

Submitted by e-mail

European Securities and Markets Authority
103 Rue de Grenelle
75007 PARIS
FRANCE

The Hague, 15 October 2013

Ref: B13.48

Subject: Eumedion's response to the consultation on ESMA's Guidelines on enforcement of financial information (ESMA/2013/1013)

Dear Sirs, dear Madams,

Eumedion welcomes the opportunity to submit comments on the European Supervisory Markets Authority's (hereafter ESMA) Draft Guidelines on the enforcement of financial information (Document Nr. ESMA/2013/103). By way of background, Eumedion is the Dutch based corporate governance forum for institutional investors. Our 69 Dutch and non-Dutch participants have together more than EUR 1 trillion assets under management. They invest for their clients and their beneficiaries in listed companies worldwide.

Institutional investors rely heavily on adequate financial and non-financial information of EU listed companies in order to be able to make sound investment decisions and to act as engaged shareholders. The confidence that investors have in financial reports is supported and strengthened by proper and rigorous enforcement regimes so as to ensure compliance with the applicable reporting standards and the required transparency of financial information. As institutional investors allocate resources to listed companies in many EU member states, it is fundamental to have an effective, common and consistent European supervisory approach on how the International Financial Reporting Standards (IFRS) should be interpreted and applied in practice. Therefore, Eumedion very much supports ESMA in its efforts to further develop this common approach by putting in place a meaningful set of guidelines in accordance with Article 16(1) of the ESMA regulation.¹

¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of the European Union of 24 November 2010 establishing an European Supervisory Authority (European Securities and Markets Authority) .

Q1: Do you think that the proposed guidelines will improve the quality and consistency of financial reporting in Europe?

Yes, we believe that the guidelines together with the continuing work of ESMA's Corporate Reporting Standing Committee will help to improve the quality and consistency of financial reporting across Europe, which is fundamental for institutional investors' confidence in listed companies' performances and prospects. We expect the guidelines to be an effective instrument since national competent authorities will be required to make any effort to comply with the guidelines in accordance with Article 16 (3) of the ESMA regulation.

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.

We tend not to agree. Whilst we are very supportive of a common European approach to the enforcement of financial information, regulatory arbitrage would not be our biggest concern in case the common approach was not to be sufficiently established. We are not convinced that issuers' choice of the market is seriously impacted by different approaches to enforcement of financial reporting applied in different EU jurisdictions.

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

Yes, we agree. As institutional investors, being the primary users of financial information, it is fundamental that the financial statements of different issuers are adequately comparable and based on a consistent application and interpretation of the relevant accounting standards. A prerequisite for achieving consistency in the application of IFRS across the EU is that competent authorities share the same understanding of the framework and react in the same manner when deviations of standards come to light (recitals 11-12).

With regard to the concept of enforcement, we support ESMA's view that all competent authorities should have the power to take appropriate and timely actions when deviations of reporting standards are discovered in order to ensure that the market is provided with accurate information in accordance with IFRS. Issuing alerts and other publications on the enforcement practices and policies have proven to be proper instruments for both assisting issuers in preparing their financial statements and both keeping users updated with relevant practices.

ESMA is right in its view that enforcement should not be restricted to financial information in accordance with IFRS (financial statements and notes to the financial statements). EU and national requirements for the content of management reports and other disclosures should also be subject to enforcement.

Q6: Do you agree that enforcers should have the powers listed in paragraph 30? Are there additional powers which you believe that enforcers should have?

Yes, we agree that enforcers should have the powers listed in paragraph 30, which are in accordance with paragraph 24 (4) of the Transparency Directive. In addition to that we believe that competent authorities should be granted the power to take appropriate administrative or civil sanctions and measures where the relevant reporting standards have not been complied with. Article 28 of the revised Transparency Directive (finally adopted by the European Parliament in June 2013) offers an adequate legal basis for ensuring appropriate sanctions in all EU member states in case of breaches of Transparency Directive requirements.

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 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?

Yes, we believe that independency from issuers, auditors, regulated markets and other market participants is a key pillar under high quality and effective enforcement of relevant reporting standards in order to ensure that these standards are adequately applied by listed companies and thereby serving appropriate investors' protection.

Q10: Do you agree that a risk-based approach for selection methods should not be used as the only approach?

We would prefer a combination of a risk based approach and rotation. A purely risk based approach would entail the risk that some issuers would never be subject to a review. We agree with ESMA that in respect of determining the selection of companies, aspects such as the complexity of the financial statements, the risk profile of the issuer and its board(s), ethical standards and the board's ability or willingness to apply the relevant financial reporting framework correctly should be taken into consideration.

In addition, risks that are related to the whole sector and that go beyond individual issuers' financial information, should also be taken into consideration. For instance, the case that many European banks still show reluctance to write down real estate assets which significantly lost commercial value should be an important trigger for selecting banks for a full review. We support ESMA's view that indications of misstatements provided by statutory auditors or regulatory bodies as well as motivated complaints should always be considered for a review. At the same time, we also agree with the approach that an unqualified opinion from a statutory auditor should not be considered as proving the absence of a risk of a misstatement.

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)?

Yes, we believe that each issuer should be put up for a full review of a competent authority at least every five years. This would stimulate the relevant reporting standards being properly applied, as all issuers are aware that their financial information being scrutinised by an enforcement authority on a more or less regular basis.

Q15: Do you agree that, in determining materiality for enforcement purposes, materiality should be assessed according to the relevant reporting framework, e.g. IFRS?

Yes, we agree. The principles to be applied in assessing materiality for reporting purposes and for enforcement purposes should be the same. When a material misstatement is detected by an enforcement authority, investors should not only be informed that there is a misstatement but also timely be provided with the adjusted financial information.

Also, we strongly support ESMA's approach to communicate material controversial accounting issues as well as ambiguities in the financial reporting standards to the IASB and other bodies responsible for standard setting and interpretations.

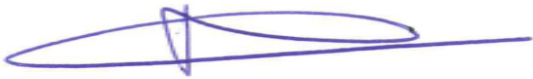
Q20: What are your views about making public on anonymous basis enforcement actions taken against issuers?

As users of financial information, Eumedion supports the concept of making enforcement actions taken against issuers publicly available. Publication is not only important to promote consistency of IFRS application, as set out in draft Guideline 18, but also to inform users about enforcement authorities' interpretations and decisions. In this regard we see no merit in keeping the issuers' names confidential

when making public an enforcement action taken. Publication of an action taken without mentioning which particular issuer failed to apply relevant reporting standards, would not be of much value and could even result in uncertainty and speculation among investors. Investors' confidence could only be significantly strengthened when enforcement actions are disclosed, including the names of the issuers involved.

If you would like to discuss our views in further detail, please do not hesitate to contact us. Our contact persons is Wouter Kuijpers E. wouter.kuijpers@eumedion.nl T. +31 70 2040 302.

Yours sincerely,



Rients Abma
Executive Director