Consultation Response

ESMA Consultation Paper: Update to the Guidelines on disclosure requirements under the Prospectus Regulation

09/11/2026

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the Summary of ESMA Consultation Paper: Update to the Guidelines on disclosure requirements under the prospectus Regulatio . Association for Financial Markets in Europe (AFME) is the voice of the leading banks in Europe's financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent over 150 leading global and European banks and other significant market players. Our members play a vital role in Europe's financial ecosystem, underwriting around 90% of European corporate and sovereign debt, and 85% of European listed equity capital issuances. Importantly, AFME members are market makers, providing liquidity, which is essential for ensuring financial markets can function efficiently. We also represent law firms and other associate members which advise market participants and support AFME's legal and regulatory initiatives.

AFME is registered on the EU Transparency Register, registration number 65110063986-76. We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Principles-based and proportionate supervisory convergence

AFME welcomes ESMA's efforts to promote supervisory convergence in the application of the Prospectus Regulation and supports the objective to foster greater consistency in the way competent authorities assess the completeness, consistency and comprehensibility of prospectuses across the Union.

Under Article 20(12) of the Prospectus Regulation, ESMA is required to use its powers under Article 16 of Regulation (EU) No 1095/2010 to promote supervisory convergence in competent authorities' assessment of the completeness, consistency and comprehensibility of prospectus disclosure, including through guidelines on the examination of compliance with the Prospectus Regulation and its delegated and implementing acts. The purpose of such guidelines is to support convergent supervisory outcomes, rather than to introduce new substantive expectations or prescriptive requirements beyond those established in the Prospectus Regulation and the related legislative framework.

This principle is particularly important in the current policy environment. The Listing Act reflects a deliberate policy choice by the co-legislators to streamline prospectus requirements, reduce administrative burdens and facilitate access to public markets. More broadly, the Savings and Investments Union agenda and the ongoing debate on European competitiveness recognise the importance of ensuring that regulatory and supervisory frameworks support capital formation, market efficiency and the ability of European markets to compete globally.

Against that backdrop, AFME believes it is important that Level 3 measures fully support, and do not inadvertently dilute, those policy objectives. The final Guidelines should therefore be carefully calibrated to avoid reintroducing, directly or indirectly, requirements that have been removed, simplified or made more flexible through the legislative process.

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In AFME's view, the ultimate test for the final Guidelines should be whether they facilitate consistent supervisory approaches among competent authorities while preserving issuers' flexibility in demonstrating compliance with the Prospectus Regulation. The focus should be on the regulatory outcome to be achieved rather than on prescribing a single method for achieving that outcome. Firms should remain able to rely on alternative means of compliance, provided that they achieve the same investor protection objective and satisfy the relevant legal requirements.

Where AFME recommends additional illustrative examples or content guidance in specific areas below, this is intended to support - not supplant - the outcome-based, principles-driven character of the relevant Guidelines, by anchoring supervisory judgement to clear, non-exhaustive reference points rather than introducing new substantive tests or prescriptive requirements.

AFME would also encourage ESMA to remain mindful of the practical effect of Level 3 measures in the prospectus approval process. While Guidelines are formally non-binding, in practice they are frequently treated by both market participants and competent authorities as the benchmark against which compliance is assessed. As a result, detailed or prescriptive guidance can effectively operate as an additional layer of requirements even where this was not the policy intention. It is therefore particularly important that the final Guidelines remain principles-based, proportionate and closely anchored to the underlying legislative framework.

AFME's Response

Q1: Do you have any major concerns regarding these deletions? If you think alternative guidance is needed, please provide a clear legal basis and supporting arguments

We have no major concerns regarding the deletion of the Guidelines on OFR, Capital Resources, Capitalisation and Indebtedness, History of Share Capital and Information on Holdings. These deletions correctly follow from the removal of the corresponding disclosure items from the Annexes to the Commission Delegated Regulation, and there is accordingly no legal basis for retaining stand-alone Level 3 guidance on these points. We support ESMA's approach of introducing targeted new guidance on management reports to fill the resulting gap, rather than retaining guidance tied to a disclosure item that no longer exists. Removal should however not affect the ability to include the relevant disclosures on a voluntarily basis or on the basis of Article 6(6) Prospectus Regulation.

Q2: Do you agree with ESMA's proposal for Guideline [1]? If not, what improvements would you suggest?

We do not agree with the proposal for Guideline [1] and recommend that it should be removed and the words "or included from the management reports" should be used to, effectively, always apply what is now proposed as Guideline [2].

