

**Mr Roger Marshall
Acting President EFRAG Board
European Financial Reporting
Advisory Group (EFRAG)
35 Square de Meeûs
1000 Brussels
Belgium**

Ref: Trustees' Review of Structure and Effectiveness: Issues for the Review

Dear Mr Marshall,

The European Securities and Markets Authority (ESMA) thanks you for the opportunity to contribute to the EFRAG's due process regarding the IFRS Foundation Trustees' Request for Views (RfV) on the *Review of Structure and Effectiveness* of the IFRS Foundation. We are pleased to provide you with the following comments with the aim of improving the public accountability and effectiveness of the IFRS Foundation.

As requested in the EFRAG's invitation for comments, this comment letter does not deal with governance and financing issues which are covered by questions 7 to 14 of the RfV as these will not be addressed by the EFRAG's comment letter.

Like EFRAG, ESMA is of the view that setting financial reporting standards for listed entities should remain the main focus and priority of the IASB. In light of the limited resources, the IASB's remit should not be extended to other areas (such as setting standards for public sector or for not-for-profit organisations) before all significant gaps in financial reporting for listed entities identified by the agenda consultation are addressed.

Furthermore, ESMA highlights the need for consistent application of IFRS across the globe. While the primary responsibility for consistent application of IFRS rests with the preparers, auditors and regulators rather than with the IASB, ESMA believes the IASB and the IFRS Foundation should create the circumstances that contribute to the consistent application of IFRS across jurisdictions and industries. In this context, ESMA welcomes the changes made in enhancing the standard-setting process and facilitating the implementation of new standards.

The establishment of the Transition Resource Groups (TRGs) can be a good way to further facilitate consistent implementation and application of complex standards. In particular, ESMA considers that the use of TRGs is useful to bridge the gap between standard-setting and implementation. As the IASB has established TRGs on two topics on an ad-hoc basis,



the Trustees should formalise the structure and its use and analyse the experience and effectiveness in establishing and operating the TRG.

ESMA is of the view that the IFRS Interpretations Committee (IFRS IC) is an indispensable part of the organisation and contributes to the consistent application of the standards. While we welcome the improvements in the organisation of the IFRS IC following the Trustees' review of efficiency and effectiveness of IFRS IC in 2012, we call on the Trustees to further enhance the functioning and effectiveness of the IFRS IC in order to better respond to the implementation issues identified in practice and provide any necessary guidance on a timely basis. In particular, ESMA highlights the need to streamline the communication between the IASB and the IFRS IC in order to agree on a timely basis on how to proceed with particular issues. We also highlight the need to examine the underlying reasons for the recent decrease in the number of submissions to the IFRS IC.

In this context, ESMA also calls for a re-assessment of the overall composition of the IFRS IC in order to ensure that it contains an appropriate balance of professional backgrounds, including sufficient representation of securities regulators and/or accounting enforcers that play a very important role for the consistent application of IFRS.

Finally, ESMA supports EFRAG's suggestion that Post-implementation Reviews should help the IASB identify what works and what is in need for improvement in the current practice, regardless of the date at which a standard has been issued. Equally, ESMA agrees that once a Post-Implementation Review is completed, the IASB should communicate clearly on its action plan to provide improvement where needed and discuss the level of priority the related standard-setting efforts should receive.

Our detailed responses to the RfV are set out in the Appendix I to this letter. Please do not hesitate to contact us should you wish to discuss all or any of the issues raised.

Yours sincerely,



Steven Maijoor

Appendix I – ESMA’s detailed answers to the questions in the Request for Views

Question 1 – Considering the consequences referred to above, what are your views on whether the IASB should extend its remit beyond the current focus of the organisation to develop Standards; in particular for entities in the private, not-for-profit sector?

