

## U.S. GAAP Confronts the IASB: Roles of the SEC and the European Commission

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### Introduction

The International Accounting Standards Committee (IASC), today known as the International Accounting Standards Board (IASB), passed through two distinct phases prior to its restructuring in 2000–2001 as the IASB. The IASC was founded in 1973 as a part-time body with a small technical staff, based in London.<sup>1</sup> Its aim was to harmonize international accounting standards to make financial statements from different countries more comparable for use by investors.<sup>2</sup>

The countries whose national professional accounting bodies founded the IASC were the United States, the United Kingdom (jointly with Ireland), Canada, Mexico, the Netherlands, France, Germany, Japan, and Australia.<sup>3</sup> At the time of formation, the informational needs of investors were paramount only in the minds of the national standard setters in the United States, the U.K., Canada, the Netherlands, and Australia. In the other countries—France, Germany, Japan, and Mexico—information destined to the securities market was secondary in importance to, and heavily influenced by, the requirements of the income tax law.

### I. Early History

During the first phase of the IASC's life, from 1973 to 1987, its board issued some twenty-six standards that permitted optional

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<sup>1</sup> Stephen A. Zeff, *The Coming Confrontation on International Accounting Standards*, 5 IRISH ACCT. REV. 89, 90 (1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

treatments, and the standards were adopted or adapted mainly in developing countries, most of which had no domestic accounting standards at all.<sup>4</sup> The founding countries that were represented on the IASC's board paid little attention to its standards.<sup>5</sup> Perhaps this was due to the fact that the authorities in the United States, the U.K., Canada, and Australia believed their domestic standards to be superior to those of the IASC. In France, Germany, and Japan, income tax reporting continued to compete with reporting to investors.

By the 1980s, all of the founder countries except Germany had established programs in the private or public sector for issuing accounting standards. In Germany, federal statutes and the decisions of the tax courts governed accounting practice. Among the founder countries, the most effective standard-setting programs were in the United States, the U.K., Canada, and Australia, followed by the Netherlands.<sup>6</sup>

A much larger gap has persisted among the founder countries in regard to their institutional processes for securing compliance with accounting standards. The U.S. Securities and Exchange Commission (SEC) was, and is, the most aggressive and rigorous securities market regulator in the world.<sup>7</sup> Since the 1970s, the Netherlands has had a judicial organ that deals with departures from the financial reporting law, but its effectiveness has depended on public-spirited plaintiffs to bring cases.<sup>8</sup> Since 1991, the U.K. has had a private-sector Financial Reporting Review Panel,<sup>9</sup> which cajoles companies into revising their financial

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<sup>4</sup> *Id.* at 91.

<sup>5</sup> *Id.*

<sup>6</sup> See STEPHEN A. ZEFF ET AL., *COMPANY FINANCIAL REPORTING: A HISTORICAL AND COMPARATIVE STUDY OF THE DUTCH REGULATORY PROCESS* 345-71 (1992) [hereinafter *COMPANY FINANCIAL REPORTING*].

<sup>7</sup> See *id.* at 358. For a discussion and description of the regulatory structures in Europe for securing compliance with financial reporting, see generally FÉDÉRATION DES EXPERTS COMPTABLES EUROPÉENS, *ENFORCEMENT MECHANISMS IN EUROPE: A PRELIMINARY INVESTIGATION OF OVERSIGHT SYSTEMS* (2001).

<sup>8</sup> See Jan Klaassen, *An Accounting Court: The Impact of the Enterprise Chamber on Financial Reporting in the Netherlands*, 55 *ACCT. REV.* 327, 337-38 (1980), available at <http://www.jstor.org/>.

