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**Consultation Paper:  
ESMA Guidelines on Alternative Performance Measures**

Dear Mr. Maijoor

As the German Insurance Association (GDV) we welcome the opportunity to comment on the Consultation Paper 'ESMA Guidelines on Alternative Performance Measures' (ESMA/2014/175) published by the European Securities and Markets Authority (ESMA) on 13 February 2014.

The objective of IFRS financial statements is to provide relevant information about financial position and financial performance of the reporting entity. An appropriate performance reporting is of utmost importance for long-term oriented insurers. We agree with ESMA that it should be clearly understandable and transparent for investors what the Alternative Performance Measures (APMs) are intended to express (**Question 8**). Nevertheless, we have serious concerns regarding the specific content of the [draft] ESMA Guidelines as articulated below. In general, the change in APMs' definition, an extended scope of the [draft] ESMA Guidelines and the additional excessive disclosure requirements as a result of the 'complain or explain' approach would lead to significantly increased work overload for issuers. For these reasons we suggest keeping the existing definition of an APM (paragraph 8 of CESR Recommendation, CESR/05-178b, October 2005). Furthermore, we object to inclusion of prospectuses and related documents into the scope of the final ESMA Guidelines (paragraph 19 of CESR Recommendation, CESR/05-178b, October 2005).

On the whole the [draft] ESMA Guidelines are too extensive and do not entirely pass the cost-benefit-test. In particular, we emphatically oppose the impractical and overly burdensome requirement to accompany in general the use of any APM with reconciliations to amounts presented in the financial statements (**Question 7**). We explicitly recommend the removal of paragraphs 22 - 25 of the [draft] ESMA Guidelines without replacement.

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From the insurers' perspective there is at present no common base to produce such reconciliations as the final standard IFRS 4 *Insurance Contracts* (Phase II) is not available yet. Thus, the objective to increase the understandability and comparability of financial information of insurers can't be achieved without undue costs for issuers before the final high-quality standard becomes effective (**Question 13 & Question 14**). Indeed, one of the main reasons for use of APMs by insurers (e.g. embedded value) might be the matter of fact that the key IFRS is unfortunately still under development.

Furthermore, the GDV has the firm view that the [draft] ESMA Guidelines might have the unintended consequence being contradicting the efforts undertaken by the IASB's Disclosure Initiative which aims to reduce the information overload and to improve the disclosures of financial statements. In addition, IAS 1 *Presentation of Financial Statements* allows entities the flexibility to provide relevant, business model and entity specific information. Thus, although we share the rationale for the existing CESR Recommendation on Alternative Performance Measures (CESR/05-178b, October 2005), the requirements of the proposed [draft] ESMA Guidelines go far beyond the initial rationale and will lead unavoidable to overload of additional financial disclosures.

Finally, we do not fully understand the intended interaction between the expectations of ESMA regarding the actions the national competent authorities (NCAs) should take and expectations regarding the issuers themselves before the NCA undertakes an action. We encourage ESMA to explicitly clarify that issuers themselves are not affected by the final ESMA Guidelines directly. Only the NCAs should decide if and how to implement the ESMA Guidelines.

We hope that our general comments and detailed responses to specific questions will be helpful for ESMA in reaching its final conclusions on the [draft] Guidelines on the Alternative Performance Measures. If you would like to discuss our comments further, we would be delighted.

Yours sincerely,



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Member of the Board  
German Insurance Association



Hans-Juergen Saeglitz  
Head of Accounting  
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## Annex

**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 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 regardless of the financial reporting framework they use to report? If not, why?**

Irrespective of the comparability argument, we do not consider it fully appropriate to include entities which are not applying the International Financial Reporting Standards (IFRS) but still being issuers into the scope of the [draft] ESMA Guidelines. Especially, in such cases the initial rationale for the issuance of the Guidelines on the use of APMs by CESR [CESR/05-178b, October 2005] does not apply, as the formats for balance sheet and income statement are prescribed by the Accounting Directive 2013/34/EU. In particular, we remind that the initial CESR Recommendation explicitly referred to the decision of the European Commission that the formats laid down in the European Accounting Directive do not apply to IFRS [consolidated] financial statements. We encourage ESMA to explicitly acknowledge this aspect when finalising the [draft] ESMA Guidelines.

**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?**

If designed in an appropriate way the ESMA Guidelines might constitute a useful tool for dealing with variety of ways on which issuers are communicating its financial position or performance to users when using flexibility of IAS 1 *Presentation of Financial Statements*. Nevertheless, we have the strong view that solely the International Accounting Standards Board (IASB) should remain responsible to design disclosure requirements for financial reporting purposes. Especially, we note that the IFRS requirements are developed by the IASB already with the primarily objective to meet the expectation of investors and other users of financial statements on the capital markets.