1. ESMA has consistently argued¹ that in light of the impact on proper functioning of capital markets, setting standards for listed entities should remain the main focus and priority of the IASB. Considering the limited financial and human resources available to the IASB, ESMA is of the view that the IASB should continue to focus on financial reporting for listed ‘for-profit’ entities and notably on filling the existing gaps in financial reporting as identified by the results of the second triennial Agenda Consultation.^{2,3}
2. ESMA agrees with the Trustees that the IASB should not address the accounting for public sector nor should the IFRS Foundation become responsible for the governance and oversight of the International Public Sector Accounting Standards Board (IPSASB).
3. ESMA recognises that there is a strong demand for developing international standards for the private not-for-profit sector. However, ESMA is of the view that, despite the absence of an international standard-setter for not-for-profit sector, the remit of the IASB and the IFRS Foundation should not be extended to this area. In light of the limited resources available to the organisation and ambitious existing and upcoming technical agendas, extension of the remit of the IASB in this area could compromise the focus and quality of the standard-setting process in the existing remit of the IASB.
4. Considering the ongoing project of developing a Capital Markets Union (CMU) in the European Union (EU),⁴ ESMA welcomes that the IFRS Foundation stands ready to work with the European Commission, and other constituents in considering the financial reporting implications of the CMU.⁵ The recently published *Action Plan on Building a Capital Markets Union*,⁶ states that the European Commission will explore with the IASB the possibility of developing a voluntary tailor-made accounting solution, which could be used for companies admitted to trading on SME Growth Markets. If a decision is made to use in the EU a specific set of standards for ‘for-profit’ entities listed on non-regulated markets, such as the Multilateral Trading Facilities (MTFs), the IFRS Foundation should develop a set of standards that is fit for the purpose for this type of listed entities.

¹ ESMA response to the Trustees’ consultation, IFRS as the Global Standard: Setting a Strategy for the Foundation’s Second Decade, 19 July 2011, ESMA/2011/212

² IASB’s Request for Views: 2015 Agenda Consultation, August 2015

³ ESMA response to the IASB’s Request for Views: 2015 Agenda Consultation, November 2015, ESMA/2015/1740

⁴ http://ec.europa.eu/finance/capital-markets-union/index_en.htm

⁵ IFRS Foundation response to the European Commission public consultations on the green paper: Building a Capital Markets Union, Accompanying paper by the IFRS Foundation on the financial reporting implications, 12 May 2015

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on Building a Capital Markets Union, European Commission, 30 September 2015, COM(2015) 468 final

Question 2 – Do you agree with the proposal that the IASB should play an active role in developments in wider corporate reporting through the co-operation outlined above?

5. ESMA is of the view that the current role of the IASB, is appropriate to ensure that the IASB remains fully aware of developments and can take steps to maintain the prominence and relevance of IFRS within wider corporate reporting. ESMA welcomes the existing cooperation of the IASB with other organisations active in this area (such as integrated reporting) and encourages the IASB to further monitor the developments in wider corporate reporting.
6. However, ESMA encourages the IASB to further develop a long-term vision on the developments in corporate reporting in order to maintain the relevance of financial reporting and of the IASB in the future, e.g. considering technological developments.
7. Reporting of non-IFRS information (e.g. alternative performance measures) and their location within the financial statements or in other reports is of high importance and has been consistently highlighted by users and regulators as an issue to be addressed by the IASB. ESMA agrees with the Trustees that this is a technical issue within the competence of the IASB and consequently should be examined within the context of the IASB's current agenda consultation.⁷

Question 3 – Do you agree with the Foundation's strategy with regard to the IFRS Taxonomy?

8. ESMA welcomes that the focus of the IASB shifted to the taxonomy itself as it would not be appropriate for the IASB to be involved in the development of one of the technological solutions that can be used for electronic reporting. ESMA supports that the IFRS Foundation's goal is now focused on having the IFRS Taxonomy recognised as the globally agreed standard to tag and intelligently structure IFRS financial information within a digital report.
9. ESMA agrees that the IFRS Taxonomy should be integrated into the standard-setting process as that can be beneficial for stakeholders who could more easily and timely understand the way the new standards would be translated in the taxonomy. This would also shorten the timeline for the availability of taxonomy to its users. Furthermore it might increase stakeholder participation in the due process for the IFRS Taxonomy.
10. However, ESMA calls on the Trustees to establish the structure and procedures that would make sure that the proposed IFRS taxonomy is only a by-product of the standard-setting process and does not influence the way principles-based standards are developed or how decisions are made as part of the standard-setting process.