<sup>9</sup> See Financial Reporting Review Panel home page, at <http://www.frrp.org.uk/> (last visited Mar. 29, 2003).

statements when it is believed they do not give a “true and fair view,” as required by the Companies Acts.<sup>10</sup> Since the mid-1990s, both the Ontario Securities Commission<sup>11</sup> (in Canada) and the Australian Securities and Investments Commission<sup>12</sup> have empowered their chief accountants to confer with companies that are not following proper accounting practice, but the accounting staffs of these two commissions possess only limited authority to compel publicly traded companies to comply with proper practice. Apart from these initiatives, the last line of defense against improper financial reporting is the external auditor. In countries other than the United States, the U.K., Canada, and Australia, the external auditor has usually been the sole agent for securing compliance with accounting standards. The special tribunal in the Netherlands and the regulators in France and Italy have had only moderate success in monitoring company financial reporting. It was recently reported that the chairman of the German Accounting Standards Board, on a visit to the SEC in 1999, “complained that German companies and their auditors were ignoring domestic standards. When the companies listed in America, he asked plaintively, could the SEC please try to get them to behave?”<sup>13</sup>

In quite a number of countries, moreover, the external auditor has been seldom known to give other than a clean opinion on listed companies’ financial statements, even if they have departed from the law, to say nothing of their compliance with private-sector accounting standards. It is not an accepted professional norm in the regulatory culture, in some countries, to administer a public rebuff to the managements of large, listed companies. Hence, in countries where a standard setter has been in existence, it comes as no surprise that companies have not contested some of the more controversial accounting standards that were recommended for use in their financial statements, because there was potentially an escape valve in the form of a compliant external auditor.

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<sup>10</sup> See *id.*; Companies Act of 1985, c. 6, § 226 (Eng.).

<sup>11</sup> See Ontario Securities Commission home page, at <http://www.osc.gov.on.ca/> (last visited Mar. 29, 2003).

<sup>12</sup> See Australian Securities and Investments Commission home page, at <http://www.aisc.gov.au/asic/asic.nsf> (last visited Mar. 29, 2003).

<sup>13</sup> *Holier Than Thou: European Sanctimony Over American Accounting Scandals Misplaced*, *ECONOMIST*, Feb. 8, 2003, at 69.

Until the last few years, there was no regulator that required companies in countries with well-developed equity capital markets to adhere to the IASC standards. Adoption of the IASC's standards has been voluntary, or, at most, an alternative to U.S. Generally Accepted Accounting Principles (GAAP), for example, on the German Neuer Markt (from 1997 to 2002).<sup>14</sup> Furthermore, because many of the IASC's standards, until recently, permitted optional treatments,<sup>15</sup> companies could find sufficient room for their preferred choices without necessarily contravening the standards.

Since 1988, the IASC has been, with strong encouragement from the International Organization of Securities Commissions (IOSCO),<sup>16</sup> a confederation of national securities regulators, revising its earlier standards to remove most of the optional treatments, enhance the required disclosures, and specify in greater detail how each standard is to be interpreted. The IASC's progress in responding to IOSCO's initiative has been closely monitored by its most influential member, the SEC, which has been intensely interested in promoting greater comparability of financial reporting around the world.<sup>17</sup>

In April 1996, the SEC, believing that it would not be long before it would need to consider the use of IASC standards in its own securities market, announced three "key elements" that must be reflected in the IASC's standards for them to be acceptable:

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<sup>14</sup> See FÉDÉRATION DES EXPERTS COMPATABLES EUROPÉENS, *supra* note 7, at 35.

<sup>15</sup> Examples are the following: the use of the FIFO (first in first out), weighted average, LIFO (last in first out) or base stock methods for merchandise inventories; the use of either the percentage of completion method or the completed contract method for construction contractors; and either the capitalization or non-capitalization of borrowing costs on assets that take a substantial period of time to prepare them for their intended use or sale.

<sup>16</sup> 1988 INT'L ORG. OF SECURITIES COMMISSIONS, ANN. REP.

<sup>17</sup> See News Release, U.S. Securities and Exchange Commission, SEC Statement Regarding International Accounting Standards (Apr. 11, 1996) (on file with the North Carolina Journal of International Law and Commercial Regulation).

