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COMMENTS

FASB v. IASC: Are the Structure and Standard Setting Process at the IASC Adequate for the Securities and Exchange Commission to Accept International Accounting Standards for Cross-Border Offerings?

*Charles Canfield**

I. INTRODUCTION

The International Accounting Standards Committee ("IASC") is still struggling to develop a core set of international standards that provide reliable, high quality information for the world's capital markets. The project originated from a request by the International Organization of Security Commissions ("IOSCO"). The Securities and Exchange Commission ("SEC") supports the work of IOSCO and the IASC, and has stated that if the IASC successfully completes the "core standards" project, the SEC will

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consider accepting the "core standards" in securities offerings for cross-border issues in the United States.¹ IOSCO originally set a March 1998 deadline for IASC to complete the project. The deadline has long past, and The IASC's failure to complete the "core standards" on schedule raises questions about the IASC's legitimacy and is damaging the IASC's crucial relationship with IOSCO.² In fact, an IOSCO member and IASC observer, Herbert Biener, recently stated that "IASC must have a good relationship with IOSCO, and this is not the case."³ The IASC's failure is caused by deficiencies in its structure and standard setting process.

This comment compares and contrasts the IASC's structure and standard setting process with the structure and process for promulgating accounting standards of the Financial Accounting Standards Board ("FASB"), the standard setter for the United States. The purpose of this comparison is to determine whether or not the IASC's structure and process for standard development are adequate for the development of acceptable core standards. This comparison uses FASB, not for the purpose of imposing FASB as the standard setter for the world, but for the purpose of comparing the IASC with an established long-standing standard setter, and because the key to the IASC's success is approval by the SEC.

Moreover, such a comparison is relevant because the SEC is familiar with and accustomed to FASB as the SEC has oversight authority to FASB.⁴ The purpose of this comment is not to discredit nor to discount the work of the IASC, International Accounting Standards ("IAS"), but to examine some of the deficiencies in the IASC's structure and standard setting process in order to entertain recommendations for improvement.

II. INTRODUCTION TO THE IASC

The IASC is a London-based non-profit non-governmental international organization that was founded in 1973. Since 1983, IASC's members have included all of the professional accounting bodies that are members of the International Federation of Accountants ("IFAC").⁵ As of January

¹ Securities and Exchange Commission, *Report on Promoting Global Preeminence of American Securities Markets* (last modified December 12, 1997) <<http://www.sec.gov/news/studies/acctgsp.htm>> [hereinafter *SEC Report*].

² See *IASC Niagara Meeting*, ACCT. INT'L, August 1998, at 9.

³ *IOSCO Member Hits Out at IASC*, ACCT. INT'L, August 1998, at 9.

⁴ See generally THE IASC-US COMPARISON PROJECT: A REPORT ON THE SIMILARITIES AND DIFFERENCES BETWEEN IASC STANDARDS AND US GAAP (Carrie Bloomer ed., Financial Accounting Standards Board of the Financial Accounting Foundation 1996) [hereinafter *IASC-US COMPARISON*].

⁵ See International Accounting Standards Committee, INTERNATIONAL ACCOUNTING STANDARDS 1998, at 7 (1998). IFAC is a worldwide organization for the accounting profession with 143 member organizations in 104 countries, representing over 2 million accountants. International Federation of Accountants, *IFAC Facts and Figures* (visited Aug. 26, 1999) <<http://www.ifac.org/FactsAndFigures/index.html>>.

1998, the IASC had 122 members from ninety-one countries.⁶ The IASC's original purpose was to achieve harmony among accounting principles used by enterprises and other organizations for financial reporting around the world. To accomplish this, the IASC's initial accounting standards were compilations of practices from many countries, often allowing alternative treatments for one transaction.⁷ The "core standards" project has changed the IASC's role. The IASC is now charged with developing more detailed standards, which requires the elimination of alternative treatments.⁸

III. INTRODUCTION TO FASB

FASB is a private sector accounting standard setting organization, which, like the IASC, has no statutory authority. FASB was formed in 1972 and began operating in 1973. FASB plays a unique role in setting accounting standards. While Congress granted the SEC authority to set accounting standards, the SEC is not prepared to carry out this role. Instead, the SEC confers upon FASB the responsibility to promulgate accounting standards in the United States.⁹

IV. THE NEED FOR INTERNATIONALIZATION OF ACCOUNTING STANDARDS

Recently, in addressing the New York Stock Exchange, Tony Blair, Prime Minister of the United Kingdom, stated that: "promoting greater accountability and openness will strengthen the incentives on governments to pursue sound policies, will enable markets to price risk more accurately and should help countries manage more effectively the risk of global integration."¹⁰ In light of recent market declines and failures, there is an increasing need for regulators to push for legislation that improves global disclosure. Shortly after the United States government organized rescue of Long-Term Capital Management's hedge fund, in a speech to a Dow Jones/Wall Street Journal Conference in New York, U.S. Treasury Secretary Robert E. Rubin called for "a new openness in international finance" by recommending private and public sector efforts at improving international disclosure and requesting that the International Monetary Fund examine and broadly publicize countries' adherence to international standards of transparency.¹¹

⁶ See INTERNATIONAL ACCOUNTING STANDARDS, *supra* note 5, at 7.

⁷ See SEC Report, *supra* note 1.

⁸ See *Id.*

⁹ See PAUL B. W. MILLER ET AL., THE FASB: THE PEOPLE, THE PROCESS, AND THE POLITICS 21 (Richard D. Irwin, Inc. 1994).

¹⁰ International Accounting Standards Committee, *Late News from the IASC* (last modified October 7, 1998) <<http://www.iasc.org.uk.htm>>.

¹¹ *Id.* Financial statements are considered transparent when they provide full disclosure in such a manner that the users of the financial statements are able to understand fully the nature of the reporting enterprise's operations and finances.