Furthermore, we do not fully understand the interaction between the expectations of ESMA regarding the actions the national competent authorities (NCAs) should take and expectations regarding the issuers themselves before the particular NCAs undertake an action. We are concerned about the potential consequences regarding if and to whom the issuers should report if they do not complain with the final ESMA Guidelines, and especially when it is the case. Should every European NCA create a register of issuers who are non-compliant and oblige the entities to report? We would strongly disagree with such a bureaucratic approach if intended by

ESMA. Thus, we kindly request ESMA to explicitly clarify that issuers themselves are not intended to be affected by the ESMA Guidelines directly. The NCAs should decide how to implement the ESMA Guidelines /or not if unnecessary/ considering the issuers behavior in national markets.

**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?**

The GDV does not share the view of [draft] ESMA Guidelines that the reporting of all quantitative information not defined by the applicable financial reporting framework should result in additional, in our view excessive, disclosure requirements. In particular, because we note that [draft] ESMA Guidelines suggest that any numerical measure (...) not defined under IFRS would be considered as an APM (paragraph 15 of the [draft] ESMA Guidelines).

The GDV does not agree that issuers should in general disclose a reconciliation of an APM. We have the strong view that this requirement would be overly burdensome to issuers without any significant benefit to users. It would rather unavoidable lead to further considerable increase of information overload. Furthermore, it would contradict the objective of the IASB's Disclosure Initiative which aims to ensure a level of effective disclosure requirements. Especially, the explicit requirement to separately explain the 'each reconciling item' (paragraph 22 of the [draft] ESMA Guidelines) would lead to excessive disclosure requirements.

We strongly believe that the requirement to explain the objective of a particular APM is suitable and sufficient enough to achieve an understandable information flow between issuers and users. For example, it is from our perspective appropriate to provide a clear and understandable rationale, what the Embedded Value as an APM is intended to express. But it is not appropriate and fully unnecessary to require a detailed reconciliation of Embedded Value to the numbers in financial accounts.

Finally, it is unclear how the reconciliation of a particular APM should be exercised when the particular APM is used between the reporting dates (e.g. in a press release on 31 May). Should the reconciliation refer to numbers in the interim report of 31 March or to the forecast of numbers of 30 June?

For the reasons above we strongly recommend the removal of paragraphs 22 - 25 of the [draft] ESMA Guidelines without replacement.



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

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

We support the view that particular APM should be used in a consistent and understandable way over time. It is a valid recommendation.

However, having the strong view that reconciliations of APMs should not be required by the final ESMA Guidelines we consequently believe that also the requirement in the paragraph 31 of the [draft] ESMA Guidelines should be removed.

Consequently, we recommend deleting the paragraph 31 of the [draft] ESMA Guidelines without replacement.

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

No, regarding the requirements on consistency in paragraph 34 of the [draft] ESMA Guidelines we suggest to delete the words "*or no longer use*". We believe that consistency argument does not apply if an issuer decided to no longer use a specific APM. As the use of a particular APM is not required, the issuer should not be obliged to explicitly justify why the use of a particular APM is considered to be not necessary by the management. Especially, there is no danger of misleading information for investor decisions if the specific APM is not used any more.

Consequently, we recommend deleting the paragraph 38 of the [draft] ESMA Guidelines without replacement.

**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.**

We believe that the transparency of financial communication is at stake when the final ESMA Guidelines on Alternative Performance Measures would remain containing the reconciliation requirements. And the comparability with regard to reconciliation can't be achieved as long as the common starting base (IFRS 4 *Insurance Contracts* Phase II) is not available.

In particular, we strongly recommend deleting the paragraphs 22 - 25 of the [draft] ESMA Guidelines without replacement.

**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.**

The GDV does not agree with the cost/benefit analysis in the ESMA Consultation Paper. In particular, we believe that especially the costs for users are not sufficiently weighted. Nowadays users are already expressing their significant concerns about information overload. Also preparers of financial statements like insurers express continually the serious concerns regarding the cost/benefits relation regarding the existing IFRS disclosure requirements at large. The IASB is recently trying to address these valid concerns via the 'Disclosure Initiative' which we explicitly support.

We are afraid that the [draft] ESMA Guidelines on the use of APMs might have the unintended consequence that the considerable efforts of the IASB in 'Disclosure Initiative' would be effectively contradicted as not reduction but additional detailed information as suggested by this Consultation Paper would be required.

In our strong view, the right approach would be to aim that only relevant disclosures on the use of APMs are transparently provided. For example, the techniques how the APMs are calculated are highly different and in many cases quite sophisticated (e.g. Embedded Value calculations). The sufficient objective of the final ESMA Guidelines on APMs should be to ensure that clear and understandable explanation is provided what a particular APM is meant to express. This should be encouraged or even required as a sufficient measure. For these reasons the [draft] ESMA Guidelines should be redesigned to focus them on how to ensure the usefulness and effectiveness of the financial information provided to investors and other users on financial markets.

Finally, the activities of ESMA should be aligned with the objective of considerable efforts of the IASB's Disclosure Initiative.