- The standards must include a core set of accounting pronouncements that constitutes a comprehensive, generally accepted basis of accounting;
- The standards must be of high quality—they must result in comparability and transparency, and they must provide for full disclosure; and
- The standards must be rigorously interpreted and applied.<sup>18</sup>

By 1999, the IASC had not only revised most of its earlier standards but had issued new standards in highly complex areas, such as accounting for financial instruments.<sup>19</sup> In May 2000, IOSCO endorsed the IASC's revised and new standards, although it allowed securities market regulators the option to require a reconciliation of IASC-based financial statements with national GAAP, to require expanded financial disclosures, and to stipulate more specific interpretations of the IASC's standards.<sup>20</sup> These are steps that the SEC had already taken with respect to the financial statements of foreign registrants that were not prepared in accordance with U.S. GAAP.<sup>21</sup> In particular, the SEC requires foreign registrants not using U.S. GAAP to reconcile their earnings and shareholders' equity to U.S. GAAP results in Form 20-F, a reconciliation that foreign companies contemplating a U.S. listing regard as odious, because it obliges the company to explain to unbelieving shareholders and the press why it publishes two earnings figures.<sup>22</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> See Summaries of International Accounting Standards and International Financial Reporting Standards, at <http://www.iasplus.com/standard/standard.htm> (last visited Mar. 29, 2003).

<sup>20</sup> Press Release, International Accounting Standards Committee, IOSCO Endorses IASC's Core Standards (May 17, 2000) (on file with the North Carolina Journal of International Law and Commercial Regulation); see also Int'l. Org. of Securities Commissions, *Report of the Technical Committee* (May 2000), available at <http://www.iasplus.com/resource/ioscorpt.pdf> (on file with the North Carolina Journal of International Law and Commercial Regulation).

<sup>21</sup> Conditions for Use of Non-GAAP Financial Measures, Proposed Rule Release Nos. 33-8145, 34-46768; File No. S7-43-02 (Nov. 20, 2002), available at <http://www.sec.gov/rules/proposed/33-8145.htm> (on file with the North Carolina Journal of International Law and Commercial Regulation).

<sup>22</sup> *Id.*

The SEC takes a position on comparability that is fundamentally different than that of the London Stock Exchange (LSE).<sup>23</sup> While U.K. law requires U.K. companies to report in U.K. GAAP, the LSE allows foreign listed companies based in other European Union countries to use their national GAAP without submitting a required reconciliation to U.K. GAAP, thereby adhering to the E.U.'s principle of "mutual recognition."<sup>24</sup> Foreign companies listed on the LSE may also use IASC/IASB standards or U.S. GAAP without making such a reconciliation.<sup>25</sup> Potentially, therefore, as many as seventeen GAAPs may be used by companies listed on the LSE. While the SEC allows foreign registrants to use their national GAAP or IASC/IASB standards in their financial statements, it insists on the 20-F reconciliation to U.S. GAAP for any material differences.<sup>26</sup> The SEC also knows that, if it were to allow foreign registrants to use their national GAAP or IASC/IASB standards without such a reconciliation for material differences, U.S. registrants would themselves apply to adopt something less detailed and more yielding than U.S. GAAP (such as IASC/IASB standards), and the SEC knows that, in such a circumstance, it could not reject their application to do so. Hence, to protect its own domestic turf, including its long-standing reliance on the Financial Accounting Standards Board (FASB) for U.S. GAAP, the SEC must call for reconciliation for such foreign registrants.

For its part, the SEC made it clear in a major concept release issued in February 2000 that the harmonization and improvement of the IASC's standards would not be sufficient to promote comparable financial reporting around the world.<sup>27</sup> It insisted that

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<sup>23</sup> See London Stock Exchange home page, at <http://www.londonstockexchange.com/> (last visited Mar. 29, 2003).

<sup>24</sup> See LONDON STOCK EXCHANGE, RULES OF THE LONDON STOCK EXCHANGE (2003), available at <http://www.londonstockexchange.com/cmsattach/1550.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> See SEC Form 20-F, available at <http://www.sec.gov/divisions/corpfin/forms/20f.htm> (last visited Mar. 29, 2003).