The globalization of capital markets presents the need for a common language of accounting that can be understood by all of the participants in the world's markets. This trend is prevalent in the world's largest capital market, the United States. In 1997, foreign registrants raised \$28 billion in U.S. capital markets and 1,000 of the 13,000 companies currently registered with the SEC were foreign companies.¹²

In 1990, IOSCO recognized a need for a set of internationally accepted standards to facilitate cross-border offerings on the world's markets.¹³ In 1995, IOSCO assigned the IASC the task of developing a core set of accounting standards, with a deadline of March 1998 for meeting this objective.¹⁴

FASB also recognizes the need for internationally accepted accounting standards, and has formulated a strategic plan for international activities. FASB's main objective is to improve international comparability by internationalizing accounting into a set of accounting principles for general purpose financial statements that are accepted in all countries.¹⁵ To this end, FASB works with the IASC, as well as national standard setters.¹⁶ However, paramount in FASB's plan is that domestic reporting needs are a first priority.¹⁷

In the IASC's twenty-five years of existence, it has accomplished a great deal with limited resources. Without the IASC's efforts, the globalization of accounting would merely be an abstract discussion; nevertheless, the shortcomings of the IASC are more apparent as the need for international accounting standards becomes more urgent.

V. THE CURRENT STATUS OF THE IASC'S CORE STANDARDS PROJECT

In 1993, IOSCO identified a list of forty core standards necessary to facilitate cross-border offerings.¹⁸ In July 1995, IOSCO declared that fourteen of the existing standards at that time did not require any additional im-

¹²International Accounting Standards Committee, *Notable Quotations International Accounting Standards: The World's Standards by 2002 Article by Paul Pacter, IASC International Accounting Fellow The CPA Journal, July 1998* (last modified September 4, 1998) <http://www.IASC.org.uk/news/cen8_124.htm> [hereinafter IAS *Notable Quotations-Paul Pacter*].

¹³See SEC Report, *supra* note 1.

¹⁴Donald Schwartz, *Special Report: The Future of Financial Accounting: Universal Standards*, J. OF ACCT., May 1996, at 20.

¹⁵Dennis R. Beresford, *Highlights of Financial Reporting Issues: The Financial Accounting Standards Bureau. "FASB's Plan for International Activities."* January 1995, Practising Law Institute Corporate Law and Practice Course Handbook Series, October 1996, at 337.

¹⁶See *Id.*

¹⁷See *Id.*

¹⁸See International Accounting Standards Committee, *Current Projects-Core Standards* (last modified September 4, 1998) <http://www.IASC.org.uk/frame/cen3_5.htm>.

provement, leaving twenty-six standards to comprise the work plan. In the three years that followed, the IASC completed twenty-two core standards, leaving four standards to be completed.¹⁹ The four remaining standards are Hedging, Investments, Financial Instruments and Business Combinations.²⁰ The remaining standards are significant because they cover areas that have been the subject of long-term debate within the IASC.²¹ Since the March 1998 deadline has passed, global investors grow more impatient for the IASC to complete its work.²²

Fulfilling IOSCO's request to complete a set of "core standards" is paramount to the credibility of the IASC; however, IOSCO feels as though the IASC is on its way to missing this opportunity to establish itself as the world's premier standard setter.²³

VI. THE UGLY AMERICANS²⁴

The key to the IOSCO agreement is the acceptance of IAS in securities offerings in the United States by the SEC for cross-border issues. The largest capital market in the world is in the United States. Forty-two percent of the world's corporate equities are traded in the United States.²⁵ One of the main reasons for developing international accounting standards is to provide foreign access to the U.S. market.²⁶

¹⁹ See *id.*

²⁰ See *id.*

²¹ International Accounting Standards Committee, *Notable Quotations "What is Going to Happen in the U.S.?" Remarks of Mary B. Tokar, Senior Associate Chief Accountant, U.S. Securities and Exchange Commission, at the 2nd International Accounting Standards Conference, Brussels March 10, 1998* (last modified September 4, 1998) <http://www.IASC-org.uk/news/cen8_115.htm>.

²² See generally *IOSCO Member Hits Out at IASC*, *supra* note 3.

²³ See *id.* at 9.

²⁴ The modern day usage of the term "Ugly American" is a misnomer. The term originated from William J. Lederer and Eugene Burdick's critically-acclaimed, best-selling 1958 novel, "The Ugly American," about a compassionate American ambassador in a strife-torn Southeast Asian nation who tries to prevent the overthrow of a weak democratic government. The main character was treated with mistrust by the host country nationals at first, but eventually became a hero. See EUGENE BURDICK & WILLIAM J. LEDERER, *THE UGLY AMERICAN* (W.W. NORTON & COMPANY 1999).

²⁵ The New York Stock Exchange, *Equity Market Globalization: A View from 11 Wall Street*, remarks by Richard A. Grasso, Chairman and Chief Executive Officer New York Stock Exchange, Inc. (visited October 12, 1998) <<http://nyse.com/public/thenyse/1d/1d2/-1d2bfm.htm>>.

²⁶ Joel P. Trachtman, *Accounting Standards and Trade Disciplines: Irreconcilable Differences?*, at 10 (June 4, 1997) (unpublished article prepared for the Research Seminar on Trade Liberalisation and Financial Services sponsored by the Centre for Commercial Law Studies, The London Institute of International Banking, Finance and Development Law and the Centre for European Law). Other important reasons include developing standards for emerging markets and providing an abstract set of standards for worldwide standard setting.

