

12 May 2014

Steven Maijor
Chairman
European Securities and Markets Authority
103 Rue de Grenelle - 75007 Paris
France

Dear Mr Maijor,

Re: Consultation paper on Guidelines on Alternative Performance Measures

On behalf of the European Financial Reporting Advisory Group (EFRAG), I am writing to comment on the ESMA consultation paper, Guidelines on Alternative Performance Measures.

This letter is submitted in order to contribute to ESMA's due process in a timely manner. Our comments on the draft Guidelines are set out below:

Purpose of issuing new guidance

- 1 EFRAG believes that Alternative Performance Measurement ('APMs') can provide useful information to users when properly used and presented, and assist investors in gaining a better understanding of a company's financial performance. Therefore, EFRAG supports the idea that alternative performance measures should be clearly defined and explained by preparers, and presented consistently over time to improve the understanding of the performance by users of financial statements.
- 2 However, EFRAG believes that the proposed Guidelines do not articulate clearly enough what the underlying principle is that determines the scope of the requirements and the types of disclosures that are asked for. In particular, we are concerned that as currently drafted the guidelines could result in lengthy disclosures that contain relatively little valuable information. We believe that the requirements should be targeted more narrowly so as to avoid clutter and boilerplate language in financial reporting.
- 3 We further observe that ESMA has not provided clear evidence on why the existing CESR Recommendation is no longer considered to provide adequate guidance and is in need of replacement. An evidence-based approach would allow ESMA to identify deficiencies in the existing CESR Recommendation. It would also help in setting clearer objectives for the guidelines and in setting principles underlying the disclosure requirements.

Definition of Alternative Performance Measures

- 4 Although EFRAG welcomes the fact that the Guidelines try to provide a direct definition of alternative performance measures; we are concerned that the proposed definition is overly broad and may result in capturing financial information that we do not consider to be APMs.
- 5 The proposed definition in the guidelines refers to all measures '...other than a measure defined by the applicable financial reporting framework'. In our view, this

definition does not work very well in the context of IFRS financial reporting. IFRS is principle-based and consequently:

- (a) defines very few performance measures;
- (b) does not prescribe detailed formats for the presentation of financial statements; and
- (c) does not define subtotals and line items to be included in those statements.

It is clear from the work on XBRL that many commonly used terms (e.g. operating income and various balance sheet subtotals) are not defined by IAS 1 and IFRSs.

6 EFRAG notes that, in the existing CESR Recommendation, APMs are defined as follows:

- (a) APMs are 'any measure other than a defined measure'; and
- (b) defined measures are 'all information included in audited IFRS financial statements in view of providing a true and fair view, either on the face of the balance sheet, income statement, statement of changes in equity, cash flow statements or in the notes' (paragraph 14).

7 EFRAG believes that, by changing the definition of 'defined measures', ESMA significantly increases the scope of the requirements and hence the volume of disclosures without providing evidence that this might result in useful information.

8 When applied to the IFRS reporting framework, the definition of APMs that is being proposed would cover a much broader range of common and well-understood measures such as:

- (a) line items (including totals and sub-totals) presented on the face of the balance sheet, income statement, statement of changes in equity or cash flow statements that are not specifically defined by IFRSs;
- (b) measures that are presented in the notes to the financial statements, whether they are derived from the primary financial statements or not; and
- (c) measures derived from the primary financial statements that are presented outside the financial statements and whose definition is self-evident from their name (e.g. results before share of investee's results).

9 EFRAG notes that paragraph 25 of the proposed guidelines only provides relief for APMs that are totals or subtotals of measures 'directly readable from financial statements', and that relief is limited to the requirement to provide a reconciliation and the other disclosures remain applicable. In our view, this would result in a scope that is much broader than we believe is appropriate.

10 We believe that, as far as IFRS financial statements are concerned, ESMA should retain the current supporting text to the definition of a defined measure, i.e. paragraph 14 of the existing CESR Recommendation mentioned in paragraph 6-b above.

11 Under the CESR Recommendation supporting guidance, segment information presented in accordance with IFRS 8 *Segment Reporting* is undoubtedly included as defined measures, whereas the proposed guidelines make this outcome at best ambiguous.

