D23 sub 2

9 April 2008

The Chairman
Australian Accounting Standards Board
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Email: standard@aasb.com.au

Dear David

IFRIC Draft Interpretation D23 "Distributions of Non Cash Assets to Owners"

Thank you for the opportunity to comment on IFRIC Draft Interpretation D23 *Distributions of Non Cash Assets to Owners* (proposed Interpretation). CPA Australia and the Institute of Chartered Accountants in Australia (the Institute) are professional membership bodies representing professional accountants in Australia. We represent over 160,000 members who work in diverse roles across public practice, commerce, industry, government, academia throughout Australia and internationally.

CPA Australia and the Institute have jointly considered the proposed Interpretation and we have attached for your convenience our comment letter sent to the IASB. In addition we set out below some additional comments that are specific to Australian entities and therefore not included in the comment letter sent to the IASB.

Within the Australian context, these changes have the potential to impact Corporations Law entities especially in the area of paying dividends out of profit, an already uncertain legal area as a result of its current reliance on case law.

We recommend that the AASB carefully consider the legal implications of issuing these requirements. We are aware that ASIC currently applies an interpretation of the accounting standards similar to that in the proposed Interpretation when these types of transactions are encountered and that this is a source of tension within the profession. It is, therefore, of major importance that the conclusions reached on this issue are well exposed and reviewed before they move from 'professional judgment in the absence of a standard' to a legally binding document.

The perceived need for this proposed Interpretation may also be an additional impetus for progressing the project of updating our dividend payment legislation to include solvency issues as they do in many other parts of the world and we would also encourage the Board in its representations to the Federal Government in this area.

If you have any questions regarding this submission, please do not hesitate to contact either Kerry Hicks (the Institute) at 02 9290 5703 or Mark Shying (CPA Australia) at 03 9606 3903.

Yours sincerely

Geoff Rankin
Chief Executive Officer
CPA Australia Ltd

Graham Meyer
Chief Executive Officer
The Institute of Chartered Accountants in Australia

9 April 2008

Sir David Tweedie
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Via "Open to comment" page on www.iasb.org
Also email to ifric@iasb.org

Dear Sir David

IFRIC Draft Interpretation D23 "Distributions of Non Cash Assets to Owners"

Thank you for the opportunity to comment on IFRIC Draft Interpretation D23 *Distributions of Non Cash Assets to Owners* (proposed Interpretation). CPA Australia and the Institute of Chartered Accountants in Australia (the Institute) are professional membership bodies representing professional accountants in Australia. We represent over 160,000 members who work in diverse roles across public practice, commerce, industry, government, academia throughout Australia and internationally.

CPA Australia and the Institute have jointly considered the proposed Interpretation and our comments on it are set out below. They include comments on the specific questions raised by IFRIC, which are addressed in the Appendix.

CPA Australia and the Institute acknowledge that there is a diversity of thought internationally on the topic of accounting for distributions to shareholders and that it is an important issue requiring resolution. We acknowledge that this proposed Interpretation would result in a reduction in the diversity in accounting practice internationally.

However we are concerned about the limited scope of the proposed Interpretation. We would have preferred the IASB to lead the development of literature in this area, informed by a fundamental examination of the topic of distributions (an accounting standard[s]) and not the IFRIC.[1] The production of an IASB standard on this matter would ensure that the end result of these more extensive deliberations would be a principle that has been thoroughly discussed within the profession and is capable of application to all the types of entities that require this issue to be addressed. This treatment would also enable the final document to cover a number of important features deliberately left out of the proposed Interpretation, that is, unequal treatment of shareholders, distributions from both corporate and non corporate entities and common control transactions. It would also allow the more fundamental issues of whether it is possible for an entity to make a profit from transactions with its shareholders and the differing perspectives of the entity and its shareholders (users) to be addressed and resolved.

We are aware that the IASB currently has a project on common control transactions on its active agenda, which is due for consideration soon. We would support consideration being given to including this matter in that project.

[1] Distributions to shareholders is an accounting issue that is encountered by most entities at some stage during their life cycle and therefore an accounting issue that regularly confronts our members in practice. However existing accounting standards deal only indirectly with the issues raised, a situation we do not consider satisfactory, particularly when IFRS standards are principles based.

Further, we do not think that the limited circumstances envisaged by the IFRIC are actually the most common forms of these transactions. With this in mind, we are concerned that the issue of the proposed Interpretation, in the absence of any other guidance, has the potential to create a precedent for the application of principles in this area to transaction types IFRIC deliberately scoped out.

It is within the context of these caveats that CPA Australia and the Institute accepts, as an interim measure, the issue of an Interpretation. Tensions do currently exist between the Australian accounting profession and our Corporations and Securities regulator on these matters because the regulator, in order to ensure that significant diversity in practice in this area does not exist, interprets this issue in a manner similar to that articulated in the proposed Interpretation and therefore an Interpretation would help resolve these tensions.

However, we do not support the proposed Interpretation's intention to take the gain arising from this transaction to profit. Our members have argued that there is sufficient weight to the alternative view raised in the Interpretation's 'Basis of Conclusions' to warrant more extensive debate. Therefore we would prefer that the gain be taken to equity in the interim period until such time as a more comprehensive debate on this topic has been engaged in.

If you have any questions regarding this submission, please do not hesitate to contact either Kerry Hicks (the Institute) at kerry.hicks@charteredaccountants.com.au or Mark Shying (CPA Australia) at mark.shying@cpaaustralia.com.au .

