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Rt Hon Lord Hill of Oareford CBE
Commissioner for Financial Stability,
Financial Services and Capital Markets Union
European Commission
Rue de la Loi 200
1049 Brussels, Belgium

14 December 2015

Dear Commissioner Hill

As you are aware, the International Regulatory Strategy Group (IRSG) has strongly supported the creation of a Single Market for capital since the Commission first announced this initiative in the summer of 2014.

I write to you today in response to the Commission's Action Plan on 'Building a Capital Markets Union' which was published on 30 September 2015. The purpose of this letter is to reiterate our support for this initiative and also to highlight our initial reaction to the steps that have been set out by the Commission in the Action Plan.

In the attached paper, we would also like to highlight a number of areas for comment which we hope are of interest and use to the Commission as you embark on realising the Action Plan. These areas include:

- Re-calibration of Solvency II Capital Requirements;
- The revision of the Prospectus Directive;
- Third country access;
- The cumulative impact of regulation;
- Insolvency; and
- Enforcement of EU legislation.

The IRSG will continue to follow developments relating to Capital Markets Union (CMU) closely and stands ready, where appropriate, to support the Commission as it looks to implement the actions set out in its ambitious Action Plan.

Rachel Lomax

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Chair, IRSG Council

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International Regulatory Strategy Group response to the Commission Action Plan on Building a Capital Markets Union

This paper sets out the IRSG's response to the Commission Action Plan on Building a Capital Markets Union which was launched on 30 September 2015.

The IRSG responded immediately to the CMU announcement, setting out the principles that should underpin the development of a CMU. The group also responded positively to the Commission's Green Paper consultation which closed in May.

The IRSG welcomes the Action Plan and the six key areas identified within it, namely:

- Financing for innovation, start-ups and non-listed companies;
- Making it easier for companies to enter and raise capital on public markets;
- Investing for long-term infrastructure and sustainable investment;
- Fostering retail and institutional investment;
- Leveraging banking capacity to support the wider economy; and
- Facilitating cross-border investing.

Nevertheless, we would highlight the following specific areas for comment which we hope will help to inform the Commission's thinking as it embarks on the delivery of the Action Plan:

Re-calibration of Solvency II Capital Requirements	The Commission and/or EIOPA could seek to use the amendments made in relation to the standard model, to encourage NCAs to be more flexible in the application of the rules for companies applying an internal model.
Review of the Prospectus Directive	The revision of the PD will be important to facilitate quicker and cheaper access to the markets and to encourage a wider array of investors to participate in the IPO process.
Third country access	For international businesses operating within the EU, it is vital that CMU not only addresses barriers to a Single Market for capital within the EU but also recognises the international nature of capital markets. The IRSG is concerned to see that there is not greater attention paid to third country issues in the Action Plan.
Cumulative impact of regulation	With many of the legislative proposals still to enter into force it will be much more difficult to assess fully the cumulative impact of regulation on the industry. We therefore support the idea of ongoing assessment of the impact of the changes that have been made.
Insolvency	We support the inclusion of insolvency in the Commission's work programme for 2016 as an important step and we would encourage the Commission to prioritise this issue.
Enforcement of EU legislation	We welcome the increased focus on enforcement as a way of realising a Single Market for capital.

Re-calibration of Solvency II Capital Requirements

It is critical that the EU continues to focus its attention on encouraging further investment in infrastructure in order to meet the current infrastructure funding requirements in the EU, which are estimated to be around EUR 600 billion up to 2020. The Commission has already taken important steps in this regard including the launch of the European Fund for Strategic Investment (EFSI) and the introduction of SME and infrastructure focussed investment products in the form of the European Long-term Investment Funds (ELTIFS). We particularly welcome the Commission's proposals to adjust the calibration of the capital requirements for the Banking sector, in the Capital Requirements Regulation (CRR).

The steps proposed to recalibrate Solvency II are extremely positive and set an excellent precedent. The IRSG is fully supportive of action to facilitate investment in long-term infrastructure and we hope that adjustments to Solvency II will assist greatly in achieving this. Currently though, we note the action will only be applicable to companies that are utilising the standard model under Solvency II. However, it is often those insurers using the internal model who will be the biggest investors in infrastructure. If the substantial funds insurers could invest are to be used to their full potential, without impacting prudential soundness, then EIOPA could seek to use the amendments made in relation to the standard model, to encourage NCAs to be more flexible in the application of the rules for companies applying an internal model.

