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European Securities and Markets Authority
103 Rue de Grenelle
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1 April 2014

Dear Sir

Comments on Consultation Paper: ESMA Guidelines on Alternative Performance Measures

GlaxoSmithKline is a major multi-national pharmaceutical group with a primary listing on the London Stock Exchange and a secondary listing on the New York Stock Exchange. We are grateful for the opportunity to comment on the proposals and our responses to the detailed questions are set out in the attached appendix.

It appears that the guidelines have been written from an “anti-abuse” perspective. Many companies utilise APMs in their communications with investors because of a genuine desire to provide insight into the true performance of their company and not with the intention of misleading investors or hiding material information. While we have no issue with efforts to improve consistency and clarity, with requirements such as reconciliations to GAAP equivalents for financial APMs and explanations and definitions, we do not support measures that create unnecessary restrictions on how companies communicate with investors or that increase clutter and reduce transparency in communications.

Although the proposals are called “guidelines”, ESMA expects all National Competent Authorities to include them in their supervisory procedures and monitor compliance. The “guidelines” will therefore become *de facto* regulatory requirements.

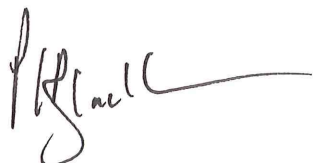
As a result of our US listing, our financial communications with investors are subject to the regulations of the US SEC in respect of “non-GAAP measures”, which are similar in a number of respects to the proposed guidelines on alternative performance measures (APMs). We therefore have practical experience of applying this type of requirement. In particular, we have experience of how quickly such requirements add clutter to any communication, obscuring the messages the company wishes to communicate and reducing transparency for investors.

We are not aware of significant calls from investors in Europe for greater regulation in this area. We believe that any benefits would be limited and outweighed by the compliance costs that the guidelines in their current form will impose on companies and the risk of increased clutter in financial communications actually decreasing transparency for investors.

As a result, we do not believe that increasing the regulatory burden on European companies for a questionable and unquantifiable potential benefit is necessary at this time. However, if the proposals are to be implemented, we believe that they should be no more restrictive than the equivalent rules for US listed companies. In particular, there should not be a requirement to present APMs with less prominence than the equivalent GAAP measures, as this would put European companies at a competitive disadvantage compared with their US counterparts. Also, we believe that the requirements should be restricted to formal periodic results announcements (quarterly and half-yearly announcements) and annual reports, and not extended to include all communications with investors.

If you would like to discuss this response further, please contact Chris Buckley (+44 (0)20 8047 5405; chris.j.buckley@gsk.com) or me.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'PF Blackburn', with a long horizontal flourish extending to the right.

PF Blackburn
Corporate Financial Controller
GlaxoSmithKline plc

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 State 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 not?

Yes.

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?

We agree that the guidelines should apply to financial statements (i.e. primary statements and supporting notes) and associated reports of financial results released to a regulated market (eg Annual Reports, quarterly or half-yearly results announcements).

However, extending the requirements to all other communications with investors would be unworkable (and probably unenforceable) in practice. It is important that companies are able to communicate on a timely basis and with full and transparent information on performance. Placing restrictions on what can be presented, or even said, by company representatives in informal meetings, including those where performance reporting is not the primary purpose, will restrict companies from providing open communication. Company representatives will refrain from providing information that could potentially be regarded as an APM for fear of breaching the guidelines or creating the need to follow a meeting with a further publication giving all of the required information about APMs referred to. This would simply be counter-productive to the aims of open and transparent communication with investors.

Q3: Do you believe that the ESMA [draft] guidelines should also be applicable to prospectuses and other related documents, which include APMs (except for pro-forma information, profit forecasts or other measures which have specific requirements set out in the Prospectus Directive or Prospectus Directive implementing regulation)? Please provide your reasons.

Yes.

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?

