174. See Turner, *supra* note 164.

175. See *generally* Part III.

176. The number of standards promulgated by the FASB and IASC respectively, evince the sharp contrast of the standard setters approaches. As of this writing, there are 134 FASB standards (though a few of these have been superceded). These are supplemented by interpretative, technical, academic and industry specific guidance at levels B-D. See DELANEY, *supra* note 81.

177. See *id.*

proach.¹⁷⁸ As a result of its approach, the IASC has not promulgated a significant amount of interpretive guidance.¹⁷⁹ The SEC opines that where there is no (or insufficient) guidance, there is a danger that the standards will be interpreted differently in different countries.¹⁸⁰ If this happened,¹⁸¹ financial statement user confidence would be more severely eroded than in 1993 and 1994 because the new statements lacking comparability would have been prepared under the auspices of the IAS; a uniform financial language.¹⁸² Their underlying differences in philosophy should keep the SEC from accepting the IASC's standards, despite the IASC's embrace of the SEC's proposed changes to their infrastructure.

IV. FINANCIAL FRAMEWORK V. CORE STANDARDS

The SEC has taken the first step toward determining if the IAS are sufficient, in the context of a larger international financial reporting framework, by issuing a Concept Release seeking comment on the IAS.¹⁸³ The *framework* that is the subject of the Release, suggests that the IAS standing alone, can, at most, be viewed as a component part of an international financial framework.¹⁸⁴ The SEC explicitly contends that it "encourag[es] convergence towards a high quality global financial reporting *framework* internationally."¹⁸⁵ The U.S. tripartite framework may well be indicative of the SEC's requirements.¹⁸⁶

178. In contrast, there are thirty core standards and fifteen SIC publications of guidance. See EPSTEIN, *supra* note 110.

179. As of May 2000, fifteen SIC releases existed. This means that interpretive guidance exists for only half of the thirty standards. See *Press Release*, *supra* note 29.

180. This is a legitimate fear. See *supra* note 42 and accompanying text (discussing the Daimler-Benz issue).

181. See *supra* note 42.

182. See *supra* note 42 and accompanying text. The Daimler-Benz disparity was the result of incomparable German and U.S. standards. While this was disconcerting, such results under the same set of standards would be even more so. Then, standards setters would lose investor confidence. See *Restructuring*, *supra* note 4.

183. See *Restructuring*, *supra* note 4.

184. See *id.*

185. See *id.*

186. See *id.*

A. *The U.S. Equation*

The U.S. financial reporting framework may be expressed in the following tripartite equation:

Accounting Standards + Auditing Standards + Enforcement = U.S. Financial Reporting¹⁸⁷

U.S. GAAP are the U.S. accounting standards.¹⁸⁸ U.S. Generally Accepted Auditing Standards (U.S. GAAS) function as a check on U.S. GAAP.¹⁸⁹ The SEC is the enforcement mechanism ensuring that financial accounting principles (U.S. GAAP) are adhered to and that the U.S. GAAS are applied uniformly.¹⁹⁰ This framework creates a sufficient assurance level for domestic investors.¹⁹¹ It also underscores the obstacles that the current international equation poses for the SEC, even assuming that the IAS are of the highest quality.¹⁹²

B. *The International Equation*

In U.S. terms, the present international financial framework equation may be articulated as:

Accounting Standards + X(1) + X(2) = International Financial Reporting
(X = *unknown variable*)

1. X(1)

To date, no international auditing standards that have been recommended by IOSCO remain in existence.¹⁹³

187. See Concept Release, *supra* note 10.

188. See *id.*

189. See *id.*

190. See *id.*

191. See *id.*

192. This is not an uncontested assumption. See *supra* note 16.

193. A Resolution Concerning International Standards on Auditing, at <http://www.iosco.org/resolutions/resolutions-document07.html> (Oct. 1992).