While the SEC has supported the tremendous undertaking by IOSCO and the IASC, the SEC has stated that they will not accept the core standards without a reconciliation to Generally Accepted Accounting Principles ("GAAP") unless: (1) the core standards constitute a comprehensive body of accounting; (2) are of high quality and result in comparability and transparency and provide for full disclosure; and (3) they can and will be rigorously interpreted and applied.²⁷

Currently the SEC's principal accounting requirements are governed by Regulation S-X,²⁸ which requires GAAP reporting. The SEC monitors the structure, activity, and decisions of FASB, which oversees GAAP promulgation.²⁹ FASB recognizes that there are significant differences between IAS and GAAP.³⁰ Regarding the superiority of GAAP to IAS, Paul Pacter, an IASC International Accounting Fellow, states: "The U.S. Accounting Literature is the most comprehensive and arguably the best in the world. American investors are the most informed, and the American capital markets the broadest and deepest anywhere."³¹ The prominence of GAAP is due to the manner in which it is developed by FASB.

VII. FASB AND IASC STRUCTURE AND STANDARD DEVELOPMENT COMPARISON

A. Introduction

The structures of the IASC and FASB vary greatly. These bodies differ in terms of mission and board member composition.³² These differences extend to project staffing; board meetings; sponsoring, oversight and general advisory organizations; and project specific advisory groups.³³

The standard development process varies between the two organizations due to differences in conceptual frameworks, standard composition, due processes and enforcement of the standards.³⁴ A more detailed discussion of the differences follows.

²⁷ SEC Report, *supra* note 1.

²⁸ Regulation S-X, 17 C.F.R. § 210.4-01(a)(2).

²⁹ Securities and Exchange Commission, *SEC 1997 Annual Report: Program Areas* (visited September 15, 1998) <<http://www.sec.gov/asec/annrep97.htm>>.

³⁰ See John p. Redd, *Worlds Apart? - FASB Issues a report That Analyzes U.S. and International Accounting Standards*, INSIGHTS, April 1997, at 19.

³¹ IAS *Notable Quotations- Paul Pacter*, *supra* note 12.

³² See John P. Redd, *supra* note 30.

³³ See IASC-US COMPARISON, *supra* note 4, at 40-53.

³⁴ See *id.* at 55-60.

VIII. COMPARISON OF THE IASC'S STRUCTURE AND FASB'S STRUCTURE

A. Missions

A significant difference between the two organizations is the scope of their missions.

The IASC Mission is twofold:

(1) to formulate and publish in the public interest accounting standards to be observed in the presentation of financial statements and to promote their worldwide acceptance and observance; and

(2) to work generally for the improvement and harmonization of regulations, accounting standards and procedures relating to the presentation of financial statements.³⁵

The FASB mission is to establish and improve standards of financial accounting and reporting in the United States.³⁶ An underlying objective of the FASB mission is to satisfy the needs of financial report users by providing information that is useful for economic decision making processes in order to improve the efficiency of capital markets' resource allocation.³⁷

The IASC mission is not explicitly designed to serve the needs of capital market participants.³⁸ Further, the IASC mission is much broader in that the mission hopes to achieve accounting harmonization and worldwide acceptance of IAS.³⁹ In striving to achieve its mission, the IASC deals with broad principles rather than details like GAAP.⁴⁰ The historical approach of the IASC is a stumbling block to the development of core standards. The IASC approach has been one of commonality, which is in conflict with the traditional "reciprocal" approach utilized in the United States.⁴¹

Due to IOSCO demands and the importance of the IOSCO endorsement, the IASC has changed to a more detail oriented approach, which would bear more of a resemblance to current GAAP.⁴² Despite GAAP's

³⁵ INTERNATIONAL ACCOUNTING STANDARDS, *supra* note 5, at 17.

³⁶ IASC-US COMPARISON, *supra* note 4, at 41.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See BARRY J. EPSTEIN & ABBAS ALI MIRZA, IAS 98 INTERPRETATION AND APPLICATION OF INTERNATIONAL ACCOUNTING STANDARDS 1998 (1998).

⁴¹ See Uri Geiger, *Harmonization of Securities Disclosure Rules in the Global Market - A Proposal*, 66 FORDHAM L. REV. 1785, 1791 (1998). The "reciprocal" approach allows foreign issuers to access the U.S. market using their domestic disclosure documents, as long as the foreign issuer provides a reconciliation to U.S. GAAP. See *id.* Consequently, foreign issuers adopt new rules that substantially equal GAAP requirements. See *id.* at 1792. Conversely, commonality involves the modification or replacement of domestic rules with rules that are substantially the same as those of other countries. *Id.*

⁴² EPSTEIN & MIRZA, *supra* note 40, at 10.

elaborate disclosure requirements, the SEC is calling for more detailed disclosure in order to improve GAAP.⁴³

B. Board member composition and meetings

Another notable difference in the two organizations' structures is the composition of the governing boards. The IASC governing Board consists of seventeen organizational members with one vote each. Of these seventeen members, thirteen members are designated by IFAC, and four members are designated by the IASC Board.⁴⁴

The IASC members serve on a part-time volunteer basis, and maintain their previous employment positions.⁴⁵ The members serve a term of no more than five years determined by the Board.⁴⁶ The IASC does not designate any required composition regarding the background of Board members, but the usual makeup is one-half from public accounting, one-fourth from industry and the remainder is usually from accounting education or financial analysis.⁴⁷

The FASB Board consists of seven full-time independent members. In order to ensure independence and objectivity, all Board members are required to relinquish previous employment ties and comply with the restrictions FASB imposes upon Board members' investing activities.⁴⁸ Like the IASC, FASB has no requirement on composition, but the usual makeup includes three financial and reporting professionals, two industry representatives, one education specialist and one user of financial reports.

