TREATMENT DIFFERENCES AND POLITICAL REALITIES IN THE GAAP-IFRS DEBATE

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INTRODUCTION

INTERNATIONAL Financial Reporting Standards ("IFRS") have swept the globe[1] even as Generally Accepted Accounting Principles ("GAAP") have retained their hold over reporting companies and securities markets in the United States. But the globalization wave continues to rise and GAAP's days appear to be numbered, along with those of its generator, the Financial Accounting Standards Board ("FASB"). The Securities and Exchange Commission ("SEC"), long the backer and protector of GAAP and the FASB, lately changed course to defect against them in favor of IFRS and its generator, the International Accounting Standards Board ("IASB"). The road to defection began when the SEC eliminated the requirement that foreign issuers registered in the United States and reporting under IFRS restate their financials to GAAP.[2] The political economic logic of globalization took over from there. In 2007, the SEC proposed to extend the option to report under IFRS to U.S. issuers.[3] That option, said the SEC, would afford competitive advantages to U.S. issuers with extensive opera-

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[1] For an account of this, see Lawrence A. Cunningham, The SEC's Global Accounting Vision: A Realistic Appraisal of a Quixotic Quest, 87 N.C. L. Rev. 1 (2008).

[2] Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP, Exchange Act Release No. 33-8879, 73 Fed. Reg. 986 (2008), *reprinted in* [2002 to Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 88,032 (Dec. 21, 2007).

[3] Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standard, Exchange Act Release Nos. 33-8831, 72 Fed. Reg. 45,600 (proposed Aug. 14, 2007), *reprinted in* [2002 to Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 87,944 (Aug. 7, 2007) [hereinafter 2007 Concept Release].

tions abroad.[4] But the commentators pushed back.[5] They argued that the value of global convergence in accounting standards lies in enhanced comparability across the financials of different issuers;[6] accordingly, admitting two competing accounting systems into the domestic market would only retard progress toward the goal. The SEC responded by admitting the policy salience of comparability and doubling its bet on IFRS: it has produced a new "Roadmap" that describes a process leading to mandatory use of IFRS by domestic issuers by 2014.[7] The Roadmap bypasses an alternative, more painstaking route to convergence—a longstanding joint project of the FASB and the IASB directed to the articulation of a common set of accounting standards.[8]

Professor Cox accepts the termination of the requirement of GAAP restatements by foreign issuers.[9] We agree, for the reasons he states. We read him to be concerned about an IFRS option for U.S. issuers,[10] and so are we. We read him to be very concerned about the elimination of GAAP,[11] and so are we. We would like to

[4] Id. ¶ 45,601.

[5] One of us has raised the following objections: (1) effective competition presupposes full information and IASB has a practice of misrepresenting the contents of IFRS; and (2) widespread adoption of IFRS signals a national-level preference for comparability over competition. See Cunningham, supra note 1, at 26–27. Numerous accounting scholars expressed opposition to the SEC's ambitions, although for a wide variety of reasons. For a collection and summary, see Posting of David Albrecht to The Summa–Debits and Credits of Accounting Professor David Albrecht, http://profalbrecht.wordpress.com/2008/10/04/publishing-schedule/ (Oct. 4, 2008) (reviewing criticisms by Shyam Sunder (Yale Univ.), Ray Ball (Univ. of Chicago), J. Edward Ketz (Penn State Univ.), Tom Selling (Thunderbird Sch. of Global Mgmt., emeritus), Bob Jensen (Trinity Univ., emeritus), and David Albrecht (Bowling Green State Univ.)).

[6] See Cunningham, supra note 1, at 27–28.

[7] Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers, Exchange Act Release No. 33-8982, 73 Fed. Reg. 70,816 (proposed Nov. 21, 2008), *reprinted in* [2002 to Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 88,409 (Nov. 14, 2008) [hereinafter 2008 Roadmap].

[8] See A Roadmap for Convergence between IFRSs and US GAAP—2006–2008: Memorandum of Understanding between the FASB and the IASB, Feb. 27, 2006, http://www.iasb.org/NR/rdonlyres/874B63FB-56DB-4B78-B7AF-49BBA18C98D9/0/MoU.pdf (last visited Feb. 20, 2009).

[9] James D. Cox, Coping in a Global Marketplace: Survival Strategies for a 75-Year-Old SEC, 95 Va. L. Rev. 941, 985 (2009).

[10] Id. at 985–86.

[11] Id.

take this opportunity to follow up his paper with some amplifying points along similar lines.

