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Mr. Jonathan Bravo
IOSCO General Secretariat
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
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Berlin, 3. Dezember 2014

Dear Mr Bravo,

Public Comment on the Statement on Non-GAAP Financial Measures

The Accounting Standards Committee of Germany (ASCG) appreciates the opportunity to comment on the proposed *Statement on Non-GAAP Financial Measures* issued on 8 September 2014. We generally support IOSCO's efforts to assist issuers in providing clear and useful disclosure for investors and other users of non-GAAP financial measures reported outside of financial statements. In our comment letter to ESMA on similar proposed guidance about *Alternative Performance Measures*¹ we already emphasised IOSCO's role and the importance of coordinating the efforts among regulators and accounting standard-setters on this topic.

We provide our comments on the following proposals in IOSCO's Statement that in our mind need further work and clarification efforts:

- Definition of non-GAAP financial measures
- Scope of documents concerned
- IOSCO's expectations for the presentation of non-GAAP financial measures

Definition of non-GAAP financial measures

Overall we support a narrow definition of non-GAAP financial measures in the proposed Statement. We believe that non-GAAP financial measures should only cover those measures

¹ http://www.drsc.de/docs/press_releases/2014/140516_CL_ASCG_ESMA_APM.pdf



that are reconcilable to measures prepared in accordance with relevant accounting guidance. Therefore, non-GAAP financial measures within the scope of the proposed definition should typically include only measures that represent a form of totals or subtotals of assets, liabilities, equity, income, expense, cash flows, and derived ratios. We think key performance indicators as part of issuers' management commentary prepared in accordance with the relevant national reporting requirements should not be considered as non-GAAP financial measures.

Nonetheless, we consider further clarification regarding the proposed definition of non-GAAP financial measures necessary as follows:

- It is not clear to us what 'outside of financial statements' implies. We believe there are different ways of reading this term. We think IOSCO should clarify whether information could be embedded in the financial statements but still considered to be outside of financial statements. For example, information that is displayed and labelled as non-GAAP information and placed on the face or within the accompanying notes of the financial statements may not form part of financial statements.
- We are concerned that the definition could result in the conclusion that financial measures reported 'inside' financial statements, eg EBITDA, are always considered to be GAAP financial measures; but the same financial measures reported in other parts of the financial reporting package would be considered a non-GAAP financial measure.
- It would be helpful to better understand the purpose of the distinction between 'earnings' and 'financial performance' in the proposed definition. In our view 'earnings' are already part of the broader term 'financial performance' and therefore need not be listed separately in the definition.
- Furthermore, the proposed definition does not indicate whether the non-GAAP financial measure must be considered as a measure that serves the same objective or purpose as GAAP measures.

Scope of documents concerned

We perceive the scope of the IOSCO Statement was drafted to cover all issuers' communication efforts about financial information with shareholders and other (capital) market participants. We believe this broad definition requires further specifications to limit the scope of documents and the types of issuers. However, we consider this would need a separate consultation process for implementation in each jurisdiction and be outside IOSCO's work.

IOSCO's expectations for the presentation

We generally agree with the list of IOSCO's expectations. In our view, those disclosures should ensure the understandability of non-GAAP financial measures. Within this context we

believe it could be useful to emphasise ‘understandability’ as the underlying objective of those additional disclosures.

Despite the fact that we generally agree with IOSCO’s expectations, we have concerns about the following proposed disclosure requirements:

Defining the Non-GAAP Financial Measure

4. Explicitly state that the non-GAAP financial measure does not have a standardised meaning prescribed by the issuer’s GAAP and therefore may not be comparable to similar measures presented by other issuers.

- We discourage IOSCO to retain the requirement of such a statement. In our view the required disclosures explaining the non-GAAP financial measures should ensure the understandability of the information. In consequence, the additional disclosures make the information comparable between non-GAAP financial measures labelled similarly. We consider IOSCO’s expectation #2, that non-GAAP financial measures should be clearly labelled in a way such that they are distinguished from GAAP measures, sufficient.

Prominence of Presentation of GAAP measures versus non-GAAP financial measures

6. When an issuer presents non-GAAP financial measures, it should include with equal or greater prominence a presentation of the most directly comparable measure calculated and presented in accordance with GAAP. Presentation of non-GAAP financial measures should not in any way confuse or obscure the presentation of the GAAP measures.

- We believe that it would be difficult to operationalise this proposal to present GAAP measures with equal or greater prominence outside of financial statements. For example, the additional disclosures proposed for non-GAAP financial measures may already imply to users a greater importance of the measure.
- Furthermore, if the issuer considers a non-GAAP financial measure of greater importance than a GAAP measure for a specific purpose, the issuer may also need to communicate that fact to the user. For example, if the issuer discloses a performance/cash flow measure such as ‘free cash flow’ for the purpose of evaluating the entity, we foresee many question marks how equal or greater prominence of a most directly comparable GAAP measure would be achieved.
- Generally, we believe it would be more appropriate to highlight that a non-GAAP financial measure should not be displayed with undue prominence outside of financial statements compared to the information in a complete set of financial statements.



Reconciliations

7. 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. The adjustments should be explained.

- We believe further guidance is necessary regarding the term ‘most directly comparable GAAP measures’. We are aware that this term or the term ‘most relevant comparable GAAP measures’ are already used in similar regulatory guidance in some jurisdictions. However, to make the guidance understandable beyond any doubts, we encourage IOSCO providing more clarification.
- We also think that the IOSCO Statement should clarify whether an issuer must prepare a GAAP measure for reconciling that would not be available otherwise to users. In other words, is the disclosure of a non-GAAP financial measure prohibited if the (most directly comparable) GAAP measure is not available? This need for clarification does not only arise within the context of ‘non-standard’ financial statements such as ‘combined’ or ‘carve out’ financial statements; it becomes even more pronounced in the context of ad-hoc publications and other press releases when GAAP measures are still not produced.

We would be pleased to answer any questions that you may have or discuss any aspect of this letter.

Yours sincerely,

Liesel Knorr

President