

To: Mr Steven Maijoor  
Chair  
ESMA  
103 rue de Grenelle  
75007 Paris  
France

Subject: ESMA [draft] Guidelines on Alternative Performance Measures

14 May 2014

Dear Mr. Maijoor,

We are taking this opportunity to comment on your consultation "Guidelines on alternative performance measures (APMs)". This letter has been drafted by Insurance Europe, representing 95% of the premium income of the European insurance market and the European Insurance CFO Forum, a body representing the views of 21 of Europe's largest insurance companies. Accordingly it represents the consensus view of a significant element of the European insurance industry.

In general we agree with ESMA's identification of the investors' need to have clearly understandable information about issuers' financial performance. It should always be clear what alternative performance measures (APMs) are used and why.

However, we do not support the ESMA issuing these guidelines as we do not believe the current requirements have been proven to be inadequate. We believe it would be beneficial if the ESMA should more clearly define the objective of the guidelines in a way that focuses on the usefulness of the resulting information for users. We also have the view that the ESMA draft guidelines if implemented would contradict the efforts of the IASB's Disclosure Initiative which aims to make the disclosure requirements more effective.

Moreover, we strongly believe that the use of APMs have an equally important role as financial statement figures to explain our business. Rather than 'alternatives', we consider that many APMs are complimentary to the financial statements and that these need to be taken together for the issuer's financial performance to be understood and assessed. For example, the use of embedded value is a very important APM that is widely understood and used by investors and analysts of insurance companies.

Furthermore, we have significant concerns that the scope of application of the ESMA draft guidelines is too broad in terms of the definition of APMs and also the application to public documents such as press announcements, interim financial statements and prospectuses. The latter category is especially unclear to us as a European Directive already covers specific guidelines.

Finally, we would like to point out certain impracticalities. Especially, the general requirement to separately explain each reconciling item (paragraph 22 of the draft guidelines) would lead to a significant increase in disclosure requirements. In the case of life insurers for example some APMs are focused on explaining the long-term value creation through Key Performance Indicators (KPI) which are not always reconcilable to IFRS figures such as "Value of new business" and "embedded value". Furthermore, the use of non-GAAP measures is important to fill the gap between accounting standards and portraying the economics of a company.

Please find our detailed responses in the appendix. Feel free to contact us to discuss any matters in this letter.

Yours sincerely,



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Deputy Director General/Director Economics & Finance  
Insurance Europe



Gerald Harlin  
Chair  
European Insurance CFO Forum

## APPENDIX

### Response to specific questions of the Consultation Paper "ESMA Guidelines on Alternative Performance Measures" (ESMA/2014/175)

*Q1: Do you agree that the ESMA [draft] guidelines should apply to all issuers defined as a legal entity governed by private or public law, other than Members State or Member State's regional or local authorities, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented regardless of the financial reporting framework they use to report? If not, why?*

Yes. We agree that the guidelines should apply only to issuers trading on a regulated market which is similar to the intention of the current CESR recommendations that are intended to reinforce market confidence on financial information released by listed companies.

Nevertheless, we strongly recommend that only National Competent Authorities (NCAs) should be directly affected by the ESMA guidelines. The NCAs should decide how to implement and apply these.

*Q2: Do you agree that the ESMA [draft] guidelines should apply to APMs included in:*  
*a) financial statements prepared in accordance with the applicable financial reporting framework, that are made publicly available, and*  
*b) all other issued documents containing regulated information that are made publicly available?*  
*If not, why?*

- a) No. Financial statements are already subject to accounting and legal requirements. If European-level changes are required, they should be based on IFRS principles, in European accounting legislation or in the Transparency Directive, not through guidelines of ESMA with which NCAs and issuers would be expected to comply.
- b) No. The scope of application of the ESMA draft guidelines is too broad in terms of the application to public documents such as press announcements and interim financial statements. The detailed disclosure requirements surrounding those statements would be so burdensome, impractical and excessive in costs that they would easily outweigh any perceived benefit from providing them. Moreover, this may run the risk of boilerplate template disclosures which would also be counterproductive.

*Q3: Do you believe that the ESMA [draft] guidelines should also be applicable to prospectuses and other related documents, which include APMs (except for pro-forma information, profits forecasts or other measures which have specific requirements set out in the Prospectus Directive or Prospectus Directive implementing regulation )? Please provide your reasons*

No. It is unclear to us why prospectuses and other related documents should be included in the scope as a European Directive already covers specific guidelines. We believe the existing CESR recommendations, which explicitly excludes those documents is a sensible approach. Furthermore, we are not aware of existing evidence that the current framework of the Prospectus Directive or Regulation is inadequate.



*Q4: Do you believe that issuing ESMA guidelines constitute a useful tool for dealing with the issues encountered with the use of APMs? If not, why?*

No. We do not support the ESMA issuing these guidelines as we do not believe the current requirements have been proven to be inadequate. We believe that the objective of the guidelines should be clearly defined in a way that focuses on the usefulness of the resulting information for users.

In general we agree with the ESMA's identification of the investor's need to have clearly understandable information about issuers' financial performance. It should always be clear what alternative performance measures (APMs) are used and why.