The SEC's reports respecting these convergence initiatives talk the globalization talk, extolling the benefits of convergence. We read that standardization yields cost savings[12] and that a single global set of reporting standards yields an ultimate gain in comparability.[13] Both facilitate the search for global opportunities by U.S. investors[14] and make U.S. capital markets more attractive to foreign issuers.[15] But, as so often is the case with globalization talk, things get left out. We discuss two of them here.[16]

First, this is not just a matter of choosing the framework for standard setting. The accounting treatments themselves are at issue, treatments that for the most part concern domestic reporting firms and domestic users of financial statements. This may seem obvious, as a change of standard setter means different standards and the change would extend to domestic companies. But the Roadmap spends only three of its 165 pages comparing IFRS to GAAP.[17] We take the occasion to fill in some missing details, including a treatment-by-treatment comparison of GAAP and IFRS in the Appendix. We go on to discuss the implications of such differences.

The familiar debate over the relative merits rules and principles captures many of the matters at stake, which takes us to our second point of amplification. The rules versus principles comparison only has meaning in context, which includes not only the compliance environment, but also the political and interest group alignments surrounding the standard setter.[18] These matters tend to be assumed away in recent globalization discussions. The discussants treat standard-setter independence as an accomplished fact on both sides of the Atlantic, an assumption that became widespread after the IASB was reorganized during the last decade to acquire a

[12] 2007 Concept Release, supra note 3, ¶ 45,604.

[13] Id. ¶ 45,606; 2008 Roadmap, supra note 7, ¶ 70,823.

[14] 2008 Roadmap, supra note 7, ¶ 70,818.

[15] Id. ¶ 70,824 (asserting that a U.S. dual standard "may create challenges in the U.S. capital markets").

[16] For discussion of additional points, see Cunningham, supra note 1.

[17] 2008 Roadmap, supra note 7, ¶ 70,826–27.

[18] See generally Lawrence A. Cunningham, A Prescription to Retire the Rhetoric of "Principles-Based Systems" in Corporate Law, Securities Regulation, and Accounting, 60 Vand. L. Rev. 1411 (2007).

governance structure that closely resembles the FASB's structure.[19] Politics do not retreat so easily, however. The FASB maintained its independence during its thirty-five-year history in the teeth of opposition from corporate management. As the independent FASB formulated more and more standards, management experienced a steady diminution of its zone of financial reporting discretion. A switch to IFRS would allow management to reclaim some of the lost territory. Thus, the Roadmap sends an implicit political signal. The interest group alignment that protected the FASB, comprised of auditing firms, actors in the financial markets, and the SEC, has disintegrated as U.S. capital market power has waned in the face of international competition. Management is the shift's incidental beneficiary, with possible negative effects for domestic markets.

I. COMPARING TREATMENTS UNDER GAAP AND IFRS

The Appendix sets out a treatment-by-treatment comparison of cases where GAAP and IFRS establish different standards. We selected the treatments for salience based on our own judgment and experience.[20] If we went treatment by treatment through the list, we

[19] For a discussion of the governance issues and process that led to IASB's reorganization, see David S. Ruder et al., Creation of World Wide Accounting Standards: Convergence and Independence, 25 Nw. J. Int'l L. & Bus. 513, 526–54 (2005).

It should be noted that IASB does not yet meet the criteria established under the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, §§ 108(b)–109, 116 Stat. 745, 768-69 (codified at 15 U.S.C. §§ 77s, 7219 (2006)) for SEC recognition, because it is not funded by Congressionally levied fees. FASB, long supported by private contributions, came to be funded by fees levied on public companies under § 108 of the Sarbanes-Oxley Act. IASB, in contrast, remains privately funded and implicitly beholden to the business and accounting interests that provide the money. For discussion of other possible problems under the requirements, see Cunningham, supra note 1, at 29–33.

The Roadmap discusses the funding problem. To circumvent this problem, IASB is working with the International Organization of Securities Commissions to form an international Monitoring Group made up of representatives of various national regulators. See 2008 Roadmap, supra note 7, ¶ 70,821–22.

