

Mr. Jonathan Bravo
IOSCO General Secretariat
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
SPAIN

5 December 2014

Dear Mr Bravo

Public Comment on the Proposed Statement on Non-GAAP Financial Measures

Deloitte Touche Tohmatsu Limited is pleased to respond to the International Organization of Securities Commissions' Consultation "Proposed Statement on Non-GAAP Financial Measures" (the 'Proposed Statement').

We support addressing the issue of non-GAAP financial measures at a global level as it is pervasive. In our view, non-GAAP financial measures have a role in corporate reporting as they can improve the communication between an issuer and its stakeholders, provided that they are reported in a consistent and unbiased manner. However, we note that the regulatory approaches of various IOSCO members may not be easy to reconcile, given their differences of views about the role of non-GAAP financial measures in financial reporting. We believe that it would be in the best interests of global securities markets if the Statement was applied consistently in all IOSCO jurisdictions and not overlaid with local guidance.

For the Proposed Statement to have the maximum effect, we encourage IOSCO to develop a common definition of a 'non-GAAP financial measure' and to determine which such measures should be subject to this common discipline. We note that several national and regional securities market regulators have already issued (or are developing) guidance for their markets. It is important for the efficient operation of global capital markets that such guidance is consistent and does not contradict the requirements of globally-recognised financial reporting frameworks.

We note also that the Proposed Statement states that it is intended to apply to 'any non-GAAP financial measure wherever the measure is disclosed outside of the financial statements.' We agree with this approach as it recognises the standard-setters' responsibility to set financial reporting standards for the financial statements. Further, we see this application as a way of achieving consistency in the use of non-GAAP financial measures across the annual report as a whole.

However, we do suggest that IOSCO works with the IASB to obtain clarification about what is considered to be an 'IFRS measure.' This is because currently there is no clear understanding of what is 'a measure defined in the applicable financial reporting framework' and yet non-GAAP financial measures are often defined by contrast to a measure defined in the applicable financial reporting framework.

We assume that 'disclosed outside the financial statements' would encompass non-GAAP financial measures included in an issuer's Website and other non-regulated information. We note that some securities market regulators regulate press releases and some Web-based material and others do not. We would encourage IOSCO to determine a consistent scope, application and enforcement of the Proposed Statement.

Our detailed responses to the Request for Comment are included in the Appendix to this letter.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0) 20 7007 0884.

Yours sincerely



Veronica Poole
Global IFRS Leader

Appendix

Comments on IOSCO's Expectations for the Presentation of Non-GAAP Financial Measures

Defining the Non-GAAP Financial Measure

In order that the Proposed Statement may have the maximum effect, we encourage IOSCO to develop a common definition of a 'non-GAAP financial measure' and to determine which measures should be subject to this common discipline.

We agree with the principle that a non-GAAP financial measure should be described with sufficient clarity to enable users to understand how it is derived, its relationship to items disclosed in the financial statements, and why it is considered to provide useful information. We acknowledge that some judgement will have to be exercised in determining the nature and extent of such descriptions. For example, a more detailed discussion may be appropriate when a non-GAAP financial measure is specific to an entity or less frequently used in the issuer's sector or market as compared with a non-GAAP financial measure that is commonly used by all industry/ sector participants.

In addition, it would be helpful if the Proposed Statement distinguished non-GAAP financial measures and *non-financial* measures, including common non-financial key performance indicators, such as number of bank loans written by a bank, churn rates, hotel room occupancy or revenue per square metre.

More generally, we believe that there is a need for standard-setters, and the IASB in particular, to explain the type of measures that their framework and standards address and would be acceptable in financial statements. This is important because non-GAAP financial measures are often defined by contrast to a measure defined in the applicable financial reporting framework. However, there is no clear understanding of what is 'a measure defined in the applicable financial reporting framework.' The proposed revisions to IAS 1 *Presentation of Financial Statements* under the Disclosure Initiative project, published in March 2014, address some issues related to the presentation of sub-totals on the face of the balance sheet and statement(s) of profit or loss and other comprehensive income, but do not address the issue we raise above in a comprehensive manner. We note that the IASB decided at its April 2014 meeting to undertake research on the presentation and disclosure of non-IFRS financial measures within financial statements. We suggest that IOSCO works with the IASB to obtain clarification about what is considered to be an 'IFRS measure.'

