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Consultation Paper: ESMA Guidelines on Alternative Performance Measures

Dear Ladies and Gentlemen

SIX Exchange Regulation is responsible for the enforcement of issuers listed on the Swiss national stock exchange. We appreciate the opportunity to comment on the consultation paper regarding guidelines on Alternative Performance Measures (APMs).

APMs are increasingly used by investors to gain a more comprehensive understanding of an entity's performance. An analysis of the most significant issuers by market capitalisation at the Swiss exchange has shown that every single company uses APMs as part of their communication with investors, although the extent of their use varies significantly. Our analysis has further shown that commonly used APMs are defined differently by issuers. We therefore welcome the effort made by ESMA on this important topic and find the proposed guidelines useful. We would like to highlight the following two matters to the attention of the ESMA:

We are of the opinion that the proposed guidelines should only apply to APMs presented outside of the financial statements. The authority for the financial statements lies with the respective standard-setting body (e.g. IASB for IFRS). We believe that in the interest of good governance and clear responsibilities, ESMA should respect the due process of the responsible standard-setting body to amend existing financial reporting standards and not create new, potentially conflicting requirements. For further details, we refer to our response to Q2 in the Appendix.

We further recommend to ESMA to include an overarching principle in the guidelines that APMs should not be misleading. In order to achieve this, they should be precisely defined, neutrally labelled and consistently applied from year to year. These requirements are broadly consistent with the qualitative characteristics of applicable financial reporting frameworks, such as the IFRS.

Our responses to selected questions in ESMA's Consultation Paper are included in the Appendix to this letter. We would be pleased to discuss with you any questions you may have regarding our answers.

Yours sincerely

SIX Swiss Exchange Ltd

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APPENDIX

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) We don't agree that the proposed guidelines should apply to APMs included in financial statements. In particular the qualitative characteristics of the IFRS framework are in our opinion consistent with the proposed guidelines and the individual standards already include guidance on presentation and disclosures. While the appropriateness of certain additional line items (including totals and subtotals) may sometimes be difficult to enforce under IFRS, we are convinced that ESMA should work together with the IASB through the regular due process to amend existing requirements where necessary.

b) We are of the opinion that the proposed guidelines should cover all documents made publicly available by a listed entity that include APMs (e.g., earnings releases, analyst presentations, fact sheets).

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

We agree with the suggested scope, but we recommend to clarify the boundaries of the scope; for example, we consider it important to specify that pure physical measures (e.g. tons, square meters) are excluded from the APM definition, because the inclusion of such measures could conflict with the requirements and responsibility of other standard-setters (e.g., sustainability reporting).

Furthermore, certain entities are subject to additional reporting requirements, for example to a financial markets supervisory authority. Some key figures reported to a financial markets supervisory authority, for example a solvency measure, could also be part of the external reporting, because they may be highly relevant for investors. According to the definition in the proposed guidelines, solvency measures would fall under the definition of APMs, because they are not defined by the applicable financial reporting standard. We suggest to amend the definition to exclude measures defined by an applicable *regulatory* reporting framework.

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?

We believe that the requirement to disclose a precise definition of APMs is one of most important requirements for a transparent use of APMs. Our enforcement activities showed us various instances where commonly used and labelled APMs were defined differently, for example with regards to the exclusion of certain exceptional items, restructuring expenses and certain unrealized gains/losses. The summary of the definitions for all of the APMs used in an Appendix would be helpful, because they would be easier to find and simplify the comparison of APM definitions between entities.

However, in the interest of avoiding unnecessary reporting overload, we believe that it is sufficient if the Appendix with the definitions of APMs is presented only in one "core document", which could be defined by the issuer (e.g., the management commentary in the annual report). For all other documents subject to the proposed guidelines, we consider a cross-reference to the definitions in the "core document" to be appropriate. Equally important, we are of the opinion that APMs should be clearly labelled as such.

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?

We agree that issuers should disclose a reconciliation of an APM to the closest line item (including totals and subtotals) presented in the financial statements. We consider this to be one of the key requirement for increasing transparency of the APMs, together with the requirements for the disclosure of a precise definition and a neutral labelling.

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

Today, there is a wide-spread view that financial reporting is being overloaded and too much compliance driven. For this reason, we recommend to the ESMA to focus the proposed guidelines on those requirements that are absolutely crucial for transparency.

Furthermore, we believe that it could be prone to boilerplates explanations (e.g., the APM is used by competitors, it is industry practice or requested by investors).

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?

In our view, it would be sufficient, if APMs were presented with equal or less prominence than financial measures prepared in accordance with applicable financial reporting standards.

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

We consider it more important that an issuer should explain *that* it changed an APM and *how* it was changed, which is factual information. Again, we believe that explaining the reasons for changing the definition could likely result in boilerplate language, which is of little benefit.

Furthermore, we believe that the description about changed APMs should not be provided in every document containing APMs, but only in the one "core document", which also contains the definitions of the APMs (please see Q6).

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

While we agree that comparatives and restatements for changed APMs could be useful, the preparation of a restatement could potentially be burdensome. In the interest of a favourable cost-benefit impact, we advise to introduce a requirement to either provide comparatives/restatements or explain the reasons why this was not done ("comply or explain").

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

We believe that it would be sufficient if an issuers discloses that it discontinued to use a specific APM. The list of discontinued APMs could be included in the same "core document" that contains the definitions of APMs and the description of changed definitions (please see Q6 and Q10).

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.

Yes, we agree that proposed guidelines could improve transparency, neutrality and comparability on APMs.