[20] More exhaustive lists are available. See, e.g., Barry J. Epstein & Eva K. Jermakowicz, Wiley IFRS 2008: Interpretation and Application of International Financial Reporting Standards app. C at 26–31 (2008). Large accounting firms also have compiled booklets describing treatment differences. See, e.g., Deloitte, IRFSs and US GAAP: A Pocket Comparison (2008), available at http://www.deloitte.com/dtt/cda/doc/content/us_assurance_IFRS_US_comparison2008.pdf; Deloitte, IFRSs in Your Pocket: An IAS Plus Guide (2008), available at http://www.deloitte.com/dtt/cda/doc/content/pocket2008%284%29.pdf; Ernst & Young, US GAAP v. IFRS

would prefer the GAAP treatment in a majority of cases, but also would articulate good reasons to support a number of the IFRS treatments. Whatever the preferences of particular observers respecting particular treatments, a scan of the list reveals a fundamental problem with the current "either/or" policy discussion over the choice of systems. Only the accountants themselves are capable of addressing the matters at stake in an informed way.[21] The policymakers trade in characterizations.

The SEC's characterization, set out in the Roadmap, describes IFRS as "not as prescriptive" as GAAP and as holding out "a greater amount of options" while providing "a relatively lesser amount of guidance."[22] The SEC notes that greater optionality (to borrow its term) could detract from consistency and comparability and make litigation and enforcement outcomes harder to predict.[23] At the same time, it notes that relaxed prescription may make it

The Basics (2008); PriceWaterhouseCoopers, Similarities and Differences: A Comparison of IFRS and US GAAP, available at http://www.pwc.com/gx/eng/about/svcs/corporatereporting/SandD_07.pdf (Oct. 2007).

[21] Accounting experts tend to agree, as an empirical matter, that applying GAAP versus IFRS results in significant bottom line reporting differences. See Cox, supra note 9, at 948. We note that they also disagree on the normative policy implications of the data. Consider literature reviews and policy analysis by two distinguished committees of the American Accounting Association, the preeminent academic accounting body in the United States. Authors of the two studies agree that the empirical evidence indicates that significant differences exist in reported accounting results when applying the two standards, including the bottom line balance sheet and income statement aggregates. Yet the two draw different conclusions, one encouraging competition among multiple standards and the other cautioning that moving the United States to IFRS is premature. Compare Karim Jamal et al., Am. Accounting Ass'n Fin. Accounting Standards Comm., A Perspective on the SEC's Proposal to Accept Financial Statements Prepared in Accordance with International Financial Reporting Standards (IFRS) Without Reconciliation to U.S. GAAP (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1020408 (finding differences in outcomes but no evidence of relative superiority and therefore concluding that competition among the standards is optimal policy stance), with Patrick E. Hopkins et al., Am. Accounting Ass'n Fin. Reporting Policy Committee, Response to the SEC Release: Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083679 (finding material differences in outcomes that are relevant to investment decisions and therefore concluding that it is premature for the United States to adopt IFRS).

[22] 2008 Roadmap, supra note 7, ¶ 70,826.

[23] Id.

easier for issuers to account for transactions in accordance with their underlying economics.[24] Thus, the SEC at its bottom line frames the matters at stake within the rules versus principles discourse, taking the occasion to advocate principles.[25] But we also note a tension in the SEC's framework: whatever international comparability enhancement the Roadmap holds out implies a sacrifice of comparability in the domestic context. The SEC's stated goal is inherently elusive.[26]

The Appendix contains some classic exemplars where GAAP is famous for rules while IFRS is known for principles. Consider first accounting for capital leases—long-term leases that must be booked on the lessee's balance sheet (Appendix § VIII). GAAP breaks out four defined criteria, including one by-the-numbers test keyed to the useful life of the asset under lease, with the criteria determining the treatment. IFRS bids the reporting company to look to the economics of the transaction, including eight factors to assist its determination without stipulating results following from their application.[27] It bears noting that while IFRS is indeed more flexible, the GAAP treatment, founded on a list of factors, does not determine results on a stand-alone basis. American lawyers would describe both treatments as "standards."

Now turn to accounting consolidation (Appendix § X), probably the most frequently cited case of GAAP as rules and IFRS as principles. Under both GAAP and IFRS, when one firm "controls" another, both report on a consolidated basis. GAAP largely defines control with a by-the-numbers test: consolidation follows from ownership of fifty percent plus one share of the subsidiary's stock. But, the inference of control can be rebutted where control actually is not held or is temporary.[28] IFRS begins with a fifty percent plus one share test as well, but modifies the zone of control under a standard that variously looks to other arrangements re-

[24] Id.

[25] For a more detailed discussion of SEC pronouncements articulated under previous SEC leadership, see Cunningham, supra note 18, at 1446–53.

