European Securities and Markets Authority

The Chair
23 January 2013
ESMA/2013/104

Mr Hans Van Damme
Interim Chairman
Supervisory Board
EFRAG
35 Square de Meeus
1000 Brussels
Belgium

EFRAG draft response to the IFRS Foundation's Invitation to Comment *Proposal to Establish an Accounting Standards Advisory Forum*

Dear Mr Van Damme,

The European Securities and Markets Authority (ESMA) is an independent EU Authority that contributes to enhancing the protection of investors and promoting stable and well-functioning financial markets in the European Union (EU). ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active coordination of national supervisory activity.

ESMA has considered EFRAG's draft comment letter on the IFRS Foundation's Invitation to Comment on the *Proposal to Establish an Accounting Standards Advisory Forum*. We thank you for this opportunity to contribute to the EFRAG's due process. ESMA is pleased to provide you with the following comments aimed at improving the decision-usefulness of financial statements and the transparency and enforceability of IFRSs.

ESMA, like EFRAG, supports the IFRS Foundation's initiative to set up an Accounting Standards Advisory Forum (ASAF) to act as a network of national accounting standard-setting bodies and regional bodies involved with accounting standard-setting. However, the Foundation asked the IASB through its *Strategy Review* to formalise existing relationships or to develop them further in order to create a network of stakeholders. ESMA believes that some of the proposals would benefit from an indication on how the Foundation will develop contacts with other stakeholders, such as securities regulators and IFRS enforcers.

We believe that the Foundation should clarify whether the purpose is to liaise with national standard-setters or with the bodies that bear the ultimate responsibility for the endorsement of IFRSs into national or regional law. ESMA is of the opinion that the focus should be on bodies with the ultimate responsibility for endorsement. In this way, the ASAF's membership should consist of the national and regional bodies representing the public interest and that are ultimately responsible for the endorsement of IFRS.

However, we do not entirely agree with EFRAG regarding the purpose of ASAF. It is our opinion that ASAF should have an advisory role with the aim of discussing relevant topics at a high-level without going into technical details. The Foundation should ensure that it will not become, or be perceived by constituents as being, a *shadow board* setting the boundaries within which the IASB can act.

We think that the use of IFRS, or a strong commitment to do so, is a pre-condition to participate in the proposed ASAF. This commitment should be supplemented by strong principles highlighting the Board's independence through a Memorandum of Understanding. The commitments the Foundation is proposing in paragraph 6.4 are a good starting point, but need to be further developed and strengthened.

In particular, we are of the opinion that ASAF participants should not only commit to "support the IFRS Foundation's mission to develop, in the public interest, a single set of high quality, understandable, enforceable and globally accepted financial reporting standards", but we would propose adding to this statement that the participants, "should also require high quality, transparent and comparable information in financial statements and other financial reporting to help investors, capital markets participants and other users of financial information to make economic decisions".

We do not agree with EFRAG's suggestion that the representation of the IASB and of the participating jurisdictions should be extended. Bearing in mind the importance of the proposed ASAF, and to ensure sufficiently senior representation, we believe that it should be chaired by the IASB Chairman, and that there is no need for multiple Board members to participate in its meetings. Additionally, we believe that each jurisdiction should be consistently represented by the same person at each meeting. We believe this representative should not be accompanied by anyone other than a translator.

Thank you for this opportunity to contribute to EFRAG's due process. You will find our detailed comments in the appendix to this letter, and please do not hesitate to contact us should you wish to discuss any of the issues we have raised.

Yours sincerely,

Steven Maijoor
Chair
European Securities and Markets Authority

APPENDIX I – ESMA's detailed answers to the questions in the Invitation to Comment: *Proposals to Establish an Accounting Standards Advisory Forum*

Question 1

Do you agree with the proposed commitments to be made by ASAF members (paragraph 6.4) and that they should be formalised in a Memorandum of Understanding (paragraph 6.5)? Why or Why not?

1. ESMA supports the Foundation's initiative to set up an *Accounting Standards Advisory Forum (ASAF)* acting as a network of national accounting standard-setting bodies and regional bodies involved with accounting standard-setting. We agree that there is a need for such a platform and that the Foundation's thinking has developed substantially to seek comments on the proposals. The Foundation asked the Board with its *Strategy Review* to formalise existing relationships or to build them further in order to create a network of stakeholders. ESMA believes that some of the proposals would benefit from an indication as how the Foundation will develop contacts with other stakeholders such as securities regulators and IFRS enforcers.

2. We believe that the Foundation should clarify whether the purpose is to liaise with national standard-setters or with the bodies representing the public interest ultimately responsible for the endorsement of IFRSs into national or regional law.