The proposal for Guideline [1] in section 2.2.2 is to include those management reports (where required to have been produced) and to identify the sections or paragraphs where there is no consistency with the rest of the prospectus. The result of this approach will not be helping the readability of the prospectus as it effectively means each paragraph (or sentence) that is not in line with the rest of the prospectus will need to be flagged. In our view the better approach, which is supported by the words "or included from the management reports", would be to ensure that all relevant (in the sense of: not outdated or contrasting) information is included in the prospectus without having to include full management reports. Such approach takes into account, amongst other things, that:

- *historical management reports will inevitably contain information that is outdated at the time of prospectus approval – for example, descriptions of economic and industry conditions, risk assessments, R&D activities, and forecasts, changed accounting policies, changes to segmentation;*
- *management reports are periodic reporting documents not drafted with prospectus suitability or liability in mind;*
- *requiring issuers to retrofit management reports for prospectus disclosure and liability purposes (or to prepare detailed synopses identifying outdated information) runs counter to the EU Listing Act's stated aim of reducing the cost and effort of preparing prospectuses; and*
- *the comprehensibility requirement under the Prospectus Regulation.*

Prescriptive requirements to incorporate or directly include all (including contrasting or outdated) information from the management reports and consolidated reports would be problematic. The management reports are not typically prepared in the context of an upcoming offering and are not therefore prepared in accordance with the comprehensive and robust disclosure standards of major jurisdictions. Any material inaccuracy, omission, or misleading statement has the potential to trigger legal liabilities for directors, underwriters, and the company (particularly when involving qualified institutional investors ("QIBs") in the United States). Ultimately, it should be up to the persons responsible for the prospectus to ensure that all material information required to make an informed investment decision is included and has been properly due diligenced.

Q3: Are there any specific situations in which it would be impracticable to ensure consistency between the information in the prospectus and the management report? If so, what are these situations and how would you suggest ESMA take them into account?

Reference is made to our response to Q2, in which we have strongly argued that Guideline [1] should not be retained. As part of our argumentation, we have, in the bullets included in our response, provided examples of situations that are in our view compelling. In the same line, the following can be mentioned:

- ***Post-restructuring management reports.** Where the management report was prepared before (or not taking into account) a material corporate restructuring such as a merger, spin-off or change of reporting segments, line-by-line consistency with the prospectus may be conceptually impossible rather than merely difficult, since the group's composition, reporting and/or structure will have changed fundamentally.*

- ***Sustainability reporting assurance opinions with different consolidation scope.** Where a sustainability assurance opinion included within the management report relates to a different scope of consolidation than the historical financial information in the prospectus (a scenario that may arise in the early years of CSRD implementation) consistency at the level of specific reported metrics may be impracticable.*

See also our illustrative worked examples in Annex I (1. Guideline [1]: Management Report Consistency ("Impracticability").

Q4: Do you agree with ESMA's proposal for Guideline [2]? If not, what improvements would you suggest?

We support the principle of Guideline [2]. However, in line with our position on Guideline [1], Guideline [2] should not be limited to situations where there is no requirement to produce a management report. Should this position not be followed by ESMA, our observations in relation to Guideline [2] as currently worded are set out hereafter (including in the response to Q5).

We note a potential drafting gap between Guideline [2]'s operative text and ESMA's own explanatory commentary. The Guideline refers to issuers "not required to prepare" a management report "as referred to in" the Transparency Directive/Accounting Directive, whereas paragraph 13 of the consultation paper's explanatory text describes the intended scope as issuers "not subject to the Accounting Directive". We recommend ESMA align the operative text of Guideline [2] with its own stated intent by referring to issuers that are "not subject to, or not required to prepare a management report under," Article 4 of the Transparency Directive and/or Chapters 5 and 6 of the Accounting Directive.
We also recommend ESMA supplement this cross-reference with a self-contained, non-exhaustive list of content categories that should normally be addressed. For example: (i) a fair review of the development, performance and position of the business; (ii) principal risks and uncertainties; (iii) post-balance-sheet events material to the investment decision; and (iv) likely future developments. This would improve usability without restricting the scope of the necessary information standard.

See our illustrative worked examples in Annex I (2. Guideline [2]: Content Standard for Issuers Not Subject to the Accounting Directive).

