C.E.Cardoso - ac <cec@amcham.com.br>
Tue 13/09/2016 17:28
To:
Comment Letters;
...
You replied on 14/09/2016 13:21.

Dear sirs,

After reading comments of several colleagues on the exposure draft of IVS 104 I would like to approach a reconciliation scenario to avoid confusion between fair value definition in IVS and fair vale definitions in other standards.

So far, when administering courses in IVS and being led to explain the differences between the fair value concepts in IVS and IFRS I used to explain that in IVS "*Fair Value is the estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties*". If we think in one of the parties as being a regulatory entity and the other party as a player in the market, subject to the authority of the relevant regulatory entity, **the value that satisfies the rules imposed by the regulatory entity are fair for both parties**. Under this view, we could maintain the current definition of fair value as it is and explain in the text that if one of the parties is a regulatory or legal entity, the fair value is the value determined under the rules of the entity.

The benefit of such a rationale is to avoid the same expression to keep several different meanings. The meaning is that is **is fair for both parties**: for the regulator because it has the enforcing authority and for the regulated party because it is subject to the rule if it wants to remain operating in the regulated sector.

One possible redaction would be:

50. IVS-Defined Basis of Value – Fair Value

50.1 Fair Value is the estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties.

50.2 Fair Value requires the assessment of the price that is fair between two specific, identified parties considering the respective advantages or disadvantages that each will gain from the transaction. In contrast, Market Value requires any advantages that would not be available to market participants generally to be disregarded.

50.3 Fair Value is a broader concept than market value. Although in many cases the price that is fair between two parties will equate to that obtainable in the market, there will be cases where the assessment of Fair Value will involve taking into account matters that have to be disregarded in the assessment of market value, such as certain elements of Synergistic Value arising because of the combination of the interests.

50.4 Examples of the use of Fair Value include:

(a) determination of a price that is equitable for a shareholding in a non-quoted business, where the holdings of two specific parties may mean that the price that is equitable between them is different from the price that might be obtainable in the market, and

(b) determination of a price that would be equitable between a lessor and a lessee for either the permanent transfer of the leased asset or the cancellation of the lease liability.

50.5 Fair value under a regulatory, statutory or common law environments may be subject to distinct interpretations although the essentiality of the definition is maintained. In those cases, one of the parties is the figure of the regulatory, statutory or common law entity and the other party is one interested in or subject to operating under the relevant entity. So, still the interests of both parties are taken into consideration.

50.6 Examples of Fair value under regulatory, statutory or common law environments include:

50.6.1 Fair Value (International Financial Reporting Standards)

50.6.1.1 IFRS 13 defines Fair Value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

50.6.1.2 For financial reporting purposes, over 130 countries require or permit the use of International Accounting Standards published by the International Accounting Standards Board. In addition, the

Financial Accounting Standards Board in the United States uses the same definition of Fair Value in Topic 820.

50.6.2. Fair Market Value (Organisation for Economic Co-operation and Development – OECD)

50.6.2.1 The OECD defines Fair Market Value as the price a willing buyer would pay a willing seller in a transaction on the open market.

50.6.2.2 The OECD is made up of 34 member countries and has a mission to promote policies that will improve the economic and social well-being of people around the world. OECD guidance is used in many engagements for international tax purposes.

50.6.3. Fair Market Value (United States Internal Revenue Service)

50.6.3.1 For United States tax purposes, Regulation §20.2031–1 states: "The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."

50.6.3.2 This definition applies to all taxes paid in the United States including citizens, residents, individuals and corporations doing business in/with the United States.

50.6.4. Fair Value (Legal/Statutory)

50.6.4.1 Many national, state and local agencies use Fair Value as a basis of value in a legal context. The definitions can vary significantly and may be the result of legislative action or established by courts in prior cases.

50.6.4.2 Examples of different definitions of Fair Value are:

(a) the Model Business Corporation Act (MBCA) is a model set of law prepared by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association and is followed by 24 states in the United States. The definition of Fair Value from the MBCA is the value of the corporation's shares determined:

(i) immediately before the effectuation of the corporate action to which the shareholder objects;

(ii) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 13.02(a)(5), and

(b) in 1986, the Supreme Court of British Columbia in Canada issued a ruling in *Manning v Harris Steel Group Inc.* that stated: "Thus, a 'fair' value is one which is just and equitable. That terminology contains within itself the concept of adequate compensation (indemnity), consistent with the requirements of justice and equity."

The definition of other bases of values would not be necessary.

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