Re: Consultation Paper – ESMA Guidelines on Alternative Performance Measures

Dear Mr Maijoor,

Mazars welcomes the opportunity to express its views on the Consultation Paper – ESMA Guidelines on Alternative Performance Measures (APMs).

APMs are widely used by issuers, either in the financial statements and the related notes thereto or in other documents including financial information made publicly available. Therefore Mazars supports ESMA’s overall objective to define a common approach towards the use of APMs and agrees that this common approach will participate in a common, uniform and consistent application of the Transparency Directive throughout EU.

While we support the proposed guidelines, we have some concerns on which we would like to draw your attention.

Scope of the proposed guidelines

Mazars considers that the proposed guidelines are not precise enough to clearly understand to which documents containing financial information they apply. APMs are used by issuers in many documents made publicly available, ranging from annual or interim financial statements to press releases or analysts presentations.

We believe the [draft] guidelines should be completed on that matter, in a manner that removes uncertainty regarding the publications within the scope of the guidelines in the various jurisdictions under ESMA’s supervision.
One of the objectives of the proposed guidelines stated in the Consultation Paper is to promote a common, uniform and consistent application of the Transparency Directive. Therefore, the scope of the [draft] guidelines excludes APMs provided in documents issued according to the Prospectus Directive.

We believe that Prospectuses and related documents should be included within the scope of the guidelines. It is true that prospectuses include certain financial measures to which the application of the [draft] guidelines would be inappropriate (e.g. pro-forma information, profit forecasts and some other specific measures). However some other financial information provided in prospectuses have the features of an APM and should be dealt with according to the guidelines on APMs.

**Definition of an APM for the purpose of the [draft] guidelines**

IFRSs provide little guidance as to the headings, subtotals and line items in IFRS financial statements and only define *Revenue*, *Net income*, *Earnings per share* and *Total comprehensive income*.

According to the [draft] guidelines, any performance measure that is not defined by the applicable financial reporting framework would be an APM within the scope of the guidelines, irrespective of whether it is provided on the face of the financial statements, in the notes to the financial statements, or in any other document made publicly available.

We believe that a difference should be made between APMs directly presented on the face of financial statements and other APMs provided in the notes or other documents. The presentation of APMs as headings or subtotals in financial statements is an accounting policy and therefore the [draft] guidelines are inappropriate for those measures:

- they are self-reconciled with financial statements;
- they are self-defined in the financial statements and their detailed content is usually provided in the notes to the financial statements;
- changes in their definition, or their replacement by another heading, imply retrospective application and restatement of previous years financial statements.

We also believe that the definition of APMs is too broad, as it encompasses also “*measures designed to illustrate the physical performance of the activity of an issuer’s business* (e.g. *sales per square metre*)”. Applying the principles of the [draft] guidelines to this category of APMs would be burdensome and sometimes impracticable (as suggested in paragraph 20) and we have doubts regarding its usefulness.

**Reconciliations and definitions of the APMs used on a systematic basis**

Mazars believes that a reconciliation of an APM used consistently and on a regular basis to the most relevant amount presented in the financial statements should only be required if the document that provides the APM also includes the relevant financial statements, or if that document relates to a period for which financial statements have been issued.

In all other cases, we consider that such reconciliation is useless, especially if the APM is provided on a regular basis.
We also think that it is not necessary to accompany each document with a list of APMs used and their respective definition provided that:

- APMs are used on a regular basis;
- A list of APMs used and their respective definition is readily and easily available to users elsewhere; and
- A clear reference to that list is made in the document containing APMs.

Prominence given to performance measures directly stemming from financial statements

Finally we do not believe that prominence should be given on a systematic basis to performance measures directly stemming from financial statements over APMs presented outside financial statements.

IFRS 8 authorises the use of non-GAAP measures for segment reporting, provided that those measures represent the way management follows the performance of the entity. In that case the non-GAAP measures are considered as providing more useful financial information, as they picture the performance “with the eyes of the management”.

This demonstrates that APMs presented outside financial statements may result in useful information that does not need to be completed by the corresponding information based on financial statements figures.

Moreover, a systematic dual-presentation, together with dual-analysis, as required by the [draft] guidelines, would be burdensome and sometimes impracticable. When management monitors the issuers’ performance on the basis of APMs that are not presented in financial statements or on the basis of non-GAAP measures, a second analysis of the performance through an explanation of the corresponding figures in the financial statements appears useless and artificial.

Our answers to the questions raised in the Consultation Paper are shown in the appendix to this letter which summarises our concerns and opinion.

Please do not hesitate to contact us should you want to discuss any aspect of our comment letter.

Yours sincerely,

Michel Barbet-Massin

Head of Financial Reporting Technical Support
Appendix: answers to the specific questions raised in the Consultation Paper

**Question 1**
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?

Yes, we agree.

**Question 2**
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 ESMA [draft] guidelines should apply to APMs included in financial statements prepared in accordance with the applicable financial reporting framework that are made publicly available.

Regarding the application of the ESMA [draft] guidelines to APMs included in “all other documents containing regulated information that are made publicly available”, we believe that the expected scope should be defined more precisely.

Paragraph 3 of the [draft] guidelines states that they should apply to “all documents containing regulated information made publicly available. Therefore, the [draft] guidelines apply to the presentation of APMs by issuers in publications such as financial statements, management reports and public disclosures issued under the requirements of the Market Abuse Directive.”