The most striking difference is that FASB employs a full-time Board devoted to the organization, while the IASC is governed by a part-time volunteer Board. The IASC Board is part-time due primarily to the fact that the IASC has limited resources and distance and time constraints prevent the employment of a full-time body.⁴⁹ This difference is significant because it has a profound impact on the standard setting process. FASB's Board, since it is full-time, is involved in every step of the standard setting process.⁵⁰

Moreover, the differing composition of board membership impacts voting. The manner in which members cast votes varies between the two

⁴³ See International Accounting Standards Committee, *Notable Quotations International Accounting Standards, "The Numbers Game" remarks of Arthur Levitt, Chairman, US Securities and Exchange Commission 28 September 1998* (last modified October 7, 1998) <http://www.iasc.org.uk/news/cen8_125.htm>.

⁴⁴ IASC-US COMPARISON, *supra* note 4, at 43.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 44.

⁵⁰ *Id.*

organizations. At the IASC, votes are cast by individuals representing member organizations, rather than independent viewpoints.⁵¹ FASB, on the other hand, has only individual independent Board members.

The independence of FASB Board members allows them to be neutral in decision making, serve the public interest, possess a greater ability to innovate and more easily change long-established practices. The IASC Board members are not truly independent because, according to the IASC's constitution, they are professional accountancy bodies that are members of IFAC.⁵² The IASC Constitution requires that Board members act in the public interest.⁵³ However, a departure exists because members are essentially countries or organizations and the members usually represent and vote the views of their country or organization.⁵⁴ This arrangement fosters neofunctionalism, a theory developed by Ernst Haas.⁵⁵ Under this theory, Haas posits that national groups participate in integration with international organizations for self-serving reasons instead of for the public good.⁵⁶ FASB Board members are not prone to neofunctionalism because they must sever all past and future employment ties.⁵⁷ Unlike IASC members, FASB members receive a competitive salary to ensure their independence.⁵⁸ Further, FASB imposes restrictions on personal investments and requires that Board members file quarterly reports disclosing relevant information regarding personal investments.⁵⁹

Even the structure of board meetings differs at the two standard setters. At the IASC, Board meetings are closed and occur only four times a year, while FASB Board meetings are open weekly meetings.⁶⁰ In addition, without a full-time Board with frequent meetings, IASC decision-making falls to steering committees, which may be subject to neofunctionalism.⁶¹

C. Project staffing

Another key structural difference is the manner in which projects are staffed. At the IASC, the secretary-general is the senior staff member. A technical director oversees day-to-day project activities, while a three to

⁵¹ *Id.*

⁵² INTERNATIONAL ACCOUNTING STANDARDS, *supra* note 5, at 18.

⁵³ *Id.* at 17.

⁵⁴ See IASC-US COMPARISON, *supra* note 4, at 44.

⁵⁵ David Zaring, *International Law By any Other Means: The Twilight of Existence of International Financial Regulatory Organizations*, 33 TEX. INT'L L.J. 281, 313-16 (1988).

⁵⁶ *Id.* at 315.

⁵⁷ IASC-US COMPARISON, *supra* note 4, at 43.

⁵⁸ MILLER ET AL., *supra* note 9, at 36.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *infra* p. 14 and note 55.

five person full-time staff handles administrative affairs.⁶² To accomplish the IASC's work, it utilizes steering committees of volunteers, which have the primary responsibilities for managing projects and researching and drafting materials for the Board.⁶³ In addition, occasionally IASC member organizations contribute staff for specific projects.⁶⁴

At FASB, a director of research leads forty full-time professionals responsible for research, drafting and presentation of material.⁶⁵ Administrative matters are handled by a full-time staff of fifty.⁶⁶

In addition to the worldwide-standard-setter's staff being dwarfed by the national-standard-setter's staff, the IASC's limited resources total less than ten percent of FASB's.⁶⁷ The IASC approach to standard development is appointing part-time volunteer steering committees for each individual project, while FASB maintains a full-time project director and staff for standard development.⁶⁸ This disparate staffing level clearly impacts the level of detail that each organization can study each issue. In addition, FASB's Board is more involved throughout the entire process, and is more flexible than IASC regarding staff turnover.⁶⁹

IX. SPONSORING, OVERSIGHT AND GENERAL ADVISORY ORGANIZATIONS

Differences also prevail in the manner in which the standard setters' sponsoring, oversight and advisory organizations function. The IASC's sponsoring and advisory organizations work via informal arrangements and are comprised mostly of public accountants with limited oversight.⁷⁰ The IASC's advisory organization is a Board-appointed consulting group of fifteen, which is chaired by the IASC Board chairperson, and meets once a year for two days.⁷¹

Non-governmental organizations support FASB by participating in the standards process. Most of this support is provided by eight sponsoring organizations from public accounting, finance, industry and government.⁷²

⁶² IASC-US COMPARISON, *supra* note 4, at 45.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See EPSTEIN & MIRZA, *supra* note 40, at 14.

⁶⁸ IASC-US COMPARISON, *supra* note 4, at 45.

⁶⁹ *Id.* at 46.

⁷⁰ *Id.*

⁷¹ *Id.* at 53.

⁷² *Id.* at 49. The sponsoring organizations are comprised of the Securities Industry Association, the Association for Investment Management and Research, the Financial Executives Institute, the Institute of Management Accountants, the American Accounting Association, the AICPA, the Government Finance Officers Association and the National Association of State Auditors, Comptrollers and Treasurers. MILLER ET AL., *supra* note 9, at 23.