We further recommend that this illustrative list be drafted on a jurisdiction-neutral basis, so that it is equally capable of being satisfied by narrative reporting frameworks used in any major financial centre with comparable investor protection standards, rather than being modelled solely on EU Accounting Directive categories which were designed for issuers already subject to that Directive and were never intended as a template for issuers outside its scope. An illustrative list of this design would reduce the

practical disadvantage currently faced by issuers (and their underwriters) whose primary listing or reporting is based outside the EU, support continued inbound issuance activity from such issuers, and thereby contribute to the depth, liquidity and international competitiveness of EU capital markets consistent with the objectives of the Savings and Investments Union. Deeper and more liquid EU markets, sustained in part by diverse international issuance, directly serve the real economy by broadening the pool of investment opportunities available to EU investors and strengthening the overall attractiveness and resilience of EU capital markets as a venue for channelling savings into productive investment. Conversely, a disproportionate disclosure-format burden on non-EU issuers risks diverting such issuance (and the liquidity, investor choice and market depth it brings) toward other listing venues on the basis of disclosure-format friction rather than substantive investor protection, to the detriment of the EU's capital markets and the real economy it is intended to serve.

We recommend ESMA clarify that an issuer's existing home-market narrative disclosure (where it substantively covers the same categories of information) may be relied upon to satisfy Guideline [2], with supplementary disclosure required only to fill identified genuine gaps, rather than requiring wholesale re-drafting into an EU narrative format.

Q5: Do you agree with ESMA's attempt to ensure a level playing field between European and foreign issuers? If not, how could such a level playing field be better ensured?

We consider that the intention behind Guideline [2] achieves the right balance in principle, but, as noted in our response to Q4, we recommend ESMA first clarify the scope of Guideline [2] itself, so that issuers falling entirely outside the Transparency Directive and/or Accounting Directive are placed beyond doubt within its scope, rather than only issuers exempted from a management-report requirement while otherwise within scope of those Directives.

The practical outcome of Guideline [2] will depend on how NCAs apply the "necessary information" test during scrutiny. There is a material risk that, in practice, NCAs approach the review of a non-EU issuer's disclosure under Guideline [2] as a line-by-line gap analysis against Accounting Directive categories, rather than as a holistic assessment of whether the necessary substantive content is present. If so applied, non-EU issuers would in practice face a heavier compliance burden than the policy intends, since EU issuers incorporate (from) an existing document at negligible incremental cost while non-EU issuers would face extensive supplementary drafting to address each EU-specific category not covered by their home-market format. The focus should be on ensuring that material information normally included in a management report is included, without requiring it to be formally "extracted from" or incorporated from an existing document

A holistic assessment of whether the "necessary information" is substantively present (rather than formal compliance against EU-specific categories) applied consistently by all NCAs, is a more reliable way of testing compliance with that standard for non-EU issuers than a formal reconciliation against EU-specific categories that were not designed with such issuers, and risks generating false positives or false negatives as to whether investor-relevant information is actually present.

We recommend ESMA include in the final Guidelines a statement confirming that NCA scrutiny under Guideline [2] should be conducted on the basis of a holistic assessment of whether the necessary information is substantively present with reference to an illustrative list of content categories proposed in our response to Q4, with supplementary disclosure required only to address a specifically identified material gap in an issuer's existing home-market narrative disclosure, and without requiring a formal reconciliation exercise against Accounting Directive categories.

Q6: Do you agree with ESMA's proposed new guidelines 3, 4, 5 and 6? If you disagree, please set out your proposed alternative, including the legal basis and the rationale supporting your proposal.

We support the consolidation of Q&A 993 into Guidelines [3]– [6]. The elevation of this guidance to formal Guideline status creates a valuable opportunity to address specific interpretive difficulties with the underlying material that have been identified over a number of years but not previously resolved.

- **The consensus endorsement gap**. A persistent source of legal uncertainty in practice concerns the treatment of routine issuer statements made in trading updates and investor communications. For example, that the company is "comfortable with," "trading in line with," or "broadly in line with" current market or analyst consensus. Depending on context, such a statement may constitute an implicit endorsement of a consensus figure and therefore a profit

forecast (because it allows a floor or ceiling to be derived from published analyst estimates) even though no specific figure is stated and the issuer did not intend to make a formal forecast. The consequence is material: an inadvertently created outstanding profit forecast from a routine trading update must subsequently be addressed, confirmed, withdrawn or reconciled in any later prospectus. Guidance applied in comparable jurisdictions draws a clearer distinction between an explicit, active endorsement of a specific consensus figure or range, which may constitute a profit forecast, and a general statement that the issuer is aware of but does not adopt published market expectations, which does not. We recommend ESMA add a worked example to Guideline [3] or Guideline [5] addressing this distinction specifically.