3. In line with our comment letter on the *IASB and IFRS IC Due Process Handbook* (ESMA/2012/673) the independence of the IASB in the standard-setting process, within a framework of public accountability, is key.

4. Being a strong supporter of global accounting standards, we believe that the Board should actively liaise with all stakeholders to ensure that IFRSs are accepted around the world. Therefore, and considering the nature of global standards, we believe that the Board should further invest in setting up dialogues with (international) bodies with an interest in financial reporting rather than seeking compromise positions of regional bodies. In any case, we believe that the forum that the Foundation is considering should not be directly involved in the activities of the IASB and may not harm the independence of the IASB.

   Hence, we believe that the IASB should set the agenda of the group and dedicate the necessary resources to it. The forum should have an advisory role with the aim of discussing the topics at a high-level without going into technical details. It should in our opinion not become or be perceived by constituents as a 'shadow board' setting the boundaries wherein the IASB can act.

5. The proposal on which the Foundation is seeking comments could depending on its implementation potentially have far-reaching consequences. We believe that the Foundation and the Board have developed a strong due process framework around the standard-setting activities and that this should remain the primary focus of the Board. In any case the proposed forum could in our opinion not be considered as a replacement for the existing due process nor should constituents be limited to provide comments to their national standard-setter only. IFRSs are global standards and should be set by an independent technical committee which the IASB is.

6. We agree that the use of IFRSs or a strong commitment to do so is a *condition sine qua non* to participate in the proposed ASAF. This commitment should be supplemented by strong principles highlighting the Boards independence within a Memorandum of Understanding. The commitments the Foundation is proposing in paragraph 6.4 might be a good starting point but need to be further developed and strengthened. In particular, we are of the opinion that:

   — ASAF participants should not only commit to 'support the IFRS Foundation's mission to develop, in the public interest, a single set of high quality, understandable, enforceable and globally accepted financial reporting standards' but would like to propose to add *'which should require high quality, transparent and comparable information in financial statements and other financial reporting to help investors, other participants in the world's capital markets and other users of financial information make economic decisions'.*

     As a result of the importance ESMA attaches to the independence of the IASB, and while fully agreeing that all stakeholders should be consulted, we believe that, as a general rule, the IASB should drive its own agenda and perform its own activities. We acknowledge that in some instances the Board may feel the need to work jointly with other standard-setters. In those cases we believe that the Board should always ensure that the output of these projects meet the objectives and high quality standards that the Board has set for its own projects, especially as not all national standard-setters are driven by investor needs.

   — The consistent application of IFRS is very important for its worldwide success. We encourage all national standard-setters and regional bodies to support that objective which should be considered from the beginning of the standard-setting project. We however would like to note that in most jurisdictions securities regulators or dedicated enforcement bodies are primarily responsibly to achieve consistent application.

     Consequently we would encourage the Trustees to clarify what is meant by 'supporting consistent application of IFRSs'. Especially as experience has led us to learn that some national standard-setters have issued guidance on the application of IFRS.

We have welcomed the IASB's and Foundation's increased efforts to strengthen relationships with securities regulators and enforcers of IFRS. We believe that a comprehensive view as how to achieve consistent application and the role of the different organisations would be beneficial.

— National standard-setters or regional bodies should indeed make their best efforts to promote the endorsement/adoption of IFRS in full and without modification over time. We are however wondering whether it might not be in the Foundation's interest to seek stronger commitment from jurisdictions outside the proposed ASAF as well.

7. We would strongly encourage the Trustees to develop the network model of stakeholders other than national standard-setters further. We think here in the first place of representatives of the investor community.

8. If the Foundation continues with the proposed forum we believe that further consideration should be given to the role of national standard-setters within other bodies of the organisation such as the IFRS Advisory Council. Indeed, we believe that a misbalance could be created towards an overrepresentation of national standard-setters.

Question 2

The Foundation believes that, in order to be effective, the ASAF needs to be compact in size but large enough to allow for an appropriate global representation. Do you agree with the proposed size and composition as set out in paragraph 6.7-6.13. Why or why not?

9. We agree with the proposed size and composition set out in the consultation paper. As stated in our response to question 1 we believe that the Forum should be composed of bodies representing the public interest and that are with ultimate responsibility for the endorsement of IFRS into national or regional law.

10. Considering the importance of the Forum and to ensure senior representation we believe that it should be chaired by the IASB chairman and that there is no need for multiple Board members to participate in its meetings. In addition, we believe that each jurisdiction should be represented by one and the same person over time and during the same meeting. Having said that, we believe that the members can be accompanied by translators as suggested by the Foundation. Considering the nature of the Forum we see no need for them to be accompanied by technical experts.