Formal oversight is provided by the Financial Accounting Foundation ("FAF").⁷³ FASB is subject to reviews by the FAF, which has substantive authority.⁷⁴ The Financial Accounting Standards Advisory Council ("FASAC") provides general advice regarding current and possible agenda projects, priorities, major technical issues and policy matters.⁷⁵ Moreover, significant oversight of FASB is maintained by the SEC, which has Congressional authority to set accounting standards.⁷⁶ The SEC has specifically identified FASB as the official source of GAAP in the United States.⁷⁷ Hence, FASB is in a unique position because it technically does not have the statutory authority to be the nation's standard setter, but ultimately wields the authority to set accounting principles delegated to it by the SEC. FASB's authority is not limitless, because the SEC retains the right to create its own accounting rules if FASB remains silent on an issue or if the SEC disagrees with FASB's treatment.⁷⁸ However, the SEC rarely exercises this right, and the relationship between the SEC and FASB is cooperative.⁷⁹

The IASC is primarily sponsored, supervised and advised by public accountants, while FASB is sponsored and advised by a diverse group composed of public accounting, finance, industry and government.⁸⁰ FASB has formal oversight, while the IASC is only supervised by informal advisors.⁸¹ However, the IASC may eventually be subject to more formal oversight from IOSCO, provided IOSCO endorses the "core standards."

One of IOSCO's biggest concerns is who will enforce IAS if IOSCO endorses the core "standards."⁸² The IASC is not recognized by any agency with authority like the SEC. Herbert Biener, IOSCO member, has emphasized the IOSCO position that this role cannot be filled by the "Big 5" ac-

⁷³ IASC-US COMPARISON, *supra* note 4, at 50-51. FAF is FASB's parent organization; FAF's trustees raise funds for FASB and appoint FASB members. MILLER ET AL., *supra* note 9, at 18.

⁷⁴ IASC-US COMPARISON, *supra* note 4, at 52. The SEC specifically recognized FASB as the official source of generally accepted accounting principles in the SEC's Financial Reporting Release No. 1 in 1982. MILLER ET AL., *supra* note 9, at 21.

⁷⁵ IASC-US COMPARISON, *supra* note 4, at 52. FAF's trustees appoint FASAC members, and FASAC operates independent of FASB. MILLER ET AL., *supra* note 9, at 18. In addition, project-specific advisory groups are appointed from FASB constituents to provide insight and debate technical issues. IASC-US COMPARISON, *supra* note 4, at 53. However, these groups neither vote nor seek consensus on these issues. *Id.*

⁷⁶ 15 U.S.C. §§ 781-m (1999).

⁷⁷ SECURITIES AND EXCHANGE COMMISSION, ACCOUNTING SERIES RELEASE NO. 150 (1973).

⁷⁸ MILLER ET AL., *supra* note 9, at 21.

⁷⁹ *Id.*

⁸⁰ *Id.* at 51.

⁸¹ *Id.*

⁸² *How Shall We Regulate This?*, ACCT. INT'L, August 1998, at 19.

counting firms, which primarily supervise and sponsor the IASC.⁸³ In fact, IOSCO has criticized the IASC for letting the "Big 5" play too much of a role instead of national-standard-setters; consequently, IOSCO believes that unless the national-standard-setters are integrated into the process of standard setting, the national-standard-setters will create their own organization.⁸⁴ Karl Van Hulle, Head of Internal Markets and Financial Services at the European Commission and observer of the IASC, calls for an oversight relationship for IASC similar to the SEC's supervisory oversight of FASB.⁸⁵ Hence, IAS have no statutory authority unless national-standard-setters, or national regulatory authorities enact IAS as the national accounting rules within their respective jurisdictions.

A. Project specific advisory groups

Structural differences exist between the IASC and FASB regarding project specific advisory groups and supplemental standard setting organizations. The IASC utilizes steering committees to identify issues, deliberate solutions, propose solutions, solicit public comment and formulate standards.⁸⁶ The IASC receives no specific industry guidance, but, on September 16, 1996, formed a twelve member Standards Interpretations Committee ("SIC") to provide practical guidance in the application of IAS.⁸⁷ Also, the IASC has recently formed a Strategy Working Party to evaluate its structure.⁸⁸ The Strategy Working Party is currently evaluating the IASC's structure and need for change.⁸⁹ One consideration the Strategy Working Party is contemplating is bifurcating the IASC into a small standard setting board with a larger oversight board.⁹⁰

FASB project advisory groups and supplemental standard setting organizations consist of task forces of fifteen to twenty members who discuss issues and advise without political consequences.⁹¹ Regarding supplemental standard setting organizations, FASB has the advantage of utilizing the FASB Emerging Issues Task Force, the American Institute of Certified Public Accountants ("AICPA"), and the SEC to promulgate accounting standards.⁹²

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 53.

⁸⁷ EPSTEIN & MIRZA, *supra* note 40, at 17.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ IASC-US COMPARISON, *supra* note 4, at 53.

⁹² *Id.* at 55. Make-up of the Task Force is designed to include persons in a position to be aware of emerging issues before they become widespread and before divergent practices become entrenched. Therefore, if the group can reach a consensus on an issue, usually that is

Comparison of the IASC and FASB's Standard Development Process

B. Conceptual framework

The conceptual frameworks of the two organizations differ in several respects. The IASC's conceptual framework is based upon the presentation of financial statements, while FASB's conceptual framework is based upon a detailed conceptual framework for reporting.⁹³ The detailed FASB has evolved over sixty years.⁹⁴ The IASC framework is a product of the IASC's three-stage history that can be summarized by three stages of development: (1) surveying in detail various accounting standards; (2) consolidation; and (3) "core standards" development.⁹⁵ Initially, the IASC attempted to address all of the world's major accounting issues. Later, in attempting to harmonize accounting, the IASC consolidated the world's accounting rules. Currently, in developing the "core standards," the IASC is attempting to promulgate a set of specific rules, rather than to mediate a commonality of pre-existing rules. The result is that the IASC is currently attempting to set forth a refined set of accounting principles for international capital markets utilizing a framework that was designed for accounting commonality and diplomacy.