Additionally, we welcome the work that has been started together with EIOPA looking into the possibility of extending the recalibration of Solvency II to include infrastructure corporates. The IRSG fully supports this proposal.

Review of the Prospectus Directive

We welcome the fact that revision of the Prospectus Directive (PD) has been identified by the Commission as one of the five short-term priorities within the Capital Markets Union project. In order to improve the overall functioning of the public markets it is critical that the Prospectus Directive is revised to facilitate quicker and cheaper access to the markets and to encourage a wider array of investors to participate in the IPO process. In this regard, we have previously highlighted the following key areas which should be examined as part of the revision to the PD, these include:

- Making information available sooner by splitting the prospectus into a core registration statement and the prospectus.
- Increasing the quality of information contained in a prospectus, increasing the availability of non-connected research and by making the prospectus more focused and relevant.
- Broadening investor participation by extending the definition of 'qualified investor' to include a new category of professional investors, by introducing some form of accreditation for such investors and increasing the ability to move price ranges during the IPO process.
- Increasing investor confidence in pan-European offerings by reviewing and aligning the approach of NCAs to prospectus review and approval and encouraging minimum corporate governance standards across the various EU Member States.
- Significantly reducing the prospectus disclosure requirements for follow-on issuances, with a particular focus on eliminating the need to repeat information available elsewhere, such as on a dedicated section of an issuer's website.

Third country access

The IRSG is concerned to see that there is not greater attention paid to third country issues in the Action Plan, we note that the only reference comes in paragraph 6.4. We would reiterate that for international businesses operating within the EU, it is vital that CMU not only addresses barriers to a Single Market for capital within the EU but also recognises the international nature of capital markets. If we are to deliver stronger economic growth and create jobs, the EU must remain open to inward and outward capital flows. We would therefore advocate a strong focus by the Commission on greater regulatory convergence with countries that will act as a source of investment for the EU over the coming years, so as to enable the removal of barriers. The IRSG will submit more detailed comments in its response to the call for evidence on the cumulative impact of regulation that the Commission is proposing as part of the Action Plan.

Cumulative impact of regulation

The IRSG welcomes the Commission's intention to review the cumulative impact of financial reform introduced in the aftermath of the financial crisis. Given the need for swift action to restore financial stability and public confidence in the financial system, a full impact assessment was not feasible. This has led to inconsistencies and contradictions across the numerous legislative acts that have been or are in the process of being implemented. The IRSG will be responding separately to the Commission's call for evidence but would make the observation that with many of the legislative proposals still to enter into force, while inconsistencies and contradictions may be relatively easy to identify, it will be much more difficult to assess fully the cumulative impact of regulation on the industry. We would support the idea of ongoing assessment of the impact of the changes that have been made to ensure that where clear evidence is provided, the Commission will consider amending legislation to ensure that the legislation does not conflict with the needs of economic growth and employment.

Insolvency

The IRSG is pleased that the Commission has decided to include a section in the Action Plan dedicated to the longer-term objectives of CMU. The lack of harmonisation of insolvency legislation across the EU remains a key barrier for investors. Indeed, in some Member States poor insolvency legislation inhibits the availability of finance even internally, and including bank finance. So progress here will have multiple benefits going beyond the reduction of barriers to cross-border investment. We also note that inadequate court procedures are an important component of the overall insolvency regime. Improving insolvency legislation will in itself be of little benefit unless the administrative processes enabling its effective implementation are also fit for purpose. While we appreciate that insolvency is a shared competence, we welcome the Commission's intentions to look at ways within its current remit to address this issue. Inclusion of insolvency in the Commission's work programme for 2016 is an important step and we would encourage the Commission to prioritise this issue. We appreciate the political sensitivity of laws relating to insolvency and will continue to work with our own Government and with practitioners in other Member States, through our bilateral financial services dialogues, to raise the importance of addressing this issue and the need for greater harmonisation.

Enforcement of EU legislation

We fully support the Commission's increased focus on enforcement as a way of realising a Single Market for capital. The Single Market can only work efficiently if its rules are completely and correctly transposed by Member States in a timely manner. We particularly welcome the Commission's intentions to focus its efforts on effective implementation of EU legislation and addressing the practice of 'gold plating' which puts market participants in certain Member States at a competitive disadvantage and promotes divergent implementation of EU law. We would urge the Commission to act to remove barriers to the free flow of capital as a priority.