We suggest that, instead, the ESMA reissue the CESR Recommendation on Alternative Performance Measures (CESR/05-178b, October 2005) rather than issue guidelines under section 16 of the ESMA Regulation.

*Q5: Do you agree with the suggested scope of the term APM as used in the [draft] guidelines? If not, why?*

No. The scope of application of the ESMA draft guidelines is too broad in terms of the definition of APMs and also the application to public documents. It needs to be clearer on what basis any APMs are not to be subject to all or some of the guidelines.

*Q6: Do you believe that issuers should disclose in an appendix to the publication a list giving definitions of all APMs used? If not, why?*

No. We consider that investors should be able to understand all APMs used and the bases of their calculation, and we consider that to be an important principle. However, definitions and bases of calculation are necessary for some APMs and not for others. The meanings and bases of calculation of some APMs are self-explanatory, such as sales per square metre. It is unnecessary for the issuer to have to provide an appendix listing all APMs used, with their definitions and bases of calculation. Correspondingly, it is over-prescriptive and inappropriate for there to be a rule requiring such an appendix.

*Q7: Do you agree that issuers should disclose a reconciliation of an APM to the most relevant amount presented in the financial statements? If not, why?*

No. We believe it is not appropriate to require such reconciliation on the grounds of impracticality and lack of usefulness. The use of life assurance APMs is widely valued by investors and analysts in providing insight into aspects of insurers' performance and long-term value creation through metrics such as "embedded value", "emergence of free surplus" and "Value of new business". However, these metrics do not always lend themselves to reconciliation to GAAP data. For ESMA to insist on disclosure of such reconciliations would impose a requirement that is essentially impractical or at best very arduous to comply with.

In our opinion, it would be beneficial to investigate more fully the extent of impracticality for such a wide requirement. Especially, the general requirement to separately explain each reconciling item (paragraph 22 of the draft guidelines) would lead to a significant increase in disclosure requirements which lead to an overload of information which would be counterproductive for investors and analysts.

We consider the approach of the existing CESR Recommendation on Alternative Performance Measures appropriate and pragmatic; paragraph 25 contains the suggestion that reconciliation might be used to explain the use of APMs. We strongly suggest keeping this pragmatic approach in the ESMA final guidelines.

*Q8: Do you agree that issuers should explain the use of APMs? If not, why?*

No. We consider that investors should always be able to understand the purposes of APMs, and we consider that to be an important principle. However, specific explanation is necessary for some APMs but not for others. The purposes of some APMs are self-explanatory, such as sales per square metre. It is unnecessary for the issuer to have to provide a statement disclosing why the issuer believes presenting sales per square metre information is useful to investors. Correspondingly, it is over-prescriptive and inappropriate for there to be a rule requiring explanation for the use of each APM.

*Q9: Do you agree that APMs presented outside financial statements should be displayed with less prominence, emphasis or authority than measures directly stemming from financial statements prepared in accordance with the applicable financial reporting framework? If not, why?*

No. We strongly believe that the use of APM's have an equally important role as financial statement figures to explain our business. As explained above, the use of embedded value for example is a very important APM that is widely understood and used by investors and analysts of insurance companies. Rather than 'alternatives', we consider that many APMs are complimentary to the financial statements and that these need to be taken together for the issuer's financial performance to be understood and assessed.

*Q10: Do you agree that issuers should explain the reasons for changing the definition and/or calculation of an APM? If not, why?*

Yes. In principle, we consider that investors need to have information that enables them to make meaningful comparisons of performance over time and as between issuers.

*Q11: Do you believe that issuers should provide comparatives and / or restatements when an APM changes? If not, why?*

Yes. In principle, we consider that investors need to have information that enables them to make meaningful comparisons of performance over time and as between issuers.

*Q12: Do you believe that issuers should provide explanations when they no longer use an APM? If not, why?*

No. In principle, we consider that investors need to have information that enables them to make meaningful comparisons of performance over time and as between issuers.

However, regarding the requirements in paragraph 34 of the [draft] ESMA guidelines we suggest to delete the words "or no longer use". We believe that consistency argument does not apply if an issuer decided to no longer use a specific APM. As the use of a particular APM is not required, the issuer should also not be obliged to explicitly justify why the use of a particular APM is considered to be not necessary. Especially, there is no potential danger of misleading information for investor decisions if the specific APM is not used any more by an issuer.

Consequently, we recommend deleting the paragraph 38 of the [draft] ESMA guidelines without replacement.

*Q13: Do you agree that the [draft] guidelines will improve transparency, neutrality and comparability on financial performance measures to users? If not, please provide suggestions.*

No. We do not agree that the [draft] requirements will improve transparency, neutrality and comparability of financial information. Moreover, we do not believe the current requirements have been proven to be inadequate.

*Q14: Do you agree with the analysis of the cost and benefit impact of the [draft] guidelines? Please provide any evidence or data that would further inform the analysis of the likely cost and benefits impacts of the proposals*

We are surprised at the lack of evidence given by the ESMA to support its assertion that these [draft] guidelines are needed. Examples are given of poor practice by issuers, and we would not disagree that these can be found. But those examples are not, in our view, sufficient for the ESMA to issue guidelines that are to be binding on National Competent Authorities across Europe. Further, as indicated above, we consider that it is far from clear that there is clear enough benefit to investors to outweigh the cost to issuers.