In 1992, however, IOSCO recommended a set of auditing standards promulgated by the International Federation of Accountant's ("IFAC") International Auditing Practices Committee ("IPAC").¹⁹⁴ In language strikingly similar to that used in the IAS recommendation, the IOSCO passed a *President's Committee Resolution Concerning International Standards on Auditing* ("ISA").¹⁹⁵ The resolution recognized the "critical role" of auditing standards in investor protection.¹⁹⁶ It believed that the ISA "represent a comprehensive set of auditing standards and that audits conducted in accordance with these standards could be relied upon by securities regulatory authorities for multinational reporting purposes."¹⁹⁷ Like the IAS recommendation, the ISA recommendation also came with a caveat.¹⁹⁸ Without guidance on these critical matters related to the standards, it is difficult if not impossible to maintain any confidence in the standards. However, a discussion of the feasibility of the ISA without relevant guidance is somewhat moot, because the recommended standards are no longer in existence.¹⁹⁹

194. *Id.*

195. *Id.* The resolution states:

[T]he President's Committee recommends that the members of IOSCO:

(a) accept the International Standards on Auditing identified . . . as an acceptable basis for use in cross-border offerings and continuous reporting by foreign issuers;

(b) take all steps that are necessary and appropriate in their respective home jurisdictions to accept audit standards conducted in accordance with International Standards on Auditing as an alternative to domestic auditing standards in connection with cross-border offerings and continuous reporting by foreign issuers.

Id.

196. *Id.*

197. *Id.*

198. See *A Resolution Concerning International Standards on Auditing*, *supra* note 193. In the recommendation, the Technical Committee is careful to note that it is not making a recommendation of the form of the audit report, or auditor qualifications and independence. *Id.*

199. *Id.* In a footnote to the Resolution, there is a note stating that implementation has been suspended because the standards referred to herein are no longer in existence. However, a second note states that the Resolution has not been abrogated because the issue may be resolved with in the "fore-

The IOSCO's own words in the Resolution underscore the significance of a "comprehensive set of auditing standards."²⁰⁰ This validates the SEC's position that an international financial framework is necessary,²⁰¹ rather than an ad hoc implementation of particular standards that do not operate as part of a larger scheme, instilling confidence in financial statement users and protecting them.

2. X(2)

There is no enforcement mechanism available on the international plane.²⁰² In *A Resolution on Enforcement Powers*, regarding international securities regulation, the IOSCO recognized the necessity of "strong and aggressive enforcement of securities . . . laws."²⁰³ It continued, stating, "it is crucial to have broad access to information relating to the activities of persons and entities engaged in securities . . . transactions."²⁰⁴ Although these statements were written considering securities regulations, an analog to accounting standards can and should be drawn readily. The SEC has long recognized the validity of these statements, as they would apply to securities and accounting regulations, domestically. The lack of information available illustrates why the idea of relinquishing power to mere standards that have no assurance mechanisms in place is unsettling. However, this is not to say that merely passing a resolution that recognizes the need for enforcement will suffice.²⁰⁵ Such a resolution's recognition of the

seeable future." *Id.* However, the foreseeability of this resolution is surely questionable because as of this writing, eight years have passed and no further action appears to have been taken on the Resolution.

200. *Id.*

201. See *Concept Release*, *supra* note 10.

202. See Franck, *supra* note 120.

203. *A Resolution on Enforcement Powers Passed by the President's Committee November 1997*, at <http://www.iosco.org/resolutions/resolutions-document13.html> (last visited Oct. 19, 2000).

204. *Id.*

205. Such a resolution might read as follows:

Each member of IOSCO should strive to ensure that it or another authority in its jurisdiction has the necessary authority

need for "mutual assistance and cross-border cooperation" may be insufficient by the SEC's enforcement standards.²⁰⁶ What would constitute an acceptable enforcement mechanism for the IAS and the yet to exist ISA (as recommended by the IOSCO) remains to be seen.²⁰⁷

V. CONCLUSION

The IAS's unknown variables should cause the SEC great concern.²⁰⁸ To adopt financial statement standards that are unregulated and lack an enforcement mechanism, internationally, in lieu of U.S. standards that are promulgated with great detail, interpretation and technical guidance, are audited using well developed audit standards and enforced by a regulatory agency with actual authority, would jeopardize the protection that U.S. investors are afforded currently. U.S. investor confidence is too imperative to the SEC's mission to forfeit, for purported international efficiencies that would be achieved if the IAS were followed.²⁰⁹

to obtain information, including statements and documents that may be relevant to investigating and prosecuting potential violations of laws and regulations relating to . . . [IAS and ISA] . . . and that such information can be shared directly with other IOSCO members or indirectly through authorities in their jurisdictions for use in investigations and prosecutions of . . . [IAS and ISA] . . . violations.