[26] See Lawrence A. Cunningham, Editorial, Beware the Temptation of Global Standards, Fin. Times, Sept. 10, 2007, http://www.ft.com/cms/s/0/1d612b96-5fc3-11dc-b0fe-0000779fd2ac.html.

[27] Epstein & Jermakowicz, supra note 20, at 533–35.

[28] Fin. Accounting Standards Bd., Statement of Financial Accounting Standards No. 94: Consolidation of Majority Owned Subsidiaries ¶¶ 10, 13 (1987).

specting voting shares, contractual arrangements, and regulatory contexts. Application of the standard can cut either way, turning less than fifty-one percent ownership into control or rejecting a finding of control given more than fifty percent.[29] The rules/principles distinction once again is descriptive of the difference. But a caution about the description of GAAP once again is in order: the fifty-plus-one presumption is rebuttable under both systems.

IFRS accords reporting companies more elbow room in both of the above cases, but a dispassionate search for economic truth is not its only normative motivation. To get a fuller picture of the issues at stake, compare the treatments for tangible long-lived assets (Appendix § VII). Under GAAP, they are carried on a cost basis. If the asset's value is impaired, the impairment results in a charge to current income. Under IFRS, the asset may be carried at cost or fair value. If the asset's value is impaired, the loss is dealt with by a balance sheet adjustment only. Moreover, if the asset's value recovers after the impairment, the balance sheet adjustment can (and in some circumstances must) be reversed. Here we see that GAAP is motivated by conservatism, the practice of dealing with uncertainty through asymmetric recognition of losses compared to gains.[30] It also favors verifiable numbers, thereby hewing more closely to traditional cost accounting and constraining management's "optionality" respecting balance sheet presentations. IFRS, being more comfortable about extending management discretion to revalue assets, includes a broader range of fair value treatments, introducing subjectivity into the determination of balance sheet amounts. Thus, under GAAP, when a tangible asset is written down, the write-down is forever, while under IFRS, tangible asset values can go up and down with exterior shifts in valuation as management determines.

Note also that in the case of a decline in value, GAAP forces recognition on the income statement, while IFRS lets the company take care of the matter with a balance sheet adjustment.

[29] Epstein & Jermakowicz, supra note 20, at 441–42.

[30] See Sudipta Basu, The Conservatism Principle and the Asymmetric Timeliness of Earnings, 24 J. Acct. & Econ. 3 (1997).

This difference also applies more generally. GAAP is income statement oriented because it evolved as a system responsive to the demands of equity holders in U.S. financial markets.[31] When GAAP requires an event to make an impact on the income statement, it in effect flags the event for actors valuing the company. IFRS, with its ties to block-holder regimes, favors the balance sheet, reflecting the greater influence of other constituents, in particular bank creditors and employees.[32]

Now compare the treatments for research and development expenses (Appendix § VIII). Under GAAP, these are expensed in the period incurred, and cash outflows are classified into the operating section of the cash flow statement. Under IFRS, research and development costs are capitalized; that is, the company books the costs as an asset and shows them on its cash flow statement as investment cash flows. A basic policy difference again is manifest: under GAAP, conservatism is a motivating principle, and doubts tend to be resolved by forcing a present deduction on the income statement. IFRS is more liberal and management-friendly, assuming that research and development results in tangible economic value and delaying recognition of its costs for an extended future.

We now turn to revenue recognition (Appendix § IV), once again to see conservatism in action in GAAP. Given a service contract to be performed over multiple reporting periods, IFRS lets a company recognize all the revenue up front upon partial performance. GAAP, taking the idea that revenues should be matched to expenses more seriously, amortizes these contracts over the period of service without up-front recognition. (We note that the IFRS approach bears a more than passing resemblance to the treatment that Enron Corporation received from FASB's Emerging Issues

[31] For more discussion on the evolution of IFRS, see infra text accompanying notes 35–38.

[32] See Cunningham, supra note 1, at 48. There is a parallel dark side to this. In the United States, accounting manipulation generally affects the income statement, with earnings per share being a key factor in the compensation of the corporate insiders responsible. In block-holder countries, manipulation tends to affect the balance sheet, with payoffs to the insiders responsible stemming from the allocation of corporate assets. Id. (citing John C. Coffee, Jr., A Theory of Corporate Scandals: Why the U.S. and Europe Differ, 21 Oxford Rev. Econ. Pol'y 198, 199 (2005); Simon Johnson et al., Tunneling, 90 Am. Econ. Rev. 22 (2000)); see also Vladimir Atanasov et al., Unbundling and Measuring Tunneling (Univ. of Tex. Sch. of Law, Working Paper No. 117, 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1030529.