It is not clear whether it should apply only to publications required by the Transparency Directive or Article 6 of the Market Abuse Directive (see the definition of “Regulated information” in the [draft] guidelines) or to any financial information made publicly available.
Indeed the drafting of paragraph 3 could be viewed as encompassing a wide range of documents containing financial information (e.g. analyst presentations, brochures including financial measures, etc.), some of them being outside the scope of review of NCAs.

We believe it important that ESMA clarifies the scope of the [draft] guidelines in a way that is consistent with NCAs’ scope of review.

**Question 3**

*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, profits forecasts or other measures which have specific requirements set out in the Prospectus Directive or Prospectus Directive implementing regulation)? Please provide your reasons.*

Yes, we agree.

We do not see any rationale for excluding prospectuses and related documents from the scope of the [draft] guidelines. Prospectuses are not dealt with by the Transparency Directive or the Market Abuse Directive, but they share the same objectives with the “Regulated information” as defined by the [draft] guidelines. Therefore they should be included in the scope of the [draft] guidelines.

**Question 4**

*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?*

Yes.

We support ESMA’s initiative to define a framework which can be applied consistently by issuers and enforced by NCAs. APMs are widely used by issuers and are entity specific. It is useful that market authorities issue guidelines regarding their use by issuers, as they become an important part of financial information available to users. Nevertheless we have concerns regarding elements dealt with in the [draft] guidelines which are detailed in our answers to the other questions.
Question 5

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

We understand that according to paragraph 15 of the [draft] guidelines, an Alternative Performance Measure 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 the applicable financial reporting framework”.

IFRSs do not define performance measures, except Revenue, Net income, Earnings per share and Total comprehensive income. Therefore, any other performance measure (e.g. gross margin, operating profit, recurring operating profit, EBIT, etc.) presented on the face of the primary financial statements is considered as APM according to the [draft] guidelines.

We believe that a difference should be made in the [draft] guidelines between APMs that are presented on the face of the primary financial statements and APMs that are derived from line items of the financial statements (whether by adding / subtracting amounts or by using alternative methodologies to applicable financial reporting framework).

Moreover, we believe that the definition of APMs is too wide. In particular, it includes “measures designed to illustrate the physical performance of the activity of an issuer’s business (e.g. sales per square metre)”. We do not believe such measures should be included in the scope of the [draft] guidelines. As stated in paragraph 20 of the [draft] guidelines, ESMA agrees that for these specific APMs, some of the principles of the [draft] guidelines may not be practicable or provide relevant information.

Question 6

Do you believe that issuers should disclose in an appendix to the publication a list giving definitions of all APMs used? If not, why?

No, we don’t.

We believe that APMs that are used consistently by issuers do not need to be defined in an appendix to each publication. The definitions could be provided in the notes to the financial statements, or incorporated by reference to a separate document that is permanently and readily available to users, such as year-end financial information available on the entity’s website.
Question 7

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 do not agree that a reconciliation of an APM to the most relevant amount presented in the financial statements should be disclosed on a systematic basis.

We believe that such reconciliation is necessary when financial statements are included in the public document where APMs are provided, or when the APM relates to a period for which financial statements have been issued and made publicly available.

The usefulness of reconciliation when APMs are provided in a document that does not correspond to a period for which financial statements are issued is more questionable, especially if the APMs are provided to users consistently on a regular basis.

Question 8

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

We do not think that this provision would be practicable and useful for all APMs used by an issuer. We agree that it is useful whenever the calculation of an APM departs from applicable financial reporting framework (e.g. an APM calculation using proportionate consolidation for joint ventures whereas IFRSs require equity accounting).

In other cases we do not think it is practicable for an issuer to explain, on a systematic basis and for every single APM used, why it has chosen that measure of performance, rather than any other measure that is not defined by the applicable financial reporting framework either.

Question 9

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, we don’t.

First of all, it is not clear what “presented outside financial statements” means according to ESMA. Does it encompass any APM that is not directly presented on the face of the primary financial statements? Or are APMs that are presented in the notes to the financial statements (e.g. IFRS 8 performance measures) considered as being presented inside financial statements?
We also have doubts on whether financial information directly stemming from financial statements prepared in accordance with the applicable financial reporting framework always provides more relevant information than some APMs. For instance, APMs that are used by the management to assess the performance of the entity, and that are presented in the Segment reporting section according to IFRS 8, are considered to be relevant to users even if they are calculated according to non-GAAP measures.

We believe that a systematic dual-presentation of an APM and the relevant GAAP measure, including a management comment for both, would be burdensome or even impracticable. If the APM is the relevant measure followed by the management, commenting the GAAP measure together with the APM would be useless and artificial.

**Question 10**

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

Yes, we agree.

**Question 11**

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

Usually APMs are provided on a comparative basis. It is therefore necessary that the relevant APM for prior periods is restated and disclosed together with the APM for the current period.

**Question 12**

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

This question is only relevant for APMs that were disclosed on a regular basis.

When an issuer no longer uses an APM that was disclosed on a regular basis, it usually replaces that APM by another that it considers more relevant. We believe that such changes are similar to a change in the definition or calculation of an APM.

Therefore the same explanations should be provided.
Question 13

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.

Question 14

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.

As an audit firm, Mazars is not in a position to assess the cost of implementing the [draft] guidelines by issuers or of using the additional information by users.