<sup>27</sup> International Accounting Standards, SEC Concept Release Nos. 33-7801, 34-42430; International Series No. 1215 (Feb. 16, 2000), available at <http://www.sec.gov/rules/concept/34-42430.htm> (on file with the North Carolina Journal of International Law and Commercial Regulation).

international auditing standards must be of a comparably high level of quality and that other countries should enhance their regulatory oversight on compliance matters.<sup>28</sup> The SEC had found a troubling number of instances in which foreign registrants would purport to use the IASC's standards or their national GAAP but that, upon closer inspection and without any disclosure of this fact by the external auditor, the SEC's staff found that companies were not complying with *all* of the applicable IASC standards or their national GAAP.<sup>29</sup> The SEC does not require that foreign registrants adopt U.S. GAAP, but it does expect that they comply with all of the GAAP that they say they have adopted.<sup>30</sup>

## II. Restructuring of the IASC Board

It had become clear by the middle of the 1990s that an entirely part-time IASC board with a small technical staff would not measure up to the increasing demands being placed on it, especially "to bring about convergence between national accounting standards and International Accounting Standards" so as to provide transparent financial information to participants in capital markets.<sup>31</sup> It was, therefore, decided that the board had to be restructured. In a strong letter written by the SEC Chief Accountant, Lynn E. Turner, to the chairman of the IASC's Strategy Working Party, it was made clear that the IASC's future standards would not be regarded as possessing legitimacy in the eyes of investors in the world's capital markets unless it were to become a full-time, independent body whose members are chosen solely on the basis of their technical expertise, with a significant research staff, a commitment to follow an open and deliberative process, and oversight by a board of trustees composed of individuals representing the public interest.<sup>32</sup> These attributes also would describe the makeup, organization, and process of the

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> STRATEGY WORKING PARTY, INTERNATIONAL ACCOUNTING STANDARDS COMMITTEE, SHAPING IASC FOR THE FUTURE 45, 45 (1998).

<sup>32</sup> Letter from Lynn E. Turner, Chief Accountant, SEC, to Ed Waitzer, Chair, IASC Strategy Working Party (Sept. 21, 1999) (on file with the North Carolina Journal of International Law and Commercial Regulation).

FASB, to which the SEC has looked as the source of accounting standards since the latter's establishment in 1973.<sup>33</sup>

The IASC's board, which knew that its future success requires the support of the SEC—which regulates the most important securities market in the world—quickly acceded to the SEC's stipulations, and in 2000 the IASC was restructured very much along those lines. The new board, which in 2001 decided to rename itself the International Accounting Standards Board (IASB), was composed of twelve full-time and two part-time members, subject to the oversight of a nineteen-member board of trustees, chaired by Paul A. Volcker.<sup>34</sup> The board of trustees raises the funds needed to support the new operation, reviews the board's annual budget, and appoints the members of the board.<sup>35</sup> A sizable research and technical staff has been recruited to support the board's work.<sup>36</sup> The chairman of the IASB is Sir David Tweedie, the former chairman of the U.K. Accounting Standards Board.<sup>37</sup>

Seven of the full-time IASB members are charged with managing a "liaison responsibility" with the national standard setters in the U.S., U.K., Canada, France, Germany, Japan, and Australia (coupled with New Zealand), to facilitate convergence between the board and the national standard setters in the most important capital markets.<sup>38</sup> When the board held its first public meeting in April 2001, it launched an ambitious program of standard setting.<sup>39</sup> This program includes a proposal to issue a standard on accounting for employee stock options, and an exposure draft on this topic was issued in November 2002.<sup>40</sup> This

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<sup>33</sup> ZEFF, *supra* note 6, at 358.

<sup>34</sup> See The IASB: Who Are We, at <http://www.iasb.org.uk/cmt/0001.asp> (follow links: About Us > The IASB of Today) (last visited Mar. 29, 2003) (on file with the North Carolina Journal of International Law and Commercial Regulation).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> IASC Foundation Const., part B, ¶ 23 (2002), available at <http://www.iasb.org.uk/docs/const/iascf-con.pdf> (on file with the North Carolina Journal of International Law and Commercial Regulation).