Unbiased

We agree that non-GAAP financial measures should be used in an even-handed manner and not be used to avoid presenting adverse information to the market. For example, it would be inappropriate if a press release were to describe financial performance using non-GAAP financial measures exclusively without also including the relevant GAAP financial measures. We refer to various regulatory initiatives aimed at achieving a neutral/ unbiased presentation of information (for example, the 'fair, balanced and understandable' requirement in the UK).

Prominence of Presentation of GAAP measures versus Non-GAAP Financial measures

We agree that when used, a non-GAAP financial measure should have lesser (or no greater) prominence than the most directly comparable GAAP measure. In addition, we agree that presentation of non-GAAP financial measures should not obscure the presentation of, or detract the attention from, the GAAP measures.

Reconciliation

We agree that entities should provide a clear and concise quantitative reconciliation to the comparable GAAP amount presented in financial statements together with an explanation of the adjustments. Consistently with this view, we agree that when a reconciling item cannot be extracted directly from the financial statements, the reconciliation should show how this figure is calculated.

Present Non-GAAP Financial Measures Consistently Over Time

Entities should provide comparative information and explanations about, and the effect of, changes that have been made to the presentation of non-GAAP financial measures over time.

In addition, entities should provide explanations when they no longer use a non-GAAP financial measure.

Recurring Items

While we agree with the objective in paragraph 11, we prefer the articulation in guidance issued by the UK Financial Reporting Council in 2013:

“Where the same category of material items recurs each year and in similar amounts (for example, restructuring costs), companies should consider whether such amounts should be included as part of underlying profit.” [FRC PN 108, 13 December 2013]

In addition, we encourage IOSCO to determine a common approach to address the related issue of whether something that occurs regularly but not annually (e.g., severe storm damage, which may occur twice every decade) should be termed ‘non-recurring’.

Other issues

Scope

The commentary in Section II of the Proposed Statement, *IOSCO’s Work on Non-GAAP Financial Measures*, includes a statement that the Proposed Statement would apply to “to any non-GAAP financial measure wherever the measure is disclosed outside of the financial statements. Non-GAAP financial measures are commonly presented in press releases, periodic reports, disclosure documents filed with securities regulators and stock exchanges, and other communications to shareholders and market participants” (page 5). Not all of these items may be subject to regulation and/ or enforcement by national or regional securities market regulators.

We note that the placement of non-GAAP performance measures used by issuers varies. Some may be presented inside financial statements (on the face of the primary statements or in the notes) as well as outside financial statements (e.g. in annual reports, management commentary, press releases, analyst presentations, etc.), whereas others may be presented outside financial statements only.

We appreciate that regulators may wish that guidance on non-GAAP financial measures should ultimately cover a broad range of documents that an issuer uses to communicate with investors, including but not limited to financial statements (e.g. in management commentaries, annual reports, press releases, profit warnings, presentations to analysts, prospectus documents, brochures presenting the entity, etc.). This is because we understand, and agree, that expectations in terms of the quality and transparency of financial measures released exist whether they are published in or outside financial statements. However, given the different approaches to securities markets regulation that exist among IOSCO members at present, we doubt whether such a scope can be achieved even in the medium term. We believe that it would be in the best interests of global securities markets if the Statement was applied consistently in all IOSCO jurisdictions and not overlaid with local guidance.

We would encourage IOSCO to determine a consistent scope, application and enforcement of the Proposed Statement. In the short-term, it may be appropriate to distinguish clearly how the Proposed Statement would apply, depending on the types of documents in which non-GAAP financial measures are included. For some documents, the Proposed Statement would be a reference for best practices whereas, for others, there would be expectations that they are followed more specifically and subject to regulatory enforcement.