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13 October 2014

Mr. Jonathan Bravo
IOSCO General Secretariat
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12, 28006 Madrid
Spain

Dear Mr Bravo,

Re: *IOSCO's Proposed Statement on Non-GAAP Financial Measures.*

On behalf of the European Financial Reporting Advisory Group (EFRAG), I am writing to comment on the IOSCO request for comment on its Proposed Statement on non-GAAP Financial Measures (hereafter 'the proposed Statement').

This letter is submitted in order to contribute to IOSCO's due process in a timely manner.

The comments contained in this letter are primarily based on the output of the due process EFRAG conducted when responding to the ESMA Guidelines on Alternative Performance Measures in May 2014. EFRAG considered that it had received enough input and feedback, when conducting this due process, to respond to the IOSCO's proposed Statement on Non-GAAP Financial Measures without further consultations.

Our comments on the Statement are set out below:

Purpose of issuing a guidance

- 1 EFRAG believes that non-GAAP measures can provide useful information to users when properly used and presented, and can assist investors in gaining a better understanding of a company's financial performance and position. Therefore, EFRAG supports the idea that non-GAAP financial measures should be clearly defined and explained by preparers, unbiased and presented consistently over time to improve the understanding of the performance by users of financial statements.
- 2 However, EFRAG believes that the proposed Statement does not articulate clearly enough what the underlying principle is that determines the scope of the requirements and the types of disclosures that are asked for. In particular, we are concerned that the scope of the Statement could result in lengthy disclosures that contain relatively little valuable information. As explained in the comments on the 'scope of the proposed Statement', we believe that the requirements should be targeted more narrowly so as to avoid clutter and boilerplate language in financial reporting.

Scope of the proposed Statement

- 3 EFRAG observes that the proposed Statement would apply to any non-GAAP measure that is '*reported outside of the financial statements*'. The Statement also provides one exception for financial measures that are 'specifically required by a securities regulator' which are not within its scope.
- 4 EFRAG welcomes the fact that the disclosures that an issuer makes within its financial statements, including the notes thereto, are not contained within the scope of the proposed Statement. As EFRAG noted in its response to the ESMA *Consultation Paper on Alternative Performance Measures*, applying the guidance on non-GAAP measures in the context of the IFRS financial reporting framework would result in an overly broad scope because IFRSs are principle-based and define very few performance measures. Absent such exclusion for information contained in the financial statements, the definition would capture a much broader range of common and well-understood measures, that we do not consider to be non-GAAP measures, such as:
- (a) line items (including totals and sub-totals) presented on the face of the balance sheet, income statement, statement of changes in equity or cash flow statements that are not specifically required by IFRSs; and
 - (b) measures that are presented in the notes to the financial statements (including segment information), whether they are derived from the primary financial statements or not.

- 5 However, EFRAG still believes that the proposed scope still gives rise to a number of issues:

Non-GAAP measures derived from the primary financial statements

- 6 EFRAG notes that the proposed scope would also include measures derived from the primary financial statements that are presented outside the financial statements and whose definition is self-evident from their name (e.g. results before share of investee's results, total fixed assets) or measures that are merely totals or subtotals of measures that are directly readable from the financial statements.
- 7 EFRAG notes that no relief is provided for such measures. In our view, this would result in a scope that is much broader than we believe is appropriate.

Application to prospectuses and related documents

- 8 EFRAG notes that the IOSCO guidance includes no specific reference to information that is contained in prospectuses. However, we also note that the Statement is proposed to apply "*whenever the measure is disclosed outside of the financial statements*". Consistent with the view we expressed when responding to the ESMA consultation paper on APMs, EFRAG believes that the final Statement on non-GAAP financial measures should not apply to prospectuses.
- 9 We are particularly concerned that the final Statement may inadvertently scope in the financial information that is required from entities with a complex financial

history¹ or entities with significant financial commitments as defined under the Prospectus Directive and its application guidance. We do not believe that, for example, carved-out financial information (e.g. in the case of a spin-off transaction) and combined financial information (e.g. in the case of a listing of newly formed group) should be treated as non-GAAP measures.

- 10 It is, at best, unclear, whether such information would, collectively, benefit from the exception for 'measures required by Securities Regulators'. We note that information in prospectuses, including financial data not extracted from an issuer's audited financial statements, is governed in Europe by the Prospectus Directive and its implementation guidance and is subject to a specific recommendation issued by CESR in February 2005 and reissued and updated by ESMA in 2013 (CESR Recommendation for the consistent implementation of the European Commission's Regulation on Prospectuses n° 809/2004) Non-GAAP financial measure disclosed outside of the financial statements.
- 11 We recommend that the final Statement makes explicit that it does not apply to prospectuses.