The guidelines may improve disclosures related to APMs by some companies but they will not address the issue that APMs could present an 'optimistic' or 'inconsistent' picture. Also, it will still not be possible to compare APMs between companies where differing methodologies are used. Given these limitations, it is important that any requirements do not create unnecessary complexity or clutter in communications of financial performance.

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

The current definition is very broad, which clearly creates issues with the mandated disclosure requirements. For purely financial APMs, such as EBITDA or free cash flow, providing a reconciliation to an equivalent GAAP measure is straightforward. However, for other potential APMs, such as ratios or measures with non-financial elements, it is not clear how the reconciliation requirement could be met. This situation is clearly envisaged in paragraph 20 of the guidelines, which permits a departure from the requirements "because the information provided may not be useful to users." However, there is a complete lack of clarity as to when such a departure would be acceptable. The phrase "some APMs may require a different treatment depending on the information they are designed to communicate" is just too vague to provide companies or their regulators with any meaningful parameters to decide when a departure from the requirements would be acceptable. This will result in increased clutter in financial communications, as many companies will apply a "safety first" approach, and the increased risk of disputed enforcement actions arising from different interpretations of the guidelines.

As an example, it is not clear whether constant exchange rate (CER) calculations for growth rates, which are commonly used by multi-national companies, would be regarded as APMs. An explanation of the methodology used by a company should be provided, but requirements to provide reconciliations or local currency growth rates every time a CER growth rate is used would be excessive and only create unnecessary clutter in company communications.

The APM guidelines should therefore be clearly restricted to the use of financial APMs in formal results communications.

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 agree that companies should provide clearly referenced definitions of APMs used, but believe that companies should be able to decide the most appropriate way in which those definitions are provided in a document, or by cross-reference to a previously published document available on a website.

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 with the reconciliation requirement in respect of financial APMs, but please see comments in the answer to Question 5 in relation to the difficulties arising from non-financial APMs.

Paragraph 25 of the guidelines refers to the use of totals or sub-totals in financial statements being permitted without reconciliation. It should be made clear that this includes, or should be extended also to include, the use of columns in financial statements, as this is an accepted and common method of presentation, at least in the UK, and permitted under IFRS.

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

We believe that this is unnecessary. Companies use APMs in order to provide clarity and insight to investors in respect of the company's performance. Requiring companies to state this in financial reports will merely increase "boilerplate" clutter and not add any meaningful information for 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?

No.

The equivalent rules issued by the US SEC on non-GAAP measures require non-GAAP measures to be presented with no greater prominence than the equivalent GAAP measures. The IASB itself published an Exposure Draft on proposed changes to IAS 1 in relation to disclosures on 25 March, in which it proposed that where an entity chooses to provide additional sub-totals in the statements of profit and loss and other comprehensive income, they should "not be displayed with more prominence than the subtotals and totals specified in this IFRS."

Giving financial APMs no greater prominence than the equivalent GAAP measures is appropriate and workable with a degree of judgement. In practice, how would "less prominence" be determined – a slightly smaller font size, grey text rather than black text, or just presenting the GAAP measure first on the page, followed by the APM?

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

Yes.

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

The APM for one comparative period should be required, except when an APM is first introduced if the costs of calculating the APM for the comparative period outweigh the expected benefit to the company. In practice, we believe most companies will want to provide several periods of comparatives in order to provide meaningful trend data.

Restatements should be encouraged, but not required if to do so would cost more than the expected benefit to the company, in which case this should be made clear.

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

No, for the reasons given in the answer to Question 8.

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 do not believe that the guidelines will have any effect on neutrality or comparability between companies. There could be a marginal improvement in transparency in relation to financial reports from companies that currently do not provide reconciliations between financial APMs and the equivalent GAAP measures.

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.

We are not aware of significant calls from investors for greater regulation in this area. We believe that the benefits will be limited and outweighed by the compliance costs that the guidelines in their current form will impose on companies and the risk of increased clutter in financial communications actually decreasing transparency for investors.