⁷ ESMA response to the IASB's Request for Views: 2015 Agenda Consultation, November 2015, ESMA/2015/1740

Question 4 – How can the IASB best support regulators in their efforts to improve digital access to general purpose financial reports to investors and other users?

11. The regulatory environment in Europe has been changed by the 2013 amendments to the Transparency Directive⁸ which introduce, amongst others, a new requirement for issuers with securities on regulated markets within the EU to prepare their annual financial report in a harmonised electronic format with effect from 1 January 2020 and empower ESMA to specify the electronic reporting format that should be implemented following a cost-benefit analysis.
12. In September 2015, ESMA published a Consultation Paper⁹ proposing to introduce the requirement to prepare consolidated IFRS financial statements using the structured format using the IFRS Taxonomy issued by the IASB, subject to a dedicated endorsement process in the EU. ESMA seeks stakeholders' views on this proposal and on possible technological options for the electronic format to be implemented in the EU. Given the stage of this project ESMA is not yet able to provide you with any further views on this question.

Question 5 – Do you have any views or comments on whether there are any other steps the IASB should take to ensure that it factors into its thinking changes in technology in ways in which it can maintain the relevance of IFRS?

13. ESMA welcomes the IASB contemplating how technology might affect the way financial information is delivered and accessed more generally. As indicated in our response to Question 2, ESMA encourages the IASB to develop a vision on technological developments in these areas in order to maintain the relevance of financial reporting.
14. ESMA supports the Foundation's suggestions to establish a network of experts to help and provide advice on how to monitor and assess changing technology. However, the Foundation should clarify the link between this network of experts and the IFRS Taxonomy Consultative Group (ITCG).

Question 6 – What are your views on what the Foundation is doing to encourage the consistent application of IFRS? Considering resourcing and other limitations, do you think that there is anything more that the Foundation could and should be doing in this area?

15. From the perspective of securities regulators, consistent implementation and application of IFRS is of the utmost importance for investor protection. Furthermore, ESMA agrees that the primary responsibility for consistent application of IFRS rests with the preparers, auditors and regulators rather than with the IASB. However, ESMA believes the IASB

⁸ Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

⁹ Consultation Paper, Consultation Paper on the Regulatory Technical Standards on the European Single Electronic Format (ESEF), 25 September 2015, ESMA, ESMA/2015/1463

and the IFRS Foundation should create the conditions that promote the consistent application of IFRS across various jurisdictions and industries. This implies that standards published by the IASB should be of high quality, clear and understandable and thus enforceable.

Features of the standard-setting process

16. ESMA appreciates the efforts of the Trustees to incorporate field testing and effects analyses in the IASB's standard-setting process and to strengthen the quality control process before the issuance of final standards.
17. ESMA reiterates that the focus of the standard-setting process should be on the quality of the final standards and welcomes the on-going progress the IASB is making in integrating the effect analyses as part of the standard-setting process based on the Recommendation of the Effects Analysis Consultative Group.¹⁰ While effect analyses should be an integral part of the standard-setting process and its due process so that impact and effects of any new standards are considered by the IASB during the standard-setting process, we believe that the extent of changes in the existing practice/standards should not be used in itself as an argument against the change of an existing standard.
18. The quality control process should be sufficiently robust to ensure that final standards are unambiguous, clear and understandable, and limit to the extent possible the need for further amendments and clarifications before the mandatory effective date or immediately after implementation.
19. ESMA highlights the need for further improvements in the quality control procedures in order to identify any fatal flaws in the final output of the standard-setting process before a final standard is issued, e.g. by enlarging the number of participants in the confidential fatal flaw review before a final standard is published. Nonetheless, the fatal flaw process should remain on a confidential basis as it should not be considered as an additional possibility to comment on or challenge the underlying principles of the upcoming standard.

Transition Resource Groups (TRGs)

20. The establishment of TRGs can be a good way to further contribute to the quality of the standard-setting process as well as to facilitate consistent implementation and application of complex standards. In particular, ESMA considers that the use of TRGs is useful to bridge the gap in timing between the standard-setting process and the implementation of a standard. As ESMA considers that the TRG fulfils an important role in facilitating proper implementation of new complex standards, we believe that the activities of the existing TRGs should continue and should not stop too early during the implementation phase.

