

Le Président

Mr. Steven MAIJOOR
Chairman
European Securities and Markets Authority
(ESMA)
103, rue de Grenelle
75007 PARIS

Paris 13 May 2014

YN.MCP.CB 20140347

Re : CNCC comments on ESMA consultation paper Guidelines on Alternative Performance Measures

Dear Mr Maijoor,

The CNCC (Compagnie Nationale des Commissaires aux comptes) welcomes the opportunity to provide ESMA with its views on the consultation paper Guidelines on Alternative Performance Measures (APMs). The CNCC agrees with the overall objective to define a framework which can be applied consistently by those issuers¹ who provide APMs. Indeed APMs are widely used by issuers and are also very diversified and not consistently defined. It is therefore very important that financial information presented by issuers is transparent and reliable and that users of financial information are able to properly understand APMs that enable them to make better informed decisions.

The CNCC supports many of ESMA proposed guidelines. However, we would like to draw the attention of ESMA to some key concerns we have in connection with questions raised in the above-mentioned consultation paper. Comments relate only to IFRS financial statements of EU listed entities.

Definition of APMs

1. Although the CNCC agrees that APMs include non-GAAP financial measures and that the guidelines cover financial statements, the CNCC is concerned that the proposed definition of APMs might be too broad (paragraph 15 states that '*an APM is any numerical measure of historical, current or future financial performance, which relates to the financial position, comprehensive income or cash-flows, other than a measure defined by applicable financial reporting framework*').

¹ For the purpose of the guidelines an issuer is a legal entity governed by private or public law, other than Member States 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.

2. If we understand correctly the types of APMs that would be covered by the proposed APM guidelines, the definition of APMs also includes '*all measures designed to illustrate the physical performance of the activity of an issuer's business (e.g. sales per square-meter)*'. The CNCC believes that it would not be appropriate at this stage to make it compulsory to apply these guidelines to non-financial APMs and would rather suggest that ESMA encourages issuers to apply them on a voluntary basis. The CNCC considers that it is difficult to define precisely what are non-financial APMs but agrees that some measures such as backlog, for example, are key measures of future financial performance in a lot of industries.

Scope of the proposed guidelines

3. The CNCC considers that the proposed APM guidelines are not sufficiently explicit with respect to the types of documents to which they would apply and how this should be done. Paragraph 3 of the proposed guidelines states that the guidelines apply to APMs included in financial statements and '*in all documents containing regulated information made publicly available*' (management reports and public disclosures issued under the requirements of the Market Abuse Directive). As a result, our understanding is that they may apply to a scope of documents larger than those that National Competent Authorities (NCAs) would usually review (e.g. analyst presentations, brochures including financial measures, etc.). While we can understand the desire that APM guidelines apply to any document used to communicate with the investors' community, we question how their application could then be enforced if the scope of documents to which they apply goes beyond the reach of NCAs (or auditors). We recommend ESMA to clarify more precisely the types of documents to which the guidelines would apply.
4. In addition we believe that the scope of the proposed guidelines is too wide (reference to '*all documents containing regulated information made publicly available*'). Indeed what does regulated information really mean? The regulatory information mentioned is usually governed by other principles, rules or guidance and should comply with all their requirements and fulfill generally a precise objective. As a consequence the regulatory information should be prepared in accordance with these requirements and not with the proposed guidelines. In any case, the meaning of "documents containing regulated information that are made publicly available" should be clarified for it to be understood with the exact same meaning in various jurisdictions under ESMA's supervision.
5. Prospectuses are one of those documents for which we do not understand why they would be excluded outright from the application of the guidelines. As a matter of principle, we agree that APM guidelines could apply to various sorts of documents, as long as the scope of APMs captured is appropriate and the way they apply to the documents is clarified.

6. We agree that, as the Prospectus Directive regulates the way certain financial measures should be prepared and presented (e.g. pro-forma information, profits forecasts and some other specific measures), it would be inappropriate to apply the APM guidelines to those specific financial measures. However, if some other financial measures of the nature of an APM are presented in prospectuses, it may be appropriate to apply certain aspects of the APM guidelines to those.
7. So as to avoid overlap with existing guidance, however, ESMA should consider either to positively extend its APM guidelines to specific sections of the Prospectus, or negatively define sections or types of information that are excluded from its scope.

Prominence of measures directly stemming from financial statements over APMs presented outside financial statements

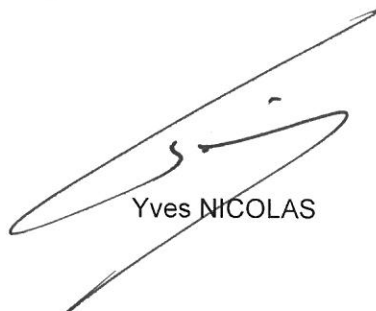
8. Although financial information prepared and presented according to the applicable financial reporting framework is the most relevant, the CNCC does not believe that less prominence, emphasis or authority should be given on a systematic basis to APMs presented in the financial statements or outside, because this may not always result in providing the most useful information. Some measures such as EBITDA or EBIT are usually provided by issuers as relevant indicators of performance and are useful to users. Moreover, the number of GAAP measures is rather limited under IFRS, thus leading many issuers to use APMs as important indicators for financial communication.
9. The CNCC has concerns about how ESMA proposes that this requirement be applied in practice. We believe that "prominence, emphasis or authority" may be very judgmental and should be better defined and explained with a view to enable National Competent Authorities to enforce these guidelines under ESMA's supervision.
10. In addition, a systematic dual-presentation of both an APM and the nearest IFRS line item when providing performance analysis may be burdensome and obscure financial reporting and other publications, especially in consideration of the very limited number of pre-defined line items. Where APMs have already been reconciled with a relevant GAAP measure, and if APMs are regularly presented by a given entity, we recommend ESMA to consider whether it is possible to provide performance analysis based on APMs without a requirement to provide the same based on a GAAP measure.
11. However, communication based on APMs only should not be permitted, and certain key GAAP measures (sales, profit or loss, EPS, cash-flow from operations,...) should be commented in press releases and other financial information.

Reconciliation and disclosure

12. The CNCC believes that the definition of APMs used consistently by issuers (including its components as well as the basis of calculation adopted) should not be systematically disclosed as an appendix to the publication. The information could be given in the notes to the financial statements or in the documents made publicly available either directly or indirectly by reference to another document which contains this information and is readily and easily accessible to users (such as the previous annual report available on the issuer's website).
13. A reconciliation of the APMs to the most relevant amount presented in the financial statements should be disclosed when financial statements (annual or interim) are included in the public document where APMs are provided.
14. If APMs used in a communication have already been defined in another communication, a reference to this communication should be displayed to explain their definition.
15. If the APMs used are totals or subtotals directly readable from the financial statements, no reconciliation is necessary except the reference to the proper financial statements (annual or interim). On the other hand if the APMs are not usually used and not directly readable, reconciliation is necessary.

Finally, due to the global nature of the subject and if this has not already been done, the CNCC would encourage ESMA to share the proposed guidelines at an international level both with the IASB and other regulators before any final guidelines are published.

Yours sincerely,



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