C. Standard composition

The end product of the two organizations, accounting pronouncements, differs as well. The IASC prepares one series—International Accounting Standards.⁹⁶ FASB is an extensive standard setter that produces detailed documents including Statements of Financial Accounting Standards, Statements of Financial Accounting Concepts, FASB Interpretations, FASB Technical Bulletins, FASB Emerging Issue Task Force Consensuses and FASB Implementation Guides.⁹⁷ Additionally, the IASC's standards are

taken by the FASB as an indication that no Board action is needed. If no consensus is possible, it may be an indication that action by the FASB is necessary. Meetings of the Task Force are open to the public and generally are well attended. *Id.*

The AICPA is the professional organization for all Certified Public Accountants. AICPA, *AICPA Mission Statement* (last modified Sep. 10, 1999) <<http://aicpa.org/about/-mission.htm>>. The AICPA's Accounting Standards Division issues statements of position, guides, practice bulletins and other publications that contain financial, accounting and reporting recommendations. AICPA, *About the Accounting Standards Team* (last modified Sep. 10, 1999) <<http://aicpa.org/members/div/acctstd/about.htm>>. In addition the Division maintains a continuous liaison with FASB, developing issues papers to assist FASB identify areas of interest and submits comment letters. *Id.*

⁹³ *Id.* at 57.

⁹⁴ EPSTEIN & MIRZA, *supra* note 40, at 11.

⁹⁵ *Id.*

⁹⁶ IASC-US COMPARISON, *supra* note 4, at 58.

⁹⁷ *Id.* at 106.

drafted comparatively broadly.⁹⁸ Currently, there are thirty-three International Accounting Standards, compared with over 160 FASB statements alone. IAS often allow alternative treatments since the IASC can rarely converge varying national accounting treatments into one acceptable practice.⁹⁹

This difference in quantity and detail of the two organizations' standards is usually attributed to the IASC's limited resources since the IASC operates on a small budget compared to FASB.¹⁰⁰ However, the IASC's limited resources are not the only reason why IAS are not specific. The imprecise nature of the IASC's standards is a direct result of its original objective of harmonization. Even as general as IAS are, problems in their commonality exist. According to IFAC, these problems are the result of two main factors: (1) "the manifestation of national sovereignty"; and (2) the "varying attitudes of standard-setters around the world to the purpose of the financial statements."¹⁰¹ In order to deal with these problems, IASC has had to formulate standards, which are general and diplomatic enough to be acceptable to constituencies that include 122 members in ninety-one countries. Due to IOSCO demands for a core set of standards, IAS are moving away from general standards towards more detailed statements.¹⁰²

D. Due process

Another significant structural difference is the process in which standards are promulgated. At the IASC, due process is a private matter with a broad approach.¹⁰³

The due process at the IASC is initiated by a Board appointed Steering Committee, which selects topics, reviews the related accounting issues and submits a Point Outline and sometimes an Issues Paper to the IASC Board.¹⁰⁴ If the Board approves the Outline by simple majority, the Steering Committee submits a Statement of Principles to the IASC Board.¹⁰⁵ The Point Outline describes the issues and scope of the project.¹⁰⁶ The Statement of Principles outlines the principles on which an Exposure Draft (proposed accounting standard) is based.¹⁰⁷ Comment letters from national and international organizations are invited and the Steering Committee usually receives between fifty and one hundred comment letters in a three to

⁹⁸ *Id.*

⁹⁹ MILLER ET AL., *supra* note 9, at 162.

¹⁰⁰ See IASC-US COMPARISON, *supra* note 4, at 58.

¹⁰¹ EPSTEIN & MIRZA, *supra* note 40, at 19.

¹⁰² *Id.* at 10.

¹⁰³ IASC-US COMPARISON, *supra* note 4, at 104-6.

¹⁰⁴ *Id.* at 101.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

six month period.¹⁰⁸ The Steering Committee then submits an Exposure Draft to the Board for approval. If the Board approves it by a two-thirds majority, the Exposure Draft is issued to accounting bodies, governments, securities markets, regulatory and other agencies and other interested parties for consideration and comment.¹⁰⁹

The comment period is usually six months and fifty to one-hundred comment letters are usually received.¹¹⁰ These comments are examined by the Board and the Exposure Draft is amended as necessary.¹¹¹ If the revised draft is approved by at least three-fourths of the Board, an IAS is issued.¹¹²

At any time in the above process, the IASC may decide that additional discussion or additional time for comment is needed; therefore, the IASC may, by a simple majority, issue a discussion paper in order to achieve additional input.¹¹³ At no time in the above process does the IASC hold public hearings.¹¹⁴

The FASB due process involves multiple steps that include public participation, field testing and meetings with constituents.¹¹⁵

The first step of FASB standard setting involves a preliminary evaluation of the problem. Preliminary evaluation involves incorporating recommendations of the Emerging Issues Task Force; monitoring the press for unusual transactions, events or conditions; addressing technical inquiries from preparers and auditors; and reviewing recommendations from professional bodies and the SEC.¹¹⁶

The second step involves admitting the item to FASB's agenda. In deciding whether or not to create an agenda project, the Board considers if the problem is both significant and controversial, as well as whether there is a high likelihood that the Board can resolve the issue.¹¹⁷ When a project is added to the agenda, FASB makes efforts to identify issues and possible solutions by having the chairperson of FASB appoint a task force with ten to fifteen members who are experts on the related issue.¹¹⁸ The task force assists FASB staff in publishing an Initial Comment Document that solicits comments from constituents and sets forth issues and possible solutions.¹¹⁹

¹⁰⁸ *Id.*

¹⁰⁹ INTERNATIONAL ACCOUNTING STANDARDS, *supra* note 5, at 26.

¹¹⁰ IASC-US COMPARISON, *supra* note 4, at 101.