¹⁰ Report to the Trustees of the IFRS Foundation, Effects Analysis Consultative Group, November 2014

21. While the IASB has established TRGs on two topics on an ad-hoc basis,¹¹ ESMA suggests that the Trustees formalise the structure and its use within the organisation. In particular, ESMA calls on the IASB and the Trustees to formally define circumstances in which the use of TRG is deemed useful and to clarify the status and timing of TRG deliberations as part of the implementation of the new standard. Furthermore the roles of the TRGs and the IFRS IC could be better articulated in terms of objectives, scope of work and timing when each body shall be involved.
 22. Furthermore, once IFRS 9 *Financial Instruments* and IFRS 15 *Revenue from Contracts with Customers* have been fully implemented, the Trustees should draw lessons from the experience in establishing and operating the TRG and to evaluate the effectiveness of the TRG process. This would require an assessment whether major implementation issues have been identified and considered by the TRG before the mandatory effective date of the respective standards and whether and how have they been addressed by the IASB. In addition, Trustees could explore the way how to induce stakeholders to submit implementation issues on a timely basis so that these could be addressed by the TRG at an early stage of implementation of a standard.
 23. ESMA also encourages the Trustees and the IASB to determine how an analysis of the issues that were referred to the IASB by the TRG and for which no clarification was provided can be made easily accessible to all IFRS constituents, In this respect, ESMA is of the view that such an analysis could be published as educational material in the framework of the IASB Educational Initiative.
 24. Finally, ESMA is of the view that the membership of the TRG should be broadly representative and include an appropriate balance of professional backgrounds including a sufficient representation of accounting enforcers and/or securities regulators.
- IFRS Interpretations Committee (IFRS IC)*
25. ESMA is of the view that the IFRS IC is an indispensable part of the organisation and contributes to consistent application of the standards. ESMA highly appreciates the interaction with the IASB and IFRC IC representatives in the framework of regular bilateral meetings¹² that help the consistent application of IFRS in the EU.
 26. While we welcome the improvements implemented following the Trustees' review of efficiency and effectiveness of IFRS IC in 2012,¹³ ESMA calls on the Trustees to further enhance the functioning and effectiveness of the IFRS IC in order to better respond to the implementation issues identified in practice and provide any necessary guidance on a timely basis.
 27. While ESMA acknowledges improvements in the cooperation between the IASB and the IFRS IC, we continue to highlight the need to streamline the communication between

¹¹ IASB FASB Joint Transition Resource Group For Revenue Recognition and IFRS Transition Resource Group for Impairment of Financial Instruments

¹² IFRS Foundation and ESMA statement of protocols for cooperation on IFRS, July 2014

¹³ Report of the Trustees' review of the Efficiency and Effectiveness of the IFRS Interpretations Committee, IFRS Foundation, May 2012

these two bodies, to agree on how to proceed with particular issues in order to solve more expeditiously implementation issues brought to their attention. This would enable to agree on a common view on the technical solution and the envisaged way forward before a draft interpretation is published (e.g. avoid recent disagreement on the way forward related to the project on puts on non-controlling interests) and avoid the process of formal referring of issues between IFRS IC and IASB that delays the process.