Id. Note this is the text of the *Resolution on Enforcement Powers* adapted to fit such a resolution for the IAS and ISA.

206. *Id.* The Resolution recognizes that cooperation is a principle tenant of IOSCO. This is a major difference between the domestic and international concepts of enforcement, as noted earlier. Cooperation is not the SEC's chosen mechanism. Rather, force is used. Whether the SEC will be willing to accept the international concept of compliance remains to be seen.

207. It is alarming to note the small number of signatories to the ISA Resolution. *Id.* Though there are many reasons that a country may not become a signatory to a Resolution and much has changed on the international plane since 1997, such a small number does not bode well for any enforcement mechanism's success.

208. See Concept Release, *supra* note 10.

209. It has not been concretely established that investors who do not invest in the U.S., due to the current reconciliation requirements, would do so if such requirements were abolished. It has also not been established that statements prepared using IAS would be comparable when prepared in different countries. It has been established that using the IAS would create financial statements that are not comparable to U.S. GAAP. Therefore, U.S.

In sum, the SEC should not accept one element of a tripartite equation. The potential cost domestically cannot be mitigated or outweighed by the potential efficiencies internationally. Without a completed tripartite financial reporting framework, acceptance of the IAS as a means of attaining the goal of a uniform financial language is premature and potentially detrimental to U.S. investors.²¹⁰ U.S. investors would be stripped of their present assurance level and be forced to confront great uncertainty. This does not mean that the SEC should rest on its laurels. The economy is globalizing rapidly.²¹¹ Therefore, the SEC should take an aggressive interest in facilitating a global financial framework, including audit and enforcement mechanisms using the IAS as a foundation on which to base its work. This is an enormous undertaking. On the international plane, adoption of auditing standards that will be interpreted and applied rigorously²¹² will be at least as difficult as implementing international accounting standards.²¹³ It may even require a designation analogous to the Certified Public Accountant.²¹⁴ Even more challenging will be a finding a solution to the enforcement mechanism issue on the international plane.²¹⁵ Although these hurdles should not be undertaken lightly and solu-

investors would have to devise their own mechanisms for interpreting the similarities and differences between domestic statements prepared in accordance with U.S. GAAP and foreign issuers statements in the U.S. prepared in accordance with IAS. The heralded comparability, if it can be established, would create efficiencies internationally. Domestically it would create inefficiencies. *See* Karmel, *supra* note 37.

210. *See* Concept Release, *supra* note 10.

211. *See* Coffee, *supra* note 18.

212. Note that the author uses the SEC's suggested criteria for accounting and audit standards. *See id.*

213. The AICPA has proposed criteria temporarily dubbed the XYZ to begin to deal with the globalizing economy.

214. If a uniform financial language is implemented, it is necessary to have a knowledgeable base of speakers of such a language. Such speakers would be able to represent the integrity of the language to its users. Moreover, they would ensure compliance with nuances of the languages to financial statement users. A domestic credential does not seem to be enough for this type of undertaking. It is likely that a wholly new credential analogous either to the United Kingdom's chartered accountant credential or the U.S. CPA credential would be necessary.

215. The domestic concept of enforcement is, in many respects, foreign to the international plane. *See* Franck, *supra* note 120.

tions may not be achieved rapidly, they are necessary to achieve the goal of a uniform financial language.²¹⁶

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216. As the new presidential administration brings changes at the SEC, this issue's priority will surely be affected. How remains to be seen.

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