Dear Sir / Madam,

Re: Consultation Paper on ESMA Guidelines on Enforcement of Financial Information

I have pleasure in enclosing The Investor Relations Society’s contribution to the above consultation paper.

The Investor Relations Society’s mission is to promote best practice in investor relations; to support the professional development of its members; to represent their views to regulatory bodies, the investment community and government; and to act as a forum for issuers and the investment community. The Investor Relations Society represents members working for public companies and consultancies to assist them in the development of effective two way communication with the markets and to create a level playing field for all investors. It has over 670 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250.

Thank you for giving us the opportunity to participate in this discussion on the guidelines on enforcement on financial information. Transparency and disclosure are at the heart of best practice investor relations. The Investor Relations Society wholeheartedly supports current regulation and disclosure requirements for listed companies in the UK, and we support the need for a common European approach to the requirements in the Transparency Directive on the enforcement of financial information. A proper and rigorous enforcement regime will not only help underpin investor confidence and avoid regulatory arbitrage among issuers in Europe, but also help us create a level playing field for all investors.

While the Society supports the principles of a common understanding of enforcement objectives across the EU, we feel the practicalities of establishing the proposed guidelines
on enforcement of financial information will be challenging and will take time to evolve. Further, given the likelihood of differences in enforcement within the different European jurisdictions, we should remain cognisant of the risk of any unintended consequences that may arise from trying to fit all enforcement of financial information under one set of guidelines.

Please note we have not responded to all questions in the consultation paper as we felt some were less directly applicable to the Investor Relations Society and its members.

Q1 Do you think that the proposed guidelines will improve the quality and consistency of financial reporting in Europe? The Society believes that over time the implementation of the proposed guidelines will improve the quality and consistency of financial reporting in Europe. Nevertheless, it will take time to implement so in the short-term we won’t see any immediate improvement.

Q2 Do you have any comments on the potential costs to the financial reporting community of any aspects of these proposals? No comment.

Q3 Do you agree that a common European approach to the enforcement of financial information is required in order to avoid regulatory arbitrage by issuers? In this context, regulatory arbitrage refers to the position where an issuer’s choice of the market on which to list its securities may be influenced by different approaches to enforcement being applied in different European jurisdictions. The Society agrees that a common European approach to the enforcement of financial information is required to avoid regulatory arbitrage. Consistent application of reporting standards and taking relevant measures for enforcement will contribute to a level playing field for issuers within the different European jurisdictions.

Q4 Do you agree with the objective, definition and scope of enforcement set out in paragraphs 11 to 21 of the proposed guidelines? Yes

Q5 Do you agree that issuers from third countries using an equivalent GAAP to IFRS should be subject to an equivalent enforcement and coordination system? Do you agree with the measures proposed to make this enforcement more efficient? Yes, we agree that third countries should be subject to an equivalent enforcement and coordination system, but with different accounting standards and reporting regulations this may prove impractical to enforce.
Q6 Do you agree that enforcers should have the powers listed in paragraph 30 of the proposed guidelines? Are there additional powers which you believe that enforcers should have? No comment.

Q7 Do you agree that enforcers should have adequate independence from each of government, issuers, auditors, other market participants and regulated markets? Are the safeguards discussed in paragraphs 38 to 41 of the proposed guidelines sufficient to ensure that independence? Should other safeguards be included in the guidelines? Do you agree that market operators should not be delegated enforcement responsibilities? The Investor Relations Society agrees that enforcers should have adequate independence in order to carry out their role most effectively. Enforcement responsibilities should not be delegated to market operators as this would pose a conflict of interest, and the Government should not be allowed to influence enforcement decisions.

Q8 Are you in favour of enforcers offering pre-clearance? Do you have any comments on the way the pre-clearance process is described and the pre-conditions set in paragraph 42 to 45 are described? No comment.

Q9 Do you agree that in order to ensure investor protection, the measures included as part of a prospectus approval should be supplemented by additional measures of ex-ante enforcement in relation to financial information? If yes, could you please specify the exact nature of ex-ante enforcement that you would expect from enforcers? Within the UK, the FCA has traditionally checked for consistency of prospectuses but there is no formal review procedure to check if prospectuses follow IFRS or not. While we are committed to investor protection, if further guidelines are introduced here, this may further increase timeframes for implementation.

Q10 Do you agree that a risk-based approach to selection should not be used as the only approach as this could mean that the accounts of some issuers would potentially never be selected for review? No comment.

Q11 Do you agree that the risk-based approach should take into account both the risk of an individual misstatement and the impact of the misstatement on financial markets as a whole? No comment.
Q12 Do you think that a maximum period should be set over which all issuers should have been subject to at least one full review (or to be used to determine the number of companies to be selected in sampling)? The Society believes a maximum period should be set for a full review of all issuers. FTSE 100 companies are subject to review approximately every 3-4 years, so the Society suggests this would be a realistic guideline and starting point for ESMA.

Q13 What are your views with respect to the best way to take into account the common enforcement priorities established by European enforcers as part of the enforcement process? No comment.

Q14 Do you agree that the examination procedures listed in paragraph 54 of the proposed guidelines are appropriate for an enforcer to consider using? Are there other procedures which you believe should be included in the list? No comment.

Q15 Do you agree that, in determining materiality for enforcement purposes, materiality should be assessed according to the relevant reporting framework, e.g. IFRS? The Investor Relations Society agrees with the proposed guidelines when determining materiality for enforcement. We understand that ESMA is committed to consistent IFRS application across Europe, and therefore there is no need to deviate from the IFRS framework that is already in place.

Q16 What are your comments regarding enforcement actions as presented in paragraphs 57 to 67 of the proposed guidelines? Do you agree with the criteria proposed? We agree with the criteria proposed within the guidelines, which seem fair and in the best interests of establishing a common approach to enforcement.

Q17 Do you have any comments on the specific criteria for the submission of decisions or emerging issues to the EECS database? The Society supports the idea of a higher level of harmonisation in enforcement and the EECS is a useful forum to help promote this. However, this additional need to reference to the EECS database may add increased timescales for enforcers to make decisions.

Q18 What are in your opinion appropriate activities that would help to achieve a high level of harmonisation of the enforcement in Europe? The Society supports the work of the EECS and its role of discussing the application and enforcement of the relevant financial
reporting framework, mainly IFRS. We appreciate however, the practicalities of achieving a high level of harmonisation in enforcement may take longer than anticipated.

Q19 Do you have any comments on the transparency, timing and frequency of the reporting done by the enforcers with respect to enforcement actions taken against issuers? No comment.

Q20 What are your views about making public on an anonymous basis enforcement actions taken against issuers? The Society supports this idea of making public enforcement actions taken against issuers on an anonymous basis. This will allow enforcers to share experiences from individual markets.

In summary, the Investor Relations Society supports ESMA’s commitment to a consistent enforcement regime across Europe in order to ensure a level playing field and appropriate investor protection, as well as to avoid regulatory arbitrage by issuers. However, while we support the principles of the proposed objectives by ESMA, in practicality, a ‘one size fits all’ approach may prove more onerous than anticipated to ensure effective enforcement.

Kind regards

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