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Board (IASB)
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Ref: IASB's Exposure Draft Annual Improvements – Volume 11

Dear Dr Barckow,

The European Securities and Markets Authority (ESMA) thanks you for the opportunity to respond to the IASB's due process with regards to Exposure Draft *Annual Improvements – Volume 11*. We are pleased to provide you with the following comments with the aim of improving the consistent application and enforceability of IFRS in the European Union.

ESMA notes that proposed Annual improvements are limited to changes that either clarify the wording in an IFRS Accounting Standard or correct relatively minor unintended consequences, oversights or conflicts between the requirements of the IFRS Accounting Standards. ESMA supports the IASB's efforts to increase the quality of financial reporting and agrees with the proposed amendments.

However, ESMA is of the view that while some of the proposed amendments will correct unintended consequences, they will not result in providing sufficient clarity on the application of the affected requirements. The reasons for these concerns are set out below.

Proposed amendment to IFRS 9 Financial Instruments – Derecognition of lease liabilities

The proposed amendment clarifies that a lessee recognises the gain or loss on extinguishment of the lease liability in profit or loss in accordance with paragraph 3.3.3 of IFRS 9. However, ESMA notes that this amendment will not provide sufficient clarity on whether a change to a lease arrangement that reduces the consideration for the lease should (i) be treated as an extinguishment of a liability under IFRS 9 or (ii) be accounted for as a modification in accordance with the requirements of IFRS 16 *Leases*. ESMA also notes that some stakeholders expressed concerns that this lack of clarity may negatively affect the faithful representation of the substance of a lease modification.

Therefore, ESMA suggests that the IASB addresses the interaction between IFRS 9 and IFRS 16 on a timely basis in a narrow-scope standard-setting project or as part of the post-implementation review (PIR) of IFRS 16, if the review starts soon.

Proposed amendment to IFRS 10 Consolidated Financial Statements – Determination of a ‘de facto agent’

ESMA acknowledges that the proposed amendment to paragraph B74 of IFRS 10 to use less conclusive language should prevent ambiguous outcomes in the application of the principle outlined in this paragraph and should eliminate the inconsistency with the requirement to use judgement in paragraph B73.

In its response to the IASB’s PIR of IFRS 10, IFRS 11 and IFRS 12¹, ESMA expressed concerns that paragraphs B73 and B74 do not seem to provide sufficient clarity on how to consider relationships between certain parties such as how two or more sister companies, belonging to the same ultimate parent, should assess control over a third entity in the absence of a contractual agreement (‘de facto agent’). ESMA notes that the proposed amendment does not seem to resolve such concern and encourages the IASB to address this issue as part of its standard-setting activities. For example, the IASB may clarify that the proposed amendment to paragraph 74² should not be applicable when assessing a ‘de facto agent’ relationship between two sister companies (which are subsidiaries of the same parent) with regards to a third entity.

In case you have any questions or comments please do not hesitate to contact me or Isabelle Grauer-Gaynor, Head of the Corporate Finance and Reporting Unit.

Yours sincerely,

[signed]

Verena Ross

¹ [ESMA32-67-716](#) Report - *On the application of IFRS 10, IFRS 11 and IFRS 12*, paragraph 98.

² Third sentence of paragraph 74 with the proposed amendment: ‘A party might be a de facto agent when those that direct the activities of the investor have the ability to direct that party to act on the investor’s behalf’.