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Tamara Oyre
Assistant Corporate Secretary
IASC Foundation
30 Cannon Street
London EC4M 6XH
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e-mail: constitutionreview@iasb.org

Ref.: Review of the Constitution: Identifying Issues for Part 2 of the Review.

Dear Ms Oyre,

The International Swaps and Derivatives Association (“ISDA”) is pleased to provide the following comments with respect to Part 2 of the second review of the IASC Foundation Constitution, at the request of the Trustees’ meeting in March 2008 and in line with the specific calendar included in the Constitution that states that a review must be completed every five years.

ISDA has over 800 member institutions from 56 countries on six continents. These members include most of the world’s major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. As such, we believe that ISDA brings a unique and broad perspective to the work of the IASB.

In this letter we outline our key messages in response to the above referenced discussion paper and in the appendix we provide our more detailed responses to the questions included in the consultation.

Our key messages are:

- ISDA commends the IASC Foundation for the following enhancements to the governance structure:
 - the successful implementation of the various measures outlined in ISDA’s letter dated 25th June 2004, ‘Strengthening the IASB deliberative procedures’ which included efficient use of ties with industry bodies so as to improve its consultation process, greater use of extensive field testing, public hearings and roundtables;
 - the establishment of the Monitoring Group to improve linkages with governmental bodies and the Financial Crisis Advisory Group to advise on matters relating to the credit crisis; and
 - the IASC Foundation’s efforts to reconstitute the Standards Advisory Council.

- We believe that the fundamental objectives of the IASC Foundation remain as stated in its Constitution, which include bringing about convergence of national accounting standards to one common set of international reporting standards based on principles.
- While we support the Constitution as drafted, we are concerned about the effectiveness of the agenda setting process and the effectiveness of the Trustees to monitor the agenda setting process. For example, currently, the volume and intensity of activity on the IASB and its constituents is high –the current IASB agenda contains 3 Discussion Papers and 13 Exposure Drafts, covering significant topics such as Consolidation, De-recognition, Fair Value Measurement and Revenue Recognition. ISDA is concerned about whether the IASB and its constituents can adequately consider, within the timeframes allotted by the IASB, the new standards and assess whether they improve financial reporting and provide decision-useful information. Refer to our detailed response to Question 9.
- With regards to the previous point, ISDA believes that the Trustees should heighten the level of challenge as to whether the agenda items are realistically achievable to the standard and quality of review that is required in the timeframes allotted.
- While we support the recent efforts made by the IASC Foundation in reconstituting the Standards Advisory Council (SAC), we note the large number of members currently on the SAC (more than 40). While we consider this large membership necessary to achieve a sufficiently broad spread of representation to achieve the SAC’s objectives, we think that the operational and efficiency of the SAC is a challenge for the IASB and the Trustees. Perhaps the Trustees could consider from an operational standpoint to split the SAC according to groups and to solicit the respective groups’ advice on that basis. Furthermore ISDA believes that to be effective perhaps the frequency of the SAC meetings needs to be consistent with the volume, complexity and timing of the IASB’s agenda. Refer to our detailed response to Question 12.

In setting out our comments below we have followed the structure and references set out in the consultation paper. We hope you find ISDA’s comments informative and beneficial. Should you have any questions or desire any clarification concerning the matters addressed in this letter please do not hesitate to contact the undersigned.

Yours sincerely,



Charlotte Jones
Deutsche Bank AG
Chair, European Accounting Policy Committee



Antonio Corbi
International Swap and Derivatives Association
Risk and Reporting

Attachment:
Appendix: Responses to the questions

Appendix: Responses to the questions

Questions related to the Objectives of the Organization:

Q1; The Constitution defines the organisation’s primary objective in the following manner:

to develop, in the public interest, a single set of high quality, understandable and enforceable global accounting standards that require high quality, transparent and comparable information in financial statements and other financial reporting to help participants in the world’s capital markets and other users make economic decisions

In fulfilling that objective, the organisation is

to take account of, as appropriate, the special needs of small and medium-sized entities and emerging economies

Does the emphasis on helping ‘participants in the world’s capital markets and other users make economic decisions’, with consideration of ‘the special needs of small and medium-sized entities and emerging economies’, remain appropriate?

ISDA supports the fundamental objectives of the IASC Foundation as stated in its Constitution. The priority for the IASC Foundation should be to focus on the development of high quality accounting and reporting standards for the world’s capital markets. ISDA believes that the correct emphasis has been given to small and medium-sized entities and emerging economies.

Q2; In the opinion of the Trustees, the commitment to drafting standards based upon clear principles remains vitally important and should be enshrined in the Constitution. Should the Constitution make specific reference to the emphasis on a principle-based approach?

ISDA supports a principle-based model as it will allow the IASB to write accounting standards capable of being applied to different legal and financial backgrounds and national identities. Therefore we agree that a principles-based model should be enshrined in the Constitution as opposed to a rules-based accounting standards model.