Yours sincerely

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Chief Executive Officer
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Graham Meyer
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cc. David Boymal Chairman Australian Accounting Standards Board
Stephen Harrison Chief Executive Officer Global Accounting Alliance

A. Detailed Answers to IFRIC Questions

1. Specifying how an entity should measure the liability for a dividend payable.

We agree that the whole area of distributions to equity holders in their capacity as such should be addressed by a one specific standard but would prefer that this standard was one addressing this particular topic rather than needing to be addressed by application from an existing standard. We do not consider it helpful that the derivation of detailed guidance on transactions as universal as these are must be drawn from a range of standards

While we agree that the principles in IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* are currently the most appropriate available standard to be applied to these transactions, the universal nature of these types of transactions to all types of entities and the complexity of the issues that can surround them warrant a more effective treatment.

Using IAS 37 for this purpose also highlights some of the deficiencies that exist within the ‘present obligation’ concept for the recognition of liabilities, an issue we address more thoroughly in our response to Question 3 dealing with IFRS 5 *Non Current Assets held for Sale and Discontinued Operations* below.

While we agree with the conclusions the IFRIC has reached on the valuation principles to be applied, we remain concerned that this IFRIC may set an accounting precedent for similar types of transactions without the benefit of significant public discussion and exposure.

2. Specifying how any difference between the carrying amount of assets distributed and the carrying amount of the dividend payable should be accounted for when an entity settles the dividend payable

Feedback from our members who have considered this issue indicates that there is sufficient weight in the alternative arguments to suggest that these proposals need wider distribution and discussion than an IFRIC issue and timeframe will allow the achievement of a consensus on the appropriate treatment.

This is evident in the proposed Interpretation’s Basis for Conclusions, which includes an alternative viewpoint and we believe this adds weight to our argument for a project to result in an accounting standard.

If the proposed Interpretation is to be released we would prefer the gain to be taken directly to equity until such times as the complexities that are inherent in this debate can be resolved by the issue of an accounting standard.

3. When an entity should apply the requirements in IFRS 5 to non current assets held for distribution to owners.

We agree that it is appropriate to apply IFRS 5 to assets once they are committed to the dividend transaction. However, the timing of this application will become a matter for practical interpretation based on the relevant corporate legislation in each country.

This is because the point at which a distribution becomes a ‘present obligation’ can vary significantly, depending on the company’s constitution. For example, in Australia a dividend is generally considered ‘declared’ when it is passed by a minute of the Board of

Directors. However, it is often not a legal obligation of the company until such time as it has been ratified by the shareholders.

In response to the provisions of IAS 10 *Events After The Balance Sheet Date* and IAS 37 the Australian Accounting Standards Board (AASB) inserted Australian specific paragraphs into the Australian equivalent of IAS 1 *Presentation of Financial Statements* to require Australian companies to disclose 'proposed' dividends in their year end financial statements. This is on the basis that the dividends have been declared by the directors but do not represent a present obligation until they are ratified at the AGM, which occurs some months after the release of the financial statements.

For Australian purposes there is, therefore, a difference under our Corporations Law between the date at which the directors might decide to commit the assets to the dividend and the date at which a present obligation is incurred and the dividend would be recognised under IAS 37.

Therefore IFRIC needs to recognise and resolve the conflict between IAS 37 and IFRS 5 in this area through appropriate disclosure requirements or an amendment to the wording of either IFRS 5 or IAS 37 to remove the uncertainly associated with the recognition point for these types of transactions.

Issues that the IFRIC might cite as indicating commitment might be 'shareholder approval' and 'public announcements'.

B. Other issues of concern

4. Use of the term "Dividend"

The proposed Interpretation is entitled "Distributions of Non Cash Assets to Owners" but throughout the Interpretation, the term 'dividend' is used interchangeably without defining it.

Given that the term 'dividend' is a specific legal term (dependent for its definition on relevant case law) and that there are other types of distributions to owners e.g. returns of capital that are not dividends, we would prefer that the term 'distribution' be used consistently throughout the Interpretation.

We would also prefer that the term was defined clearly within the body of the Interpretation and we would support the definition contained in paragraph BC6 of the Basis of Conclusion as follows

'Distribution' means the unconditional non-reciprocal transfer of assets by an entity to its equity holders acting in their capacity as equity holders

5. SME reporting

This issue is of significant practical concern to SMEs that are often involved in these types of distributions and would benefit from having principles to apply in this area. An IFRIC Interpretation will not necessarily ensure that diversity in this area is eliminated and therefore we would recommend that this issue be specifically addressed in any forthcoming SME standard.

6. Basis of conclusion

The proposed Interpretation depends for its clarity of interpretation on a range of issues that are only adequately addressed in the Basis of Conclusions. This includes the ‘definitions’ issue addressed above. However, the ‘Basis for conclusions’ document has an ‘unclear’ status and yet its arguments will be crucial in enabling the proposed Interpretation to be applied to specific transactions. Accordingly, if the proposed Interpretation is to be issued, much of the material in the Basis of Conclusions that supports the final approach taken should be included in the Interpretation itself.

7. Use of the term “fair value”

The proposed Interpretation uses the term ‘fair value’ without defining it on the assumption that it is a principle derived from IAS 37. However, IAS 37 does not define the term and given the subjectiveness of it and the various interpretations available we consider that the proposed Interpretation should define what is meant by the term. In reaching this definition, reference should be made to the outcomes of the IASB’s current ‘fair value’ project, which itself recognises the different meanings of the terms.

8. A worked example

We do not agree that the worked example provided for in the proposed Interpretation is appropriate. We consider it to be too simplistic and insufficiently representative of the types of transactions this document covers to make the example helpful. We would prefer that the example referred to items of property plant and equipment or other assets that are more likely to be the subject of the transfers being envisaged.