ESMA Guidelines on Alternative Performance Measures

The ABI’s response to the ESMA’s consultation paper, 2014/175

1. The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK and for investments amounting to 26% of the UK’s net worth. It represents its members both as preparers and users of financial statements

ABI comments

2. We welcome the opportunity to comment on the ESMA’s consultation paper, *ESMA Guidelines on Alternative Performance Measures*.

3. We agree that investors need to have consistent and comparable information about issuers’ financial performance. It should always be clear:
   - what alternative performance measures (APMs) are used and why
   - how they are calculated and any change in calculation
   - how they compare with those used before.

APMs are commonly used by issuers across Europe and we acknowledge that poor practices occur.

4. However, we do not support these guidelines in their current form. Overall, they comprise a package of rules that might improve reporting in some respects but would not in others. We do not agree with ESMA’s underlying assumption that financial statements generally provide the most appropriate performance information, and that other performance information is of lesser significance to investors. Rather than ‘alternatives’, we consider that APMs are complimentary to financial statements in enabling the issuer’s financial performance to be understood.

5. We consider that the ESMA’s guidelines would also result in issuers being required to publish information that does not always assist investors. They are unnecessarily prescriptive, which may hinder the development of best practice, and they place extra burdens on issuers. They would be inconsistent with a number of initiatives which we support, that aim to ‘cut the clutter’ and reduce the use of non-entity specific, generic corporate reporting. We support instead a principles-based approach that promotes the provision by issuers of relevant, consistent and comparable information, subject to legal requirements
and to supervision by National Competent Authorities - which, in turn, the ESMA can support in the appropriate manner.

6. We therefore suggest that the ESMA reissue CESR’s Recommendation on Alternative Performance Measures rather than issue new guidelines under s.16 of the ESMA Regulation. Further, we suggest that ways to reduce the identified incidence of poor practice should be discussed with the relevant National Competent Authorities. In the UK context, we note that the FRC have recently launched a consultation on extending the powers of the Conduct Committee, which reviews corporate reporting, and the role of auditors in assessing non-GAAP measures.

7. The appendix to this letter sets out our responses to ESMA’s consultation questions.

Association of British Insurers
May 2014
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Appendix

Consultation questions

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?

1. We agree with the ESMA’s identification of this category of issuers in which investors have a relevant interest.

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?

2. No. Regarding (a), we do not agree that ESMA guidance should apply to financial statements. These are already subject to accounting and legal requirements, including the need to reach a true and fair view. If European level changes are required, they should be made either by the IASB (which is looking at the use of non-GAAP measures in financial statements) or in European accounting legislation. Regarding (b), we note that there are existing legal requirements – such as in the UK for strategic report to provide fair, balanced and understandable information. In addition, we are concerned that the scope is unnecessarily broad in capturing every document that contains regulated information – e.g. all presentations to analysts. It would be more appropriate for national competent authorities to determine which issued documents are in scope.

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.

3. No. It is not clear to us that the Prospectus Directive and implementing guidance, together with the CESR’s recommendations that the ESMA adopted in 2013, are 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?

4. No. We support the principles behind a number of the ESMA’s guidelines (but not all of them) and we are concerned that the way the principles are expressed turns them into detailed rules that will be burdensome without sufficient benefit. We suggest that, instead, ESMA should reissue the CESR Recommendation on Alternative Performance Measures rather than issue guidelines under s.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?

5. Yes. However, 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?

6. 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?

7. No. We consider that investors should be able to understand the relationship to the financial statements of some APMs, but that it is not relevant for all of them. We do not agree with the underlying principle of the draft guidelines that information contained in the financial statements generally results in the most appropriate information on which users base their decisions in relation to the performance of the issuer.

8. We consider that many APMs that do not have such a direct relationship with the financial statements that would make the provision of reconciliations helpful to the user are nonetheless helpful.

a. First, in general terms, the longer-term the issuer’s business, the more important APMs are to the user to supplement the annual financial statements. The result is, for example, the provision by life insurers of embedded value information, which is much used by analysts – and for which reconciliations would add no value and be costly and difficult to produce.

b. Secondly, even for shorter-term business, there clearly are APMs that are valuable to the user without any reconciliation to the financial statements – as ESMA itself acknowledges, in referring to sales per square metre in the separate section headed ‘concept and labels of APMs’.

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

9. 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?

10. No. We do not agree with the underlying principle of the draft guidelines that information contained in the financial statements prepared in accordance with the applicable financial reporting framework generally results in the most appropriate information on which users base their decisions in relation to the performance of the issuer. We note in our paragraph 7 above examples of APMs that are not fully based on the financial statements and yet are valuable for communicating with investors.

11. We disagree with the term ‘alternative performance measures’. We do not think it right to assume that APMs are measuring the same thing or have the same aim as figures in the
Nor do they necessarily satisfy the same need of the investor. Rather than ‘alternatives’, we consider that many APMs, or key performance indicators, 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. We therefore do not agree with this proposed requirement.

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

12. 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?

13. 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?

14. 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.

**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.

15. No. We consider that investors benefit most from a principles-based approach that results in issuers giving clear and relevant information about their APMs. But the guidelines are too much rules-based and would result in extra information being given that may instead obstruct the view that APMs give of the issuer’s performance. It is also possible that the guidelines might diminish the extent to which APMs are used, to the detriment of the investor.

**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

16. We are surprised at the lack of evidence given by ESMA to support its assertion that these 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 sufficient benefit to investors to outweigh the cost to issuers.