Q3; The Constitution and the IASB’s *Framework* place priority on developing financial reporting standards for listed companies. During the previous review of the Constitution some commentators recommended that the IASB should develop financial reporting standards for not-for-profit entities and the public sector. The Trustees and the IASB have limited their focus primarily to financial reporting by private sector companies, partly because of the need to set clear priorities in the early years of the organisation. The Trustees would appreciate views on this point and indeed whether the IASB should extend its remit beyond the current focus of the organisation.

The Constitution states that the primary objective of the IASC Foundation is to develop global accounting standards for financial reporting to assist participants in the world’s capital markets and other users to make economic and financial decisions. As such we do not believe that the IASB’s remit should be extended to the public sector.

We note that the financial reporting needs of the public sector are currently being fulfilled by the International Public Sector Accounting Standards Board (IPSASB) and we are not aware of any significant issues or concerns about their work.

ISDA would support collaborative arrangements with the IPSASB as discussed in Question 4 below. At this time the IASB should concentrate its efforts in providing high quality global standards which promote transparent and comparative information across the world's capital markets.

Q 4; There are other organisations that establish standards that are either based upon or have a close relationship with IFRSs. The IASC Foundation already recognises the need to have close collaboration with accounting standard-setting bodies. Should the Constitution be amended to allow for the possibility of closer collaboration with a wider range of organisations, whose objectives are compatible with the IASC Foundation's objectives? If so, should there be any defined limitations?

ISDA supports close collaboration with other accounting standard-setting bodies which are fruitful and beneficial where a clear link to the IASC Foundation's objectives exists. Therefore the primary focus of the IASB's collaborative efforts with other organisations should remain with national accounting standard setters and other official bodies concerned with standard setting. While joint efforts with other organisations may be helpful, the IASB should carefully choose which organisations it will partner with, as the process can be time intensive.

Questions related to the Governance of the Organization:

Q 5; The first part of the review of the Constitution proposed the establishment a formal link to a Monitoring Group. Under this arrangement, the governance of the organisation would still primarily rest with the Trustees. Although the first part of the review has not yet been completed, the Trustees would welcome views on whether the language of Section 3 should be modified to reflect more accurately the creation of the Monitoring Group and its proposed role.

ISDA views the establishment of the Monitoring Group as an enhancement to the IASCF's public oversight and accountability arrangements. We agree that the role of the Monitoring Group merits specific reference within Section 3 of the Constitution. Furthermore we believe that the responsibilities of the Trustees in the Constitution should be amended in Sections 13 and 15 to reflect the Trustee's recently established responsibilities to the Monitoring Group.

Questions related to the Trustees:

Q 6; The Trustees are appointed according to a largely fixed geographical distribution. Is such a fixed distribution appropriate, or does the current distribution need review?

The present Constitution states that "*the mix of Trustees should broadly reflect the world's capital markets and diversity of geographical and professional backgrounds*". ISDA believes that the mix of Trustees should be periodically reviewed to ensure there is an appropriate balance of representation and maintain the IASB's credibility as the only international standard-setter with worldwide coverage.

As such we believe periodic revisions should be carried out to ensure that both the geographical distribution and the professional standing of members remain appropriate. For example, the mix of the Trustees could be re –examined at the same time as the Trustee’s terms are due for renewal.

Q 7; Sections 13 and 15 set out the responsibilities of the Trustees. The intention of these provisions is to protect the independence of the standard-setting process while ensuring sufficient due process and consultation—the fundamental operating principle of the organisation. In addition to these constitutional provisions, the Trustees have taken steps to enhance their oversight function over the IASB and other IASC Foundation activities. The Trustees would welcome comments on Sections 13 and 15, and more generally on the effectiveness of their oversight activities.

As stated in Question 5, we believe that the responsibilities of the Trustees in the Constitution should be amended in Sections 13 and 15 to reflect the Trustee’s recently established responsibilities to the Monitoring Group.

Other than the above amendment, ISDA believes the existing wording of the responsibilities of the Trustees as drafted in sections 13 and 15 is appropriate. However we are concern over the effectiveness of the Trustees in exercising their oversight activities. Refer to our response to Question 9.

Q 8; The Trustees are responsible for ensuring the financing of the IASC Foundation and the IASB. Since the completion of the previous review of the Constitution, the Trustees have made progress towards the establishment of a broad-based funding system that helps to ensure the independence and sustainability of the standard-setting process. (For an update on the funding status, see

<http://www.iasb.org/About+Us/About+the+IASC+Foundation/Funding.htm>)

However, the Trustees have no authority to impose a funding system on users of IFRSs. The Trustees would welcome comments on the progress and the future of the organisation’s financing.