Task force, under which it was permitted to show all gains from its long-term energy contracts up-front.[33]) A similar comparison obtains respecting accounting for pension obligations. Under GAAP, unfunded pension benefit obligations must be shown as liabilities on the balance sheet. IFRS requires no balance sheet disclosure. Once again, conservatism motivates GAAP, while managers get the benefit of the doubt under IFRS.

Finally, we turn to inventory accounting (Appendix § VI), an area where GAAP is the more flexible of the two regimes. For cost accounting purposes, one must make an assumption about the order in which goods are sold. They are either treated as sold in the direct order of production or acquisition (first-in-first-out or FIFO) or as sold in reverse order of production or acquisition (last-in-first-out or LIFO). Given rising prices, FIFO more closely reflects economic reality on the balance sheet, listing inventories close to current values, while LIFO better reflects prevailing economics on the income statement with a figure for cost of goods sold reflecting current prices. GAAP permits companies to choose; IFRS, with its regime of balance sheet primacy, requires FIFO.

The above comparison confirms the SEC's description—GAAP constrains, where IFRS is flexible—but does so with the noted qualifications. The flexibility, as Professor Cox notes, follows in part from the nature of the enterprise.[34] A one-size-fits-all set of global standards of necessity emerges as a big tent so that a range of national practices can be accommodated. We think that comparison also serves to show that there are values at stake—namely, conservatism, verifiability, and transparent disclosure of current period results. None of these is calculated to appeal to managers, nor do they hold out much popular appeal when the stock market is booming. But, right now, in the wake of financial collapse, risk aversion returns to the fore not only in boardrooms, but also in the minds of policymakers. Those pursuing the Roadmap over the next

[33] See Emerging Issues Task Force ("EITF") Issue 02-3: Issues involved in Accounting for Derivative Contracts Held for Trading Purposes and Involved in Energy Trading and Risk Management Activities (Mar. 20, 2003) (discussing the rescission of EITF Issue 98-10: Accounting for Contracts Involved in Energy Trading and Risk Management Activities).

[34] See Cox, supra note 9, at 947.

few years may have a more difficult trip than its progenitors project.

The globe-spanning flexibility of IFRS also reflects differences in corporate governance systems and financial market regulation. IFRS's predecessor systems all developed in small national marketplaces with tight communities of intermediaries and investor populations largely made up of institutions. Tight communities can co-exist with "light touch" regulation, and as between GAAP and IFRS, the latter is the "light[] touch" choice.[35]

But the differences in surrounding regulatory regimes are wrought into the systems. As an example, consider the U.K. requirement that, if necessary for the presentation of a true and fair view of the business, a particular mandated treatment must be overridden.[36] IFRS's stated preference for treatments that follow from the economics of the transaction partakes of the same spirit. Overrides have not been the practice in the United States, even as financials must "fairly present" the company's financial position. Litigation risk is the reason,[37] not GAAP. Litigation risk is a property of the U.S. adversary regulatory system, a system that, unlike that of the United Kingdom, evolved to cope with a dispersed, continent-wide array of financial institutions and investor clients.

In addition, most of the countries in the IFRS fold have blockholder governance systems—the United Kingdom, Australia, and Israel being the exceptions. Blockholders, having control or influence over internal decisionmaking, suffer diminished problems of agency and information asymmetry.[38] Any question arising under a discretionary treatment can be answered by direct inquiry. Accounting principles accordingly matter less than they do given the separation of ownership and control that prevails in the United States.

Thus did GAAP develop into the more constraining system as a result of political and institutional factors unique to U.S. capital

[35] Donald C. Langevoort, U.S. Securities Law and Global Competition, 13, (Georgetown Univ. Law Ctr., Working Paper, 2008), available at http://ssrn.com/abstract=1313133.

[36] See Cunningham, supra note 1, at 41–42.

[37] Id. at 42.

[38] William W. Bratton & Joseph A. McCahery, Comparative Corporate Governance and the Theory of the Firm: The Case Against Global Cross Reference, 38 Colum. J. Transnat'l L. 213, 226 (1999).

markets. All of these factors remain pertinent in the present policy context, even as potential gains from global convergence introduce a complicating factor. Part II offers a more particular description of the environment in which FASB and GAAP evolved.