<sup>39</sup> See IASB April 2001 Meeting Notes, at <http://www.iasb.org/uk/cmt/0001.asp> (follow links: News > Observer Notes > IASB Meetings > IASB April 2001) (last visited Mar. 29, 2003).

<sup>40</sup> INT'L ACCT. STANDARDS BOARD, ED 2 SHARE-BASED PAYMENT (2002).

draft proposes to adopt essentially the same standard for expensing the cost of employee stock options that the FASB was prevented from issuing in 1994 because of an intensive lobbying campaign by the high-tech industry, which, in the end, engaged the active support of key members of Congress.<sup>41</sup> The lobbying campaign that has thus far been mounted against this proposed IASB standard is discussed in the next section.

If the IASB is successful in rallying support around the world for its International Financial Reporting Standards<sup>42</sup> (as they are now called), it seems likely that national standard setters will either have a much-reduced role or will be displaced altogether. In addition to support for its program received from the SEC and the E.U., the IASB has received pro forma endorsements of its standards by authorities in Australia, Russia, and New Zealand, as well as by several other countries.<sup>43</sup>

Among the obstacles to a genuine international convergence of accounting standards are different tax legislation (giving rise to different incentives when structuring transactions from one country to the next), and changes in the attitude of powerful sectors of industry and central government toward accepting international standards that might be viewed as altering the pace and direction of business activity.

In this latter regard, one can invoke a sports analogy: the way a game is scored determines the way the game is played. When the three-point line was established in basketball, players began shooting from afar more than previously. If ties in soccer matches were to be decided by the number of corner kicks, one can be sure that each side would seek to maximize the number of their corner kicks, as a precaution. The accounting standard setter, by establishing the scales of measurement for revenues, earnings, assets, and liabilities—magnitudes that figure importantly in the calculations and incentives of managers and investors, as well as

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<sup>41</sup> See Stephen A. Zeff, *The U.S. Senate Votes on Accounting for Employee Stock Options*, in READINGS AND NOTES ON FINANCIAL ACCOUNTING: ISSUES AND CONTROVERSIES 507–17 (Stephen A. Zeff & Bala G. Dharan eds., 5th ed. 1997).

<sup>42</sup> See IASB Standards, at <http://www.iasb.org.uk/cmt/0001.asp> (follow link: Standards) (last visited Mar. 29, 2003).

<sup>43</sup> For an informative Web site covering all aspects of the work of the IASB, see [www.iasplus.com](http://www.iasplus.com), which is maintained by the Hong Kong office of the international audit firm of Deloitte Touche Tohmatsu (last visited Mar. 29, 2003).

regulators—can thus influence the way in which the game of enterprise is played.<sup>44</sup> Additionally, government policy makers, as well as company executives, institutional investors, and industry regulators, may have a strong vested interest in seeing that this game is not reshaped or reconfigured by a novel scoring system imported from another nation's field of play.

### III. The Environment in Which the Standards Are Set

In the United States, the SEC's accounting staff plays a significant behind-the-scenes role in the work of the FASB.<sup>45</sup> While the accounting standards are unquestionably the product of the FASB's own deliberations, the SEC's accounting staff can place matters on the FASB's agenda, raise specific points that need to be addressed in the context of a proposed standard, and set the tolerances within which an acceptable standard would need to be framed.<sup>46</sup> It is the SEC, after all, which possesses the statutory authority to compel compliance with accounting standards.<sup>47</sup>

Because of the importance of the U.S. securities markets, the SEC's accounting staff might well seek to exercise a degree of influence along similar lines in the work of the IASB. Recently, the SEC has urged both the FASB and the IASB to address the accounting issues that represent substantive differences between U.S. GAAP and IASB standards. If these differences could be eliminated through convergence, the 20-F reconciliation of earnings and shareholders' equity required by the SEC of foreign registrants that do not adopt U.S. GAAP will no longer be an impediment for overseas companies coming to U.S. securities markets.