ISDA commends the Trustees for the progress to date on securing funding sources and agree that an appropriate funding system is essential for the development of world-wide accounting standards. Clearly the nature of the funding system will have a crucial impact to the independence and credibility of IASC Foundation and its standard setter. For the IASB to be seen as an independent international standard setter, consideration must be given to the replacement of the current voluntary funding system with a permanent source of funding. The IASB, in coordination with the appropriate governmental bodies, should consider widening the funding contributions so that they are levied in accordance with a methodology based on, for example, the number and size of companies applying IFRS in each country.

Furthermore, ISDA believes that the Trustees should continue to ensure the transparency of the contributions and its sources as a way of reinforcing the IASB’s independence and the accountability of the IASC Foundation.

Questions related to the International Accounting Standards Board

Q9; Commentators have raised issues related to the IASB’s agenda-setting process. The Constitution gives the IASB ‘full discretion in developing and pursuing its technical agenda’. The

Trustees have regularly reaffirmed that position as an essential element of preserving the independence of the standard-setting process. However, they would welcome views on the IASB's agenda-setting process and would appreciate it if, in setting out views, respondents would discuss any potential impact on the IASB's independence.

ISDA agrees that periodic consultations with stakeholders is a useful way to promote transparency and could help the IASB to allocate its resources to those projects that have a greater demand or at least set its priorities. We note that clause 31(d) of the Constitution already allows the IASB to draw on the expertise of groups to, amongst other things, provide input to the IASB's agenda and that the IASB must consult with the Standards Advisory Council on its agenda as stated in section 24 of the IASB Due Process Handbook.

We do not have any issue with the wording in the Constitution as drafted but we are concerned about the effectiveness of the agenda setting process and the effectiveness of the Trustees to monitor that agenda setting process. For example, currently, the volume and intensity of activity on the IASB and its constituents is high –the current IASB agenda contains 3 Discussion Papers and 13 Exposure Drafts, covering significant topics such as Consolidation, De-recognition, Fair Value Measurement and Revenue Recognition. ISDA is concerned about whether the IASB and its constituents can adequately consider, within the timeframes allotted by the IASB, the new standards and assess whether they improve financial reporting and provide decision-useful information.

ISDA believes that the Trustees should heighten the level of challenge as to whether the agenda items are realistically achievable to the standard and quality of review that is required in the timeframes allotted.

Q 10; The Constitution describes the principles and elements of required due process for the IASB. The IASB's procedures are set out in more detail in the *IASB Due Process Handbook*. If respondents do not believe the procedures laid out in the Constitution are sufficient, what should be added? If respondents believe that the procedures require too much time, what part of the existing procedures should be shortened or eliminated? The Trustees would also welcome comments on recent enhancements in the IASB's due process (such as post-implementation reviews, feedback statements, and effect analyses) and on the *IASB Due Process Handbook*.

ISDA commends the IASB on the introduction of the measures to improve the due process which we outlined in our letter dated 25th June 2004, 'Strengthening the IASB deliberative procedures' including the more efficient use of industry groups, roundtables, field testing and feedback statements.

ISDA believes that the IASB's procedures could be further improved through the use of continuing educational sessions for the IASB Board members, the objective of which is to enhance Board members' understanding of specific technical subjects such as financial instruments. We believe that this will enable the Board to make better informed decisions when approving accounting standards. We note that education sessions are regularly held for FASB Board members.

Q 11; Should a separate 'fast track' procedure be created for changes in IFRSs in cases of great urgency? What elements should be part of a 'fast track' procedure?

ISDA believes that there may arise a need for a fast track procedure, although such instances should be exceptional. In general the internal review period by the IASB needs to reflect the length and complexity of the proposed change.

Questions related to the Standards Advisory Council

Q 12; Are the current procedures and composition, in terms of numbers and professional backgrounds, of the Standards Advisory Council (SAC) satisfactory? Is the SAC able to accomplish its objectives as defined in Section 38?

ISDA does not have any issue with the procedures, the composition of the SAC or the terms of reference of the SAC as currently drafted. We note the large number of members currently on the SAC (more than 40). While we consider this large membership necessary to achieve a sufficiently broad spread of representation to achieve the SAC's objectives we think that operationally, the efficiency of the SAC is a challenge for the IASB and the Trustees. Perhaps the Trustees may consider from an operational standpoint to split the SAC according to groups and to solicit the respective groups' advice on that basis. Furthermore ISDA believes that to be effective perhaps the frequency of the SAC meetings needs to be consistent with the volume, complexity and timing of the IASB's agenda.

Q 13; Attached to this discussion document are the terms of reference for the SAC, which describe the procedures in greater detail. Are there elements of the terms of reference that should be changed?

See response to Question 12 above.

Other issues

Q 14; Should the Trustees consider any other issues as part of this stage of their review of the Constitution?

We do not have any other matter of concern. We think that all important topics have been dealt with in this questionnaire.