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RE: EFRAG's draft response on the IASB's Exposure Draft *Measurement of Liabilities in IAS 37*

The Committee of European Securities Regulators (CESR) has considered, through its standing committee on financial reporting (CESR-Fin), EFRAG's draft comment letter on the IASB's Exposure Draft (ED) *Measurement of Liabilities in IAS 37*.

We thank you for this opportunity to comment on your draft response and we are pleased to provide you with the following comments.

CESR has concerns about the due process applied to this project. We share the views of EFRAG and of the two dissenting Board members that the IASB should re-expose the entire proposed standard and not only the proposed measurement requirements because measurement objectives and methods and recognition criteria are closely related.

We would urge the IASB to reconsider its approach and to take into account that:

a) The 2005 exposure draft raised many concerns among constituents. CESR was particularly concerned about the fundamental changes the IASB introduced in the recognition and measurement of liabilities (the removal of the *probability of outflow* criterion).

b) CESR is aware of the IASB's publication in February 2010 of a working draft of the entire revised standard but is also aware that no comments were sought from constituents. We do not believe this publication is an adequate counterbalance to the disadvantages of the partial re-exposure process as expressed above.

c) CESR notes that there is a significant divergence among Board members on the inclusion of a risk margin and a profit margin in the measurement of a liability. We think that such a significant number of dissenters (six out of 15!) is unusual and an indication that further deliberations might be helpful. Re-exposure would be beneficial as it would allow the IASB to reconsider the proposals carefully and would ensure a balanced and transparent debate with stakeholders.

d) Finally, we would like to note that we are not aware of clear indications (amongst other things based on the enforcement cases in CESR's database) that the current standard has led to significant or extensive application problems that would oblige the IASB to fix the standard quickly and would consequently not allow time for a full re-exposure.

CESR has not responded to the detailed questions in the exposure draft as we believe that the re-exposure of the entire standard is key. However, we have identified some issues illustrating why we believe the proposals in the ED need further discussion:

a) paragraph B15 proposes the inclusion in the measurement of a liability of an adjustment for the risk that the actual outflows may differ from the expected outflows. CESR understands that the purpose of this proposal is to address the fact that the uncertainties on the final amount of liabilities can be different, in particular when the possible outcomes have a very different likelihood of occurring. However, CESR believes that more guidance should be provided on what this adjustment is intended to represent, when it should be recognised and how it should be measured.

b) The Board seems to be divided (six out of 15 members expressing dissenting views) on the proposal to include a profit margin in the measurement of the liability based on internal cost (paragraph B8 of the ED). There are pros and cons to such a requirement. For example, it may be argued that the inclusion of a profit margin has an economic rationale and will increase comparability on the basis of the Board's assertion in BC21 that "*there is a market for most types of services*" and so "*in most situations preparers of financial statements can measure the value of services by reference to observable market-prices and do not have to use their own estimates of costs and margins*". On the other hand, it may also be said that a market for the kind of services required may not always exist and the proposal gives no guidance about what constitutes a market and how to determine the margin when there is no market for the service (paragraph AV2 (c)).

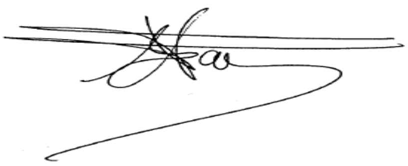
   If the Board retains this requirement of including a profit margin when the measurement of the liability is based on internal costs, CESR would recommend that the Board clarifies better its reasons for requiring this inclusion, as, in these circumstances, the lowest amount an entity would rationally pay, consistent with the guidance in paragraphs 36A and 36B, would not include a profit margin.

In addition, we note that the IASB decided to remove the "*probability of outflow*" criterion from the criteria to recognise a liability, but that the definition of a liability (provided in Appendix A) does not change compared to the current IAS 37. We wonder how to apply the new recognition criteria to present obligations in which the probability is remote – for instance, lower than 10% – that an outflow of resources will be required to settle the obligation. We also believe this new approach to be inconsistent with the recognition criteria set out in the Framework (paragraph 91). However, we note that the *Working Draft* published on the IASB's website on 19 February 2010 contains in paragraph 22 an amended definition of a liability. CESR is not sure that all constituents are aware of this change and believes that it reinforces our point that re-exposure is necessary.

To conclude we would like to mention that neither the ED nor the working draft gives an indication of the likely effective date. Generally, CESR would welcome the IASB indicating likely effective dates when publishing exposure drafts, even if only by indicating the proposed time between the issuance of the standard and its initial mandatory application.

I would be happy to discuss all or any of these issues further with you.

Yours sincerely,



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Chair of CESR-Fin