¹¹¹ INTERNATIONAL ACCOUNTING STANDARDS, *supra* note 5, at 26.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 104-106.

¹¹⁵ *Id.* at 100-103.

¹¹⁶ MILLER ET AL., *supra* note 9, at 66-8.

¹¹⁷ *Id.* at 69.

¹¹⁸ *Id.* at 71.

¹¹⁹ *Id.* at 72.

If the issue is significant or if the Board seeks additional information, public hearings are held.¹²⁰

Public hearings are usually announced sixty days in advance and tend to last two to five days.¹²¹ Hearings may be omitted if the Board believes an informed decision can be made without a hearing.¹²² The hearings are significant to the process because public opinion often has an impact on shaping FASB issues and solutions.¹²³

The next step of FASB's due process involves publishing a Preliminary Views Document in order to describe a solution to the problem and solicit feedback from constituent members.¹²⁴ If the project is to issue a Statement of Financial Accounting Standards or a Standard of Financial Accounting Concepts, an Exposure Draft may be published if two-thirds majority vote in favor of the draft.¹²⁵ The Exposure Draft is a presentation of the proposed solution with an effective date accompanied by the Board's justification for the proposal.¹²⁶ Comments are invited during the exposure period of thirty to ninety days and anywhere between forty and one thousand comment letters are received depending on the significance of the issue.¹²⁷ In some projects, field testing is performed in a relatively small number of corporations in order to test the quality of a proposed standard.¹²⁸

The final step in FASB's due process is publication of the pronouncement. FASB issues the following types of documents: (1) Statements of Financial Accounting Standards; (2) FASB Interpretations; (3) Statements of Financial Accounting Concepts; (4) Technical Bulletins; (5) FASB Emerging Issue Task Force Consensuses and (6) FASB Implementation Guides.¹²⁹

Statements of Financial Accounting Standards become the heart of GAAP because they are unambiguous accounting principles that must be complied with by accountants in order to produce financial statements in accordance with GAAP.¹³⁰ Interpretations clarify, explain or elaborate on a FASB statement.¹³¹ Statements of Financial Accounting Concepts do not constitute GAAP; however, they do guide FASB in standard setting, pro-

¹²⁰ *Id.*

¹²¹ IASC-US COMPARISON, *supra* note 4, at 105.

¹²² *Id.*

¹²³ See MILLER ET AL., *supra* note 9, at 79.

¹²⁴ *Id.* at 73.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ IASC-US COMPARISON, *supra* note 4, at 105.

¹²⁸ *Id.*

¹²⁹ *Id.* at 106.

¹³⁰ See MILLER ET AL., *supra* note 9, at 62.

¹³¹ IASC-US COMPARISON, *supra* note 4, at 106.

vide guidance to accountants and educate non-accountants.¹³² Technical bulletins are issued to provide assistance in applying standards to specific industries.¹³³

IASC's and FASB's due processes are more similar than different because both are formalistic.¹³⁴ The most significant difference is that FASB's due process is more extensive and open.¹³⁵ This extensiveness and openness can be cumbersome and time consuming.¹³⁶ However, FASB is more prepared to deal with this elaborate process because FASB employs a full-time standard-setting Board and staff, unlike the IASC, which must rely on an ad-hoc steering committee. Further, FASB's process works well, in that it results in elaborate accounting principles that survive the scrutiny of the SEC.

E. Enforcement of standards

One of IOSCO's biggest concerns is who will enforce the "core standards."¹³⁷ The IASC has no formal power to enforce its standards. While IAS are enacted by law in some countries, IAS compliance is usually sought by member bodies.¹³⁸ Like the IASC, FASB has no formal power; however, the work of FASB is enforced by the SEC.¹³⁹ The IASC is moving more towards enforcement through IOSCO endorsement.¹⁴⁰ Further, the IASC is now drafting standards, such as the revised IAS 1, to encourage adherence by requiring that IAS be complied with in their entirety. However, the question of who will enforce IAS remains to be answered.

F. Proposals For the IASC

The IASC should be proud of its accomplishments over the last twenty-five years. It has accomplished a great deal with limited resources and a meager staff. However, since inception, the IASC's role and environment have changed significantly. With the "core standards" project, the IASC's role is no longer the harmonizer of the world's accounting standards, but the premier setter of high-quality, rigorously enforced global accounting standards. Unless the IASC institutes a program of reform and restructuring, it will miss this first real opportunity to legitimize itself in its twenty-five years of existence. If the IASC does not rise to the chal-

¹³² See MILLER ET AL., *supra* note 9, at 64.

¹³³ IASC-US COMPARISON, *supra* note 4, at 106.

¹³⁴ *Id.* at 60.

¹³⁵ *Id.*

¹³⁶ See EPSTEIN & MIRZA, *supra* note 40, at 15.

¹³⁷ *How Shall We Regulate This?*, *supra* note 82, at 20.

¹³⁸ See IASC-US COMPARISON, *supra* note 4, at 60.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

lenge, other organizations will undertake accounting globalization in its place.

IASC must make organic changes in its structure and the standard development process. As part of these changes, the IASC should work towards becoming a traditional international organization. Traditionally, international law has defined international organizations as having state membership, tangible manifestations of organizational bureaucracy and an adequate legal pedigree.¹⁴¹ The IASC should analyze its legal status, membership and fund-raising in this regard.