Other documents containing regulated information

- 12 Entities operating in regulated industries often include a summary of information based on their regulatory filings (i.e. regulated information) in their financial communications.
- 13 In that respect, EFRAG observes that, according to Section II of the proposed Statement, the guidance is applicable to any non-GAAP measure presented outside the financial statements with the sole exception of measures that are 'required by a securities regulator'.
- 14 IOSCO has not explained why the exception should be limited to non-GAAP measures that are required by securities regulators and not regulated measures required by other regulators (such as bank or insurance regulators) or, more generally, measures that are governed by specific laws.
- 15 EFRAG recommends that the exemption should be extended to all measures prepared in accordance with statutory or regulatory requirements.

Prominence of defined measures over non-GAAP financial measures

- 16 EFRAG agrees that financial information prepared and presented in accordance with the applicable financial reporting framework is of primary relevance. However, giving 'equal or less' prominence to alternative performance measures on a systematic basis may not always result in providing the most useful information.
- 17 EFRAG believes that it would be unhelpful if the proposed 'prominence' requirement would effectively result in imposing a form of 'ceiling' on the amount of voluntary information that an entity is allowed to disclose regardless of whether such information is useful to users.

¹ A 'complex financial history' arises whenever the existing financial statements of an issuer needing to prepare a prospectus do not provide a comprehensive picture to investors of the financial history of the operations that it controls, or will control.

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- 18 Therefore, we believe that the IOSCO's final Statement on non-GAAP financial measures should focus on ensuring that Non-GAAP financial measures are not presented with *undue* prominence, emphasis or authority, which would be more consistent with the subjective assessment of prominence in the first place.
- 19 EFRAG acknowledges that assessing whether non-GAAP financial measures are given undue 'prominence, emphasis or authority' may also be subjective, as it will depend on factors such as: order of presentation, length of the material, tone of the wording and typesetting. However, we believe that the subjectivity of the assessment would be reduced if IOSCO clearly defined the objective of the guidelines in a way that focuses on the usefulness of the resulting information for users.

Disclosure requirements

- 20 EFRAG believes that it is important that users of financial information can understand all terms used and that they have ready access to the definitions of Non-GAAP financial measures, the reason for their use and their calculation or determination.
- 21 Financial reports vary in frequency, form and length; they range from complex and detailed announcements to short presentations on key figures. In the light of the ongoing debate about the length and complexity of disclosures, we believe that guidance on non-GAAP measures should avoid introducing requirements that may inadvertently result in boilerplate disclosures that are repeated frequently.
- 22 Therefore, EFRAG welcomes the fact that the IOSCO Statement on non-GAAP Financial Measures is not overly prescriptive as to where the disclosures on non-GAAP financial measures should be presented and allows incorporation of disclosures by reference by stating that *'the information should either accompany the non-GAAP financial measures or issuers should provide investors with a reference to where this information is available'*.
- 23 We believe that allowing incorporation of required disclosures by reference would also reduce the burden on users and preparers particularly when applied to interim reports and other 'intra-period' documents where the relevant non-GAAP financial measures were unchanged from the prior year annual report. EFRAG believes that certain disclosures (e.g. definitions that have remained unchanged) should not be required in all financial communications, but could rather be included by way of a cross-reference to other published documents.

Quantitative Reconciliation of non-GAAP measures

- 24 EFRAG observes that paragraph 7 of the Statement requires entities to provide *'a clear and concise quantitative reconciliation from the non-GAAP financial measure to the most directly comparable GAAP measure presented in the financial statements'*.
- 25 EFRAG observes that the Statement does not include any exception or relief to the requirement. However, EFRAG believes that it may not be always practicable to provide quantitative reconciliation of a non-GAAP measure to a 'comparable' GAAP measure.
- 26 Non-GAAP measures can be based on sources other than conventional accounting such as projections of future cash flows (e.g. embedded value in the insurance sector), forward-looking indicators or measures that relate to physical performance. Forward-looking measures are customarily used in certain industries

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as it is considered that they provide valuable information for users; for instance when they aim at portraying long term value creation or embedded value of business. Providing a quantitative reconciliation of such forward looking information to GAAP measures may not always be practicable or result in useful information for users. Similarly, measures that relate to physical performance, such as sales per unit of shelf space, could be relevant to an assessment of performance and it is difficult to see how such measures could be reconciled to GAAP measures.

- 27 EFRAG believes that, in certain cases, a qualitative disclosure may provide more practical and relevant information. Therefore EFRAG believes that Statement should clarify that issuers may be released from the need to provide quantitative reconciliations when that information may not be useful to users or when the cost of providing this information outweighs the benefit obtained.

If you would like to discuss our comments further, please do not hesitate to contact Hocine Kebli, Alejandro Saenz or me.

Yours sincerely,



Françoise Flores
EFRAG Chairman