

9 August 2004

EEA/IC/SL

Commissioner Bolkestein
European Commission
Rue de la Loi 200
B-1049 Brussels/ Wetstraat 200
Belgium



From the Office
of the Chief Executive

Dear Commissioner Bolkestein

ENDORSEMENT OF IAS 39

The Institute of Chartered Accountants in England & Wales is the largest accountancy body in Europe, with more than 126,000 members operating in business, public practice and within the investor community. The Institute operates under a Royal Charter, working in the public interest. We write to you to express our concerns over the continuing uncertainty in Europe over the adoption of IAS 39, 'Financial Instruments: Recognition and Measurement'.

We strongly support the adoption of the full suite of International Financial Reporting Standards (IFRS) in Europe, including adoption of the latest version of IAS 39, unamended and unabridged, in time for the use of IFRS in the consolidated financial statements of EU listed groups from 1 January 2005.

We understand that the Commission is considering deleting certain sections of IAS 39 and proposing the amended standard for endorsement. We are greatly concerned by this development. Introducing differences between IFRS in Europe and IFRS as set by the International Accounting Standards Board (IASB) is likely to lead to long-term damage to the credibility and quality of financial reporting in Europe. We note that the idea of European financial reporting standards is rejected in the IAS Regulation (No. 1606/2002) itself: Recital 2 states that '*...it is important that the financial reporting standards applied by Community companies participating in financial markets are accepted internationally and are truly global standards.*'

Accounting standards should only be issued by a properly constituted and independent standard setter with an appropriate mandate and level of technical expertise. We would expect the Commission, at the very least, to follow an open and transparent due process before adopting any amended or incomplete IFRS, including an appropriate period of public consultation. We look forward to having the opportunity to present our views on the technical merits of any proposals to amend IAS 39 as part of that public consultation process.



It is unclear whether the Commission has a sound legal basis under the Regulation for adopting a standard other than a complete standard issued or adopted by the IASB. Article 3 of the Regulation provides the Commission with the power to adopt international accounting standards, not amended or abridged versions of such standards. Article 2 defines international accounting standards as '*International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related interpretations (SIC/IFRIC interpretations) [and subsequent amendments and future standards] issued or adopted by the International Accounting Standards Board*'.

We would encourage the Commission to publish as part of its due process any legal advice that it has received on this issue. Without clarification of the legal position, the Commission may be open to legal challenge by any party which feels disadvantaged by being unable to follow IAS 39. We draw your attention in particular to Recital 15 of the Regulation, which states that '*the Commission should take into account the importance of avoiding competitive disadvantages for European companies operating the global marketplace.*' If the Commission adopts a version of IAS 39 that prevents European companies from complying with the complete standard as issued by the IASB, thereby damaging the credibility of European financial reporting, there may well be adverse consequences for the cost of capital of European companies.

This letter will be made available on the Institute's website in view of the importance of the matters covered, and will also be provided to other interested parties. We have also written both to the Department of Trade & Industry in the United Kingdom, welcoming their continued support for the adoption of IAS 39, and to EFRAG, where we set out our arguments in favour of adoption of IAS 39 and address some of the points raised in the dissenting views section of their draft endorsement advice. Copies of both representations are attached for your information.

If you would like any further information, please contact Dr Nigel Sleight-Johnson, Head of Financial Reporting, (+44 (0)20 7920 8793 or nigel.sleight-johnson@icaew.co.uk) or Iain Coke, Financial Services Industries Manager (+44 (0)20 7920 8674 or iain.coke@icaew.co.uk).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eric Anstee', with a horizontal line underneath it.

Eric Anstee