Scope of the proposed guidelines

- 12 Paragraph 3 of the proposed guidelines states that the guidance applies to APMs included in financial statements and 'in all documents containing regulated information made publicly available'. Separately, paragraph 9 provides a general exemption to 'APMs that are disclosed in accordance with other applicable law that sets out specific requirements governing the determination of such measures'.
- 13 EFRAG believes that the proposed scope is overly broad and lacks a clear underlying principle. More particularly, the proposed scope gives rise to a number of issues:
 - (a) *All documents* – By referring to 'all documents containing regulated information made publicly available', it appears that the proposed guidelines are intended to apply to 'all documents' provided that they include information that is regulated regardless of whether the documents themselves are regulated. This would imply that the proposals would cover any form of communication that merely extracts financial elements from regulated publications (e.g. it would cover presentations to analysts and financial information on websites), no matter how insignificant.
 - (b) *Regulated Information* – Entities operating in regulated industries often include a summary of information based on their regulatory filings (i.e. regulated information) in their financial communications. Under paragraph 9 of the proposals, a relief is only available for other information provided that it is determined in accordance with specific requirements under applicable law. Consequently, it is unclear to what extent such summarised information would fall within the scope of the relief.

Application to prospectuses and related documents

- 14 EFRAG believes that, consistent with the CESR Recommendation, the proposed Guidelines should not apply to prospectuses or part of prospectuses as proposed in the Consultation Paper.
- 15 We are concerned that the proposed requirement may inadvertently cover the financial information that is required in case of entities with a complex financial history¹ or entities with significant financial commitments as defined under the Prospectus Directive and its application guidance. We do not believe that, for example, carved-out financial information (e.g. in the case of a spin-off transaction) and combined financial information (e.g. in the case of a listing of newly formed group) should be treated as alternative performance measures.
- 16 We further note that information in prospectuses, including financial data not extracted from an issuer's audited financial statements, is governed by the Prospectus Directive and its implementation guidance and is subject to a specific recommendation issued by CESR in February 2005 reissued and updated by ESMA in 2013 (CESR Recommendation for the consistent implementation of the European Commission's Regulation on Prospectuses n° 809/2004).

¹ A 'complex financial history' arises whenever the existing statutory accounts of an issuer needing to prepare a prospectus do not provide a comprehensive picture to investors of the financial history of the operations that it controls, or will control.

Prominence of defined measures over APMs

- 17 EFRAG agrees that financial information prepared and presented in accordance with the applicable financial reporting framework is of primary relevance.
- 18 However, giving less prominence to alternative performance measures on a systematic basis may not always result in providing the most useful information.
- 19 EFRAG believes that it would be unhelpful if the ‘prominence’ requirement as currently drafted in the Guidelines would effectively result in imposing a form of ‘ceiling’ on the amount of voluntary information that an entity is allowed to disclose regardless of whether such information is beneficial to user. In certain industries, APMs are customarily included in the consolidated financial statements as it is considered that they provide valuable information for users, for instance when they aim at portraying long term value creation or embedded value of business. Further, we note that such measures may not be reconcilable to defined measures.
- 20 Therefore, we believe that the guidelines should focus on ensuring that APMs are not presented with *undue* prominence, emphasis or authority, which would be more consistent with the subjective assessment of prominence in the first place.
- 21 EFRAG acknowledges that assessing whether APMs are given undue ‘prominence, emphasis or authority’ may also be subjective in practice, as it will depend on factors such as: order of presentation, length of the material, tone of the wording and typesetting. However, we believe that the subjectivity of the assessment would be reduced if ESMA clearly defined the objective of the guidelines in a way that focuses on the usefulness of the resulting information for users.

Disclosure requirements

- 22 EFRAG believes that it is important that users of financial information can understand all terms used and that they have ready access to the definitions of APMs, the reason for their use and their calculation or determination.
- 23 Financial reports vary in frequency, form and length; they range from complex and detailed announcements to short presentations on key figures. Therefore, EFRAG believes that the Guidelines should not be overly prescriptive as to where the disclosures on APMs should be presented.
- 24 In the light of the ongoing debate about the length and complexity of disclosures, we believe that ESMA should also avoid introducing requirements that may inadvertently result in boilerplate disclosures that are repeated frequently.
- 25 Paragraph 8 of the guidelines already proposes permitting press releases to include the required disclosures by reference to other documents. We believe it would also reduce the burden on users and preparers if a similar relief was applied to interim reports and other ‘intra-period’ documents where the relevant APMs were unchanged from the prior year annual report. EFRAG believes that certain disclosures (e.g. definitions that have remained unchanged) should not be required in all financial communications, but could rather be included by way of a cross-reference to other published documents.

If you would like to discuss our comments further, please do not hesitate to contact Hocine Kebli or me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Françoise Flores', with a short horizontal line underneath.

Françoise Flores
EFRAG Chairman