28. As representative of securities regulators and accounting enforcers, ESMA identified a number of issues in the application of IFRS which we have submitted for consideration to the IFRS IC. ESMA appreciates that the IFRS IC has provided useful guidance to a number of these requests. However, ESMA points out that some of our submissions to the IFRS IC were not added to the active agenda because of the existence of research projects on the same topic or because development of any additional guidance would lead to a broader standard-setting activity.
29. ESMA notes the requirements of paragraph 5.21 of the IASB Due Process Handbook stating that the IFRS IC normally would not develop an Interpretation if the topic is being addressed in a forthcoming project. However, the same paragraph highlights that this guidance does not prevent the IFRS IC from acting on a particular matter if the short-term improvements can be justified. ESMA notes that there is a relatively low hurdle for adding research projects to the IASB research programme. However, the existence of a research project should not necessarily prevent the IFRS IC or the IASB to consider the issue and provide timely guidance on this matter in form of an Interpretation, Annual Improvement or (narrow-scoped) Amendment to a Standard as not all research projects lead to the development of standards.
30. Furthermore, ESMA highlights that many of the recent issues discussed by the IFRS IC have been submitted by accounting enforcers or securities regulators as these encounter issues of consistent application of IFRS during their examination procedures. While we appreciate that currently accounting enforcers and/or securities regulators are represented as observers by two representatives of the International Organisation of Security Commissions (IOSCO), we are of the view that in order to influence the outcome of the IFRS IC discussion more efficiently, representatives of securities regulators should be represented more prominently in the IFRS IC. Furthermore, the overall composition of the IFRS IC should be evaluated so that it contains an appropriate balance of professional backgrounds, including sufficient representation of securities regulators and/or accounting enforcers.
31. While the number of issues that national enforcers encounter and which are being discussed in ESMA through European Enforcers Coordination Sessions (EECS) increased, ESMA has observed a decrease of the overall number of new submissions to the IFRS IC. While such development might have many different reasons, it raises the question whether issues existing in practice are submitted for consideration by the IFRS IC. Hence, we encourage the Trustees to examine the underlying reasons for this development, including the assessment of the usefulness, efficiency and timeliness of the response provided to the submitters through the interpretations process.

32. ESMA believes that the frequency and length of the IFRS IC meetings are appropriate and should not be reduced (e.g. considering the low number of submissions received) as it would make the submission process even longer and counter the need for timely guidance on submissions received. On the contrary, in the light of the lower number of submissions received we ask the Trustees to consider where the expertise of the IFRS IC can help the IASB, such as collecting issues for preparation of the Post-Implementation Reviews (PIR) of existing standards.

Post-implementation reviews (PIR)

33. ESMA believes that PIRs constitute an important tool for a standard-setter to assess the quality of a standard and its effects as well as to evaluate the nature of application and implementation issues. ESMA believes the Trustees shall explicitly acknowledge that where a large number of application issues have been identified, the PIR process, or other type of fundamental review, should be made mandatory also for existing standards that were not subject of PIR after their publication (as it is currently the case with IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations*).
34. ESMA also believes that in light of the existence of other tools to support implementation of a standard (such as the TRGs), the minimum period of application of a new standard could be extended to 3 years before a PIR is initiated in order to have sufficient experience in the application of a standard. At the same time, should broad implementation issues arise immediately after issuance of a standard, the IASB should have the option either to advance a PIR or undertake immediate standard-setting activity in order to address these issues on a timely basis. Furthermore, should narrow application issues arise when implementing new standard, they should be addressed by the IFRS IC on a timely basis before PIR is initiated and/or completed.
35. Furthermore, we believe that the Trustees should evaluate the effectiveness of the PIR process. In particular, while we agree with the IASB that a PIR does not necessarily have to lead to a change in a standard, we are of the view that the IASB should consider the feedback received in a PIR and act on it if necessary on a timely basis. For example, we welcome that as response to the PIR the IASB has initiated standard-setting projects (IFRS 8 *Operating Segments*) or research projects (IFRS 3 *Business Combinations*). However, we question whether this response addressed the issues identified by the respective PIR on a timely basis. Therefore, we are of the view that, where relevant, findings of a PIR should provide an immediate direct input to the standard-setting process, without necessarily waiting for the results of the Agenda Consultation.

Education initiative

36. ESMA welcomes the IASB efforts in undertaking a number of education initiatives in support of consistent application of IFRS that are particularly helpful to jurisdictions with less IFRS experience and to small and medium sized entities.
37. The educational material produced by the IASB is useful for consistent application of IFRS and ESMA strongly supports that the IASB produces additional educational material when needed. However, the lack of clarity about the status of educational material, together with limited due process, can make it difficult for national enforcers to

use this material in their enforcement activities. Consequently, we recommend to the Trustees to clarify the status of the educational material and review the process of producing such material.

Question 15 – *Should the Trustees consider any other issues as part of this review of the structure and effectiveness of the Foundation? If so, what?*

38. ESMA is of the view that the Trustees considered all the main relevant issues as part of this review.