In June 2002, the E.U. approved an accounting regulation requiring all listed companies in the E.U. to adopt IASB standards in their consolidated statements by 2005.<sup>48</sup> In Europe, the

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<sup>44</sup> See Prem Prakash & Alfred Rappaport, *Information Inductance and Its Significance for Accounting*, 2 ACCT., ORGS. & SOC'Y 29 (1977).

<sup>45</sup> See FASB Facts, at <http://www.fasb.org/facts/index.shtml> (last visited Mar. 29, 2003).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the Application of International Accounting Standards, 45 O.J. (L 243) 1 (Sept. 11, 2002). At the insistence of the Germans, a provision was inserted that allows

European Commission (EC) has also inserted itself in a screening capacity for newly issued IASB standards, so that the EC can be satisfied that they are acceptable for use in the E.U.<sup>49</sup> This screening occurs at both the “technical” and “political” levels.<sup>50</sup> At the technical level, at the behest of the EC, private interests in Europe have established the European Financial Reporting Advisory Group (EFRAG),<sup>51</sup> which has a Technical Expert Group (TEG)<sup>52</sup> composed of accounting specialists from audit firms, companies, and universities. TEG is charged with advising the EC on the technical propriety of a standard.<sup>53</sup> The TEG typically conveys its views directly to the IASB on drafts in the exposure stage.<sup>54</sup> At the political level, the EC is advised by representatives from the fifteen E.U. governments, who form an Accounting Regulatory Committee (ARC).<sup>55</sup>

An interesting question is whether the TEG and the ARC, as well as the EC itself, will become the object of self-interested lobbying by European multinationals and industry associations, very much like Congress is in the United States.<sup>56</sup> There are signs that they already have, at least during the development stage of an IASB standard.<sup>57</sup> Included among the recitals in the E.U.’s

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EU companies listed in the United States and using U.S. GAAP to have until 2007 to conform to the regulation. *Id.* at 3. Member States are authorized to pass legislation requiring that certain classes of non-listed (i.e., private) companies also come under the regulation. *See id.*

<sup>49</sup> *Id.* at L243/2.

<sup>50</sup> *Id.*

<sup>51</sup> *See* European Financial Reporting Advisory Group, at <http://www.efrag.org/> (last visited Mar. 29, 2003) (home page for EFRAG).

<sup>52</sup> *Id.*

<sup>53</sup> *See* European Financial Reporting Advisory Group, at <http://www.iasplus.com/efrag/efrag.htm> (last visited Mar. 29, 2003) (description of EFRAG generally including specific description of TEG).

<sup>54</sup> *Id.*

<sup>55</sup> *See* Int’l Acct. Standards Board, Opinion of the Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on the Application of International Accounting Standards, § 2.3.2 (July 11, 2001), available at <http://www.iasplus.com/resource/ec0107.pdf> (on file with the North Carolina Journal of International Law and Commercial Regulation).

<sup>56</sup> *See* Stephen A. Zeff, “Political” Lobbying on Proposed Standards: A Challenge to the IASB, 16 ACCT. HORIZONS 43, 43–54 (Mar. 2002).

<sup>57</sup> *See* Stephen Zeff, *Viewpoint: Lobbying and the IASB*, 5:7 WORLD ACCT. REP. 11,

accounting regulation of June 2002 is a provision specifying that the EC “should take into account the importance of avoiding competitive disadvantages for European companies operating in the global marketplace . . . .”<sup>58</sup> This has already been interpreted by European multinationals to mean that the IASB should not issue a standard that places them at a “competitive disadvantage” with companies that are allowed to show higher earnings by the use of U.S. GAAP.<sup>59</sup> European multinationals have already invoked “competitive disadvantage” to complain about the IASB’s proposal on employee stock options because companies using U.S. GAAP do not need to record an expense for the cost of employee stock options. However, there is concern that the FASB will not converge with the IASB’s proposed standard because of the lobbying force of the U.S. high-tech industry.<sup>60</sup>

Indeed, between January 30 and mid-March 2003, twenty-four members of the Senate and sixty-three members of the House of Representatives sent letters to the FASB, expressing their strong views on the mandatory expensing of the fair value of employee stock options. Fifteen of the Senators and forty-two of the House members argued strongly against expensing, while nine Senators and twenty-one House members wrote in support of mandatory expensing.<sup>61</sup> This could be just the opening volley of shot across the bow of the FASB. Opposition to the prospect of an FASB standard calling for mandatory expensing has already engaged the attention of Congress.

