Ladies and Gentlemen,

Please find below our answer to your invitation to comment on the above mentioned exposure draft. We outline general comments below and answer the specific questions of the exposure draft (the ED) in the annexe.

General Comments

While we agree that a right of set-off should be unconditional, we consider that the ED does not discuss the issue where the parties have an unconditional right of set off and intend to settle net but the right might become void e.g., in case of bankruptcy as a result of the regimes that govern the agreement. In accordance with the requirements of the ED, a net presentation would not be allowed in such circumstance, which does not reflect the economic substance of the transaction.

Moreover we consider that all the numerical disclosures refer to situations that would not exist in practice as a result of the strict conditions of the ED. They would therefore be very burdensome, at least for non-financial enterprises.

The above two points are discussed in more details in the annexe.

Thank you very much for your attention to the above.

Yours very truly,

NESTLE S.A.

Encl.

H. Wirz,
Senior Vice President
Head of Group Accounting and Reporting
ANNEXE

ANSWERS TO SPECIFIC QUESTIONS

Question 1 — Offsetting criteria: unconditional right and intention to settle net or simultaneously

The proposals would require an entity to offset a recognised financial asset and a recognised financial liability when the entity has an unconditional and legally enforceable right to set off the financial asset and financial liability and intends either:

a) to settle the financial asset and financial liability on a net basis or
b) to realise the financial asset and settle the financial liability simultaneously.

Do you agree with this proposed requirement? If not, why? What criteria would you propose instead, and why?

We consider that the ED does not fundamentally change the requirements of IAS 32 § 46 as it allows offsetting when (a) an entity has a legally enforceable right of set off and (b) intends either to settle on a net basis or to realise the asset and the liability simultaneously. However, the ED requires that the right of set-off be unconditional and it removes the reference that the right needs to be currently available. While we support the principles of an unconditional right of set off, we consider that its application in all circumstances is too rigorous.

The Basis for conclusions discusses in broader detail the reason why the right must be unconditional and based on a future event. However the ED does not explain the opposite situation where a right to offset might become void due to a future event such as the bankruptcy of a counterparty. Instead § C6 specifies that an entity’s right to set-off “will depend on the law governing the contract and the bankruptcy regime that governs the insolvency of the counterparties”. We consider that the previously mentioned two references are too restrictive and that the requirement to consider the bankruptcy regime in the various legislation covered by the agreements would render offsetting almost impossible to achieve, e.g., in certain structured transactions.

Moreover we disagree with the Board when it says that it is not sufficient that the right existed at the balance sheet date. On the contrary we consider that it is sufficient that the right be currently available, i.e., that the entity has an unconditional right and the intention to use it at the balance sheet date. The very restrictive requirements of the ED would make a net presentation almost impossible to achieve and result in inflating the balance sheets of the entities, which would not reflect the economic substance of offsetting contracts. Therefore we recommend that the Board leaves the basic principles unchanged but states that offsetting shall be required on the basis of the conditions prevailing at the balance sheet date and consequently removes the reference to the bankruptcy regime.

Question 2 — Unconditional right of set-off must be enforceable in all circumstances

It is proposed that financial assets and financial liabilities must be offset if, and only if, they are subject to an unconditional and legally enforceable right of set-off. The proposals specify that an unconditional and legally enforceable right of set-off is enforceable in all circumstances (i.e. it is enforceable in the normal course of business and on the default, insolvency or bankruptcy of a counterparty) and its exercisability is not contingent on a future event. Do you agree with this proposed requirement? If not, why? What would you propose instead, and why?
As said in our answer to question 1, we support an approach whereby offsetting should reflect the economic substance of the transactions. Consequently, a net presentation should be required on the basis of the offsetting conditions prevailing in the normal course of business on the basis of the conditions prevailing at the balance sheet date. Nevertheless, in case offsetting becomes impossible due to default or bankruptcy of the counterparty, then the entity shall present gross.

As regards the conditional right of set-off, we do not believe that the entity should be allowed to present net because it would be difficult to implement robust criteria to determine under which circumstances a net presentation would be allowed.

**Question 3 — Multilateral set-off arrangements**

The proposals would require offsetting for both bilateral and multilateral set-off arrangements that meet the offsetting criteria. Do you agree that the offsetting criteria should be applied to both bilateral and multilateral set-off arrangements? If not, why? What would you propose instead, and why? What are some of the common situations in which a multilateral right of set-off may be present?

As stated in § BC61 we agree that there are no valid reasons to exclude multilateral offsetting even though it might be rare in practice.

**Question 4 — Disclosures**

Do you agree with the proposed disclosure requirements in paragraphs 11–15? If not, why? How would you propose to amend those requirements, and why?

We fail to see the benefit that the users could get from the numerical disclosures of paragraph 12, at least for non-financial entities. If the standard requires an entity to present net, we believe that the disclosure of the gross amounts as per § 12 (a) and (b) would represent a situation that would not occur based on the situation at the balance sheet date and we do not see the benefit of such disclosure. Likewise, if the entity must present gross, we do not see the benefit of disclosing the net amount as per § 12 (c) and (d) because this would also represent a situation that would not occur. Moreover, we do not understand the significance of the disclosure of § 12 (e) that requires the net amounts after taking into account of all the disclosures of § 12 (a)-(d). Finally, we consider that IFRS 7 already covers the disclosures about collateral.

Therefore we recommend that the disclosures be restricted to a narrative describing the terms and conditions of an entity’s offsetting arrangements.

**Question 5 — Effective date and transition**

a) Do you agree with the proposed transition requirements in Appendix A? If not, why? How would you propose to amend those requirements, and why?

b) Please provide an estimate of how long an entity would reasonably require to implement the proposed requirements.

We consider that the effective date of the proposed requirements regarding offsetting should be concomitant with that of IFRS 9.