The IASC could improve state membership by increasing the involvement of national-standard-setters. The IASC discussed this notion at a recent Board meeting and debated whether having national-standard-setters would be more beneficial than the current arrangement, in which the "Big Five" accounting firms play the key role.¹⁴² IASC secretary-general Bryan Carsberg believes that the national-standard setters are key in international convergence of accounting.¹⁴³ Increasing national-standard-setters' involvement provides three main benefits: (1) IASC would be more in touch with its constituents, which work with stock exchanges and regulatory bodies; (2) national-standard-setters would be more involved in the globalization of accounting; and (3) the national-standard-setters are in a legal position to have IAS recognized by national regulators. These benefits increase the speed and efficiency of accounting convergence, solve the regulation problem and prevent the national-standard setters from creating their own organization.¹⁴⁴

In addition to refining membership to increase the participation of national-standard-setters, IASC needs to increase involvement of FASB, IOSCO and the SEC. According to one IASC observer and IOSCO member, "the U.S. Securities and Exchange Commission feels that it is not being recognized, and the U.S. Financial Accounting Standards Board is not playing its correct role within the IASC."¹⁴⁵ However, enhancing the input of FASB and the SEC would be detrimental in achieving approval from IOSCO.

The IASC as an international organization, should establish itself as a legal entity with the capacity to own, acquire and transfer property. One of the IASC's most significant limitations is its lack of resources. To decrease reliance on donations, the IASC could solicit fees from national-standard-setters. Moreover, an enormous potential exists to earn revenue from offi-

¹⁴¹ Zaring, *supra* note 55, at 305.

¹⁴² See *How Shall We Regulate This?*, *supra* note 82, at 20.

¹⁴³ *Paper May Re-ignite Strategy Debate*, ACCT. INT'L, August 1998, at 7.

¹⁴⁴ *Id.* at 22.

¹⁴⁵ *IOSCO Member Hits Out at IASC*, *supra* note 3, at 9.

cial IASC training and educational programs and IASC sanctioned training and educational programs.

In addition to establishing itself as a traditional international organization, the IASC should undertake additional restructuring and reform related to its work.

The most significant problem is the way in which the IASC develops standards. In order for the IASC to promulgate high-quality global accounting standards that constitute a comprehensive body of accounting that are rigorously interpreted and applied, the IASC must reform its due process. The IASC should open its standard development process to the public, including the Steering Committee's formal standard setting meetings. While the IASC steering committee has more substantive decision making power than the FASB Task Force, the IASC needs to expand the SIC and the Strategy Working Party in order to be more detail-oriented.¹⁴⁶ The SIC's role should be expanded to include more involvement in the standard development process, rather than being limited to interpreting existing standards. Opening the process to the public would allow the IASC's constituency, which should include national-standard-setters, more involvement in the process. Involving the national-standard-setters in the process would improve the globalization process by affording additional viewpoints and raising the probability of IAS adoption within the national-standard-setters' jurisdictions. Both benefits would lead to a high-quality comprehensive body of accounting.

In order to accomplish the above, the IASC must increase the role of the Strategy Working Party, which considers proposals for restructuring the IASC. The Strategy Working Party needs to be more active in addressing deficiencies in the IASC's structure and standard setting process, and to formulate real solutions in order for the IASC to adapt to its changing environment.¹⁴⁷

One such Strategy Working Party proposal that would be instrumental in carrying out the above mentioned reforms is the creation of a separate

¹⁴⁶ IASC-US COMPARISON, *supra* note 4, at 56.

¹⁴⁷ Recently, the Strategy Working Party published "Shaping IASC for the Future," a discussion paper requesting for comments on a proposed plan to restructure the IASC's strategy and structure. International Accounting Standards Committee, *Discussion Paper: Shaping IASC for the Future* (visited Jul. 27, 1999) <http://www.iasc.org.uk/frame/cen4_6.htm>. Major revisions include the establishment of a Standards Development Committee, increased cooperation with national standard setters, changes in board composition, creation of an advisory board and consulting group and improvements in due process. See generally *id.* The IASC is scheduled to consider the changes to IASC structure at meetings of IFAC and the IASC in November of 1999 and to approve a final plan by March of 2000. International Accounting Standards Committee, *Notable Quotations International Accounting Standards: Developing High Quality International Accounting Standards* by David S. Ruder (visited Jul. 30, 1999) <http://www.iasc.org.uk/news/cen8_147.htm> [hereinafter *High Quality Standards*]. Implementation of the final plan is expected to begin in July 2000.

Standards Development Committee.¹⁴⁸ A full-time standard setting group is an ideal organ to undertake the task of developing standards.¹⁴⁹ However, the Strategy Working Party has not made clear whether or not the Standards Development Committee will be an independent and autonomous committee.¹⁵⁰

The part-time, volunteer status of the majority of individuals that run the IASC is another limitation that serves as a barrier to any proposals for reform or restructuring. The IASC should explore possibilities to expand its staff and committees to committed full-time status. This, along with the above proposals, would both better equip the IASC to handle the increasing and changing tasks that accompany the "core standards" project, and enable the IASC to better fulfill its role as the world's premier standard setter.

X. CONCLUSION

The most prevailing problem at the IASC is that its original mission and constitution did not foresee the tremendous undertaking of being the world's premier standard setter. The original purpose was to harmonize accounting throughout the world.¹⁵¹ Hence, the IASC does not have an appropriate foundation to facilitate its current workload and aspirations.

If serving as the world's premier standard setter and IOSCO acceptance and SEC approval are realistic objectives of the IASC, the IASC needs to restructure itself and modify their standard development process.

¹⁴⁸ See *Paper May Re-ignite Strategy Debate*, *supra* note 144, at 7.

¹⁴⁹ The Strategy Working Party has proposed that a Standards Development Committee, which would develop international accounting standards in coordination with national accounting standards setters. International Accounting Standards Committee, *Discussion Paper: Shaping IASC for the Future* (visited Jul. 27, 1999) <http://www.iasc.org.uk/frame/cen4_6.htm>.

¹⁵⁰ *High Quality Standards*, *supra* note 147.

¹⁵¹ INTERNATIONAL ACCOUNTING STANDARDS, *supra* note 5, at 17.