Once the IASB issues a standard, the EC will await the receipt of formal advice from the TEG and will then confer with the ARC before deciding whether the new standard is to be required of E.U. companies under the terms of the accounting regulation of June

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11 (Sept. 2002).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> See Stephen Zeff, *Congress Stirring the Pot Again?*, 6:3 WORLD ACCT. REP. 7, 7 (Apr. 2003); *Another Congressional Letter to FASB on Stock Options*, at <http://www.iasplus.com/pastnews/2003mar.htm> (entry for Mar. 15, 2003) (on file with the North Carolina Journal of International Law and Commercial Regulation).

2002.<sup>62</sup> It remains to be seen whether lobbying by European companies will succeed in influencing the TEG, ARC, and the EC once the IASB has issued a final standard.

#### **IV. The Environment in Which Standards are Enforced**

As mentioned above, the SEC is the most rigorous national regulatory body in securing compliance with accounting standards. Several other public- or private-sector bodies have also developed a capability for securing such compliance: the private-sector Financial Reporting Review Panel in the U.K.,<sup>63</sup> the Australian Securities and Investments Commission,<sup>64</sup> and the Ontario Securities Commission<sup>65</sup> (in Canada). Few regulatory bodies outside this small number have acquired a reputation for enlightened vigilance in securing compliance with accounting standards by publicly traded companies.

Within the E.U., steps have been taken to improve the process of securing compliance with financial reporting norms. In the last few years, the EC has stimulated a process for raising the standard of the regulation of financial reporting in the securities markets in the fifteen Member States, but the process of developing a framework and then a statement of principles has been slow. A Committee of Wise Men on the Regulation of European Securities Markets issued its final report (known as the Lamfalussy report) in 2001 that set forth an elaborate plan for the development of securities market regulation as well as a framework to govern the development.<sup>66</sup> This was followed by the issuance in October 2002 of a Proposed Statement of Principles of Enforcement of Accounting Standards in Europe issued by the Committee of European Securities Regulators (CESR), which will be used for developing and recommending standards of best practice for use by regulators in the Member States.<sup>67</sup> In the end, securities

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<sup>62</sup> See *supra* note 48.

<sup>63</sup> See STELLA FEARNLEY ET AL., *A PECULIARLY BRITISH INSTITUTION* (2000).

<sup>64</sup> See *supra* note 12.

<sup>65</sup> See *supra* note 11.

<sup>66</sup> Final Report of the Committee of Wise Men on the Regulation of European Securities Markets (Feb. 15, 2001), available at [http://europa.eu.int/comm/internal\\_market/en/finances/general/lamfalussyen.pdf](http://europa.eu.int/comm/internal_market/en/finances/general/lamfalussyen.pdf).

<sup>67</sup> See Committee of European Securities Regulators home page, at

regulation, including the process of securing conformity with accounting standards, comes within the jurisdiction of each Member State. It remains to be seen how the traditional regulatory cultures in the E.U. Member States, as well as in the ten countries to be admitted to the E.U. in 2004, will respond to CESR's stimulus and the active encouragement by the EC to fortify the process by which company financial reporting will be reviewed and regulated.

### **Conclusion**

Both the SEC and the EC are closely monitoring the progress of the IASB but for different motives. The SEC would be willing to dispense with the 20-F reconciliation for foreign registrants adopting IASB standards if the differences between U.S. GAAP and IASB standards were to become immaterial. The EC wants to be satisfied that the IASB standards are acceptable at technical and political levels before it requires that they be used by listed companies based in the E.U. But the perverse effects of self-interested lobbying by companies and governments cannot be dismissed as a variable influencing the course of the IASB's work. It remains to be seen whether EFRAG and the ARC, as well as the EC, will become intermediaries for transmitting the effects of self-interested lobbying in Europe (like members of Congress in the United States).