II. THE POLITICS OF GAAP

The FASB came into existence thirty-five years ago as the result of an ad hoc process looking toward the establishment of a viable standard setter under private auspices. The accountants' professional organization, the American Institute of Certified Public Accountants ("AICPA"), took the lead,[39] with input from organizations and individuals representing management and the financial sector.[40] The organizers had a high-powered incentive. They wanted a responsive standard setter without ceding territory to a federal agency,[41] which in those days was associated with domination by progressive, anti-corporate types.[42]

Public legitimacy mattered, so the new standard setter had to be independent, public regarding, and insulated from political pressure,[43] yet simultaneously responsive to constituent interests.[44] The result was a board selected by an independent foundation, itself populated with constituents, along with a monitoring advisory body, also populated with constituents.[45] Today the IASB is a car-

[39] Ronald King & Gregory Waymire, Accounting Standard-Setting Institutions and the Governance of Incomplete Contracts, 9 J. Acct. Auditing & Fin. 579, 583–86 (1994).

[40] Robert Van Riper, Setting Standards for Financial Reporting: FASB and the Struggle for Control of a Critical Process 8–9 (1994); Mohamed Elmuttassim Hussein & J. Edward Ketz, Accounting Standards-Setting in the U.S.: An Analysis of Power and Social Exchange, 10 J. Acct. & Pub. Pol'y 59, 76 (1991).

[41] The federal securities laws directed the SEC to prescribe the form and content of financial statements. See generally, Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 (1934) (codified as amended 15 U.S.C. § 77, § 77s). For a review of the legislative history, see Sean M. O'Connor, Be Careful What You Wish For: How Accountants and Congress Created the Problem of Auditor Independence, 45 B.C. L. Rev. 741, 789–820 (2004). The SEC then turned the matter over to the AICPA. Van Riper, supra note 40, at 7.

[42] See Van Riper, supra note 40, at 9.

[43] Id.

[44] See Robert Chatov, Corporate Financial Reporting: Public or Private Control? 232–39 (1975).

[45] Van Riper, supra note 40, at 13–18.

bon copy, but for a larger cast of characters and geographic distribution requirements.[46]

The FASB's governance model, now replicated at the IASB, pursues a middle way that has aroused political objections both on the right and on the left. From the right, public choice commentators have denounced the arrangements surrounding the FASB as a rent-seeking scam. From this point of view, the FASB, which should have operated as a private standard setter subject to free competition, has from the beginning worked instead as a cog in the larger machine of the federal disclosure system, the mandates of which yield rents to auditing firms.[47] Extrapolating, following the Roadmap to substitute the IASB only make matters worse, taking an unsatisfactory domestic arrangement and embedding it on a global basis.

A second set of critics attacked from the progressive, pluralist left. For them, choices of accounting principles have significant allocative consequences; therefore, accounting standard setting is a high stakes game in which the setter has no alternative but to balance interests.[48] Because the setter resolves political rather than technical issues, its legitimacy depends on political responsiveness.[49] The FASB, at its inception, could not provide this because it depended on contributions from the preparers and auditors, groups with high stakes in all of its outcomes.[50] The critics thus contended that the standard setter should be an agency directly responsible to Congress.[51] Substituting the IASB only makes things worse from

[46] See 2007 Concept Release, supra note 3 ¶ 45,605; Ruder et al., supra note 19, at 519–20; see also Intern'l Accounting Standards Bd, IASB and the IASC Foundation: Who We Are and What We Do, available at http://www.iasb.org/NR/rdonlyres/95C54002-7796-4E23A32728D23D2F55EA/0/WhoWeAre_Revise5Feb09.pdf (last visited Mar. 10, 2009).

[47] See Ross L. Watts & Jerold L. Zimmerman, The Demand for and Supply of Accounting Theories: The Market for Excuses, 54 Acct. Rev. 273, 275–81 (1979).

[48] See Van Riper, supra note 40, at 73–74.

[49] See id. at 22–23.

[50] See id. at 14; Staff of Subcomm. on Reports, Accounting & Mgmt., S. Comm. on Gov't Operations, 94th Cong., Staff Study: The Accounting Establishment 1–2 (Comm. Print 1976) [hereinafter The Accounting Establishment].

[51] See Van Riper, supra note 40, at 45 (proposing in particular the General Accounting Office). The obvious choice, the SEC, delegated the standard-setting function to the private sector early in its history. For a critical discussion, see George Mundstock, The Trouble with FASB, 28 N.C. J. Int'l L. & Com. Reg. 813, 825–26, 839–41 (2003).