COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Stig Enevoldsen
EFRAG

35 Square de Meeûs
B-1000 BRUSSELS

Date: 15 February 2010
Ref.: CESR/10-197

RE: EFRAG's draft response on the IASB's Exposure Draft *Management Commentary*

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

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

Seeing management commentary as an integral part of financial reports, CESR fully supports requiring enhanced management commentary information. CESR believes that information contained in the management commentary is firmly connected to financial statements as it provides users of financial reports with key information on the way management looks at the financial statements. Furthermore, we believe that management commentary should be as comparable and coherent between entities as possible.

As EFRAG mentions in its draft response to the IASB, Europe has a long tradition of requiring adequate management commentary information. Principles for preparing management commentary are laid out in the Fourth and Seventh Company Law Directives and are supplemented by national requirements. Consequently, although we can see benefit in developing guidance for other jurisdictions where guidance either does not exist or could be enhanced, CESR believes that the IASB could be using its resources better at this time to address more urgent issues.

This said, CESR agrees with EFRAG and the IASB that if resources are to be so expended, then the provisions of management commentaries should not be prescribed by an IFRS but rather by non-authoritative guidance. Therefore, as indicated in our response to question 1, the wording should be clear regarding the non mandatory nature of the guidance.

Our detailed comments on EFRAG's draft response are set out in the Appendices.

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

Yours sincerely,

Fernando Restoy

Chairman of CESR-Fin

APPENDIX 1 – CESR'S DETAILED ANSWERS TO THE QUESTIONS IN THE ED

Question 1
Do you agree with the Board's decision to develop a guidance document for the preparation and presentation of management commentary instead of an IFRS? If not, why?

Seeing management commentary as an integral part of financial reports, CESR fully supports requiring enhanced management commentary information. CESR believes that information contained in the management commentary is firmly connected to financial statements in that it provides users of financial reports with key information on the way management looks at the financial statements. We agree with the IASB's conclusion, that financial and non-financial information about an entity contained in its management commentary complements that entity's financial statements, and that as a result management commentary can give important explanations regarding the conditions and events that triggered the information contained in the financial statements.

As EFRAG mentions in its draft response to the IASB, Europe has a long tradition of requiring adequate management commentary information. Principles for preparing management commentary are laid out in the Fourth and Seventh Company Law Directives and are supplemented by national requirements. However, we can see benefit in the IASB's producing this guidance for other jurisdictions where guidance either does not exist or could be enhanced. Furthermore we also believe that management commentary should be as comparable and cohesive between entities as possible. Consequently it should be left to different jurisdictions individually to decide whether greater or lesser prominence should be given to this guidance (e.g. by giving it a higher legal status). Making such a standard mandatory would on the other hand run the risk of producing inconsistencies with existing (national/regional) literature and hence may actually serve to prevent global enhancement of management commentary. CESR therefore agrees with EFRAG and the IASB that provisions relating to the production of management commentaries should not be prescribed by an IFRS but rather take the form of non-authoritative guidance.

Moreover, the current wording of paragraph 8 may be a source of confusion as it states that « an entity's management should apply paragraphs 9-39 when preparing management commentary to accompany financial statements prepared in accordance with IFRSs ». In certain jurisdictions, management commentary-type reports accompanying IFRS financial statements are mandatory but their contents are defined by local legislation or regulation. As such, the provisions of paragraph 8 may be interpreted as requiring the application of this guidance every time such a report is published. We recommend the IASB clarify the wording of this paragraph to make it evident that only when an entity publishes a management commentary identified as complying with this guidance and accompanying IFRS financial statements need the entity apply paragraphs 9-39.

Finally, although CESR believes that non-authoritative guidance might help towards global convergence of Management Commentary requirements, we agree with the view expressed by the three dissenting board members in the Alternative View (AV4) that having a project on Management Commentary at this time is an effective use of neither IASB resources nor the resources of constituents. The decision to undertake this project has to be viewed against a background of the other priorities of the IASB (such as resolving the issues around financial instruments accounting and responding to requests from the G20 and other leaders). It would only be reasonable to begin considering any change to the status of the management commentary guidance when all other higher priority projects have been finalised. However, as stated previously in CESR's comment letter to the IASCF on the Constitution Review (CESR 09-1025) we believe that setting accounting standards for listed companies should remain the main focus and priority of the IASB.

Question 2

Do you agree that the content elements described in paragraphs 24–39 are necessary for the preparation of a decision-useful management commentary? If not, how should those content elements be changed to provide decision-useful information to users of financial reports?

Like EFRAG, CESR supports the high level principle-based approach towards the content of management commentary that the IASB has chosen to adopt. We believe that the information the IASB has identified as being essential to providing decision-useful management commentary in paragraph 24 provides a good overview of the qualitative characteristics of management commentary.

Although the list does not purport to be exhaustive we believe nevertheless that it is important to leave entities with sufficient flexibility to comment on all the aspects of their business performance that they deem relevant for users of financial statements. CESR believes that developing rules for the elaboration of general financial information for investors about the company and its environment is primarily the responsibility of legislators or securities regulators.

In paragraph 39 the ED calls for entities, in cases where they include financial performance measures in management commentaries that are either not required or not defined by IFRSs, to define those measures, to explain how they have been derived, and where possible, to reconcile such measures to the relevant information contained in the financial statements. CESR agrees fully with this requirement but would be inclined to add a principle that all information presented should on the whole be based on the figures included in the IFRS financial statements and that the use of indicators not based on such figures should be limited as such indicators reduce comparability between entities and do not necessarily give additional insight to users of financial statements.

Question 3

Do you agree with the Board's decision not to include detailed application guidance and illustrative examples in the final management commentary guidance document? If not, what specific guidance would you include and why?

Like EFRAG, CESR supports the IASB's proposal not to include detailed application guidance and illustrative examples. We believe that it is up to organisation other than the IASB, primarily those in jurisdictions that might not yet have adequate guidance on management commentary, to develop such guidance or illustrative examples to help entities preparing their financial reports.

However, we have some concerns about the second reason the IASB gives in BC48, namely that *'The Board noted the risk that its application guidance or illustrative examples could be interpreted as a floor (minimum requirements) or a ceiling (the only disclosures for inclusion in management commentary)'*. CESR agrees that this is a valid concern but questions to what extent including such an argument might be extrapolated by some to other IFRS disclosure requirements.

APPENDIX 2 – OBJECTIVE, USERS AND QUALITATIVE CHARACTERISTICS OF MANAGEMENT COMMENTARY AND PLACEMENT PRINCIPLES

In appendix 2 of its draft comment letter, EFRAG raises some concerns about proposals that are not covered in the Invitation to Comment part of the ED *Management Commentary*, in particular the proposals on the framework for the preparation and presentation of management commentary described in paragraphs 8 – 23.

CESR is in general supportive of the comments made by EFRAG except those relating to the placement principles.

In the Basis for Conclusions the IASB notes that it decided to defer its work on a framework for disclosure to Phase E of the conceptual framework project. The Board noted that Phase E of the conceptual framework project includes the development of disclosure principles. Consequently, the Board views Phase E of the conceptual framework as the appropriate time to resolve questions about the placement of disclosures in financial reports.

CESR agrees with the IASB's decision to defer the development of placement principles to Phase E of the conceptual framework.

We believe that existing standards provide a cohesive picture regarding what information has to be provided in the notes. These existing standards should serve as a starting point for decisions regarding where to place information within financial statements. As the management commentary guidance will be non-mandatory, relevant disclosures have to be provided in the notes. A way forward to avoid duplication could be cross-referencing the guidance to the relevant parts of the standards.