- **The sub-annual/margin calculation gap**. Guideline [4] confirms that a substance-over-form approach applies and that accounting indicators may constitute a profit forecast where information allowing derivation of a floor or ceiling is present in the prospectus. Guidelines [4] and [5] do not, however, clearly address the scenario (which arises frequently in secondary offerings) where a sub-annual directional revenue statement, read together with a previously disclosed margin figure, enables derivation of a floor or ceiling for sub-period profits. The existing worked examples do not illustrate this combination in the sub-annual context. We recommend an additional worked example addressing this.

- **Scope of Guideline [5] - statements that are not profit forecasts**. We recommend that ESMA include a non-exhaustive list of example statements that, provided they meet the stated conditions, do not constitute profit forecasts. Also, we welcome ESMA's confirmation that a statement must be specific as to both level and period to constitute a profit forecast. We recommend ESMA confirm that this principle holds even where the issuer has previously published margin data, so that a revenue statement does not automatically become a profit forecast merely because margin ratios available in the public domain would theoretically allow derivation. The Guideline [4] substance-over-form test should require specificity and directional intent by the issuer, not merely the theoretical availability of third-party calculation data.

More broadly, we would encourage ESMA and the Commission to continue developing a coherent safe harbour framework for forward-looking statements, both within the prospectus context addressed by these Guidelines and in the wider context of ongoing issuer communications outside a prospectus. The formalisation of profit forecast guidance in Guidelines [3]–[6] is a welcome step, but the absence of an equivalent EU-level safe harbour for statements that clearly fall outside the definition of a profit forecast means that issuers and their advisers are left to navigate that boundary without adequate certainty.

See our illustrative worked examples in Annex I (3. Guidelines [3] / [5]: Identification of Profit Forecasts: Endorsement of Market Consensus), (4. Guidelines [4] / [5]: Substance-Over-Form Test: Sub-Annual Statements Combined with Margin Data) and (5. Guideline [5]: Statements That Are Not Profit Forecasts).

Q7: Do you agree with ESMA's proposal to carry over the existing guidelines on profit forecasts and estimates without any material changes? If you do not agree, please indicate where you believe changes should be considered, including the relevant argumentation.

We do not object to the substantive carry-over of Guidelines [7]– [10]. However, we identify the following specific points that the carry-over leaves unresolved or that merit clarification in the final text.

- **Guideline [7] - immaterial and superseded forecasts.** Where a previously disclosed forecast is no longer material or relevant (for example because actual results are in line with or have superseded the forecast) issuers should be permitted to include a qualitative explanation in the prospectus rather than being required to formally repeat, confirm and reconcile the forecast. This is particularly relevant for short-term forecasts relating to the unexpired remainder of a financial year. This proposal has not been addressed in the Guidelines as carried over. We request ESMA confirm, in Guideline [7] or accompanying guidance, that where persons responsible for the prospectus determine on a documented, reasoned basis that a previously disclosed forecast is no longer material, the obligation may be satisfied by qualitative disclosure explaining that determination rather than full formal repetition.

- **Guideline [8] - profit forecasts based on pro forma information.** Paragraph 51 of the consultation paper states that where a profit forecast or estimate is based on pro forma or

additional financial information, it should be prepared in a similar manner to the pro forma information. A forecast based on pro forma data (which is by nature hypothetical and illustrative) cannot easily satisfy the "reliable" principle in Guideline [8], since the underlying figures are not actual historical results. We consider this tension between the "comparable" and "reliable" requirements in Guideline [8] as applied to pro-forma-based forecasts merits an express worked example or clarification in the final Guidelines.

- **Guideline [10] - "valid and correct" wording.** Market participants have expressed concern about the requirement to assess whether an outstanding forecast remains "valid and correct." A forecast by nature cannot be definitively correct, only well-founded at the time of preparation. We recommend ESMA consider replacing "valid and correct" with language such as "valid and prepared on a basis that remains appropriate" to better reflect what can realistically be assessed by persons responsible.

- **Guideline [10] - accounting framework differences in material undertaking forecasts.** We recommend ESMA add a worked example addressing the case where a target's outstanding forecast was prepared under accounting policies that differ from those of the acquirer group (a scenario common in cross-border M&A) and clarify how the clean consistency statement in Guideline [9] should address such differences.

See our illustrative worked examples in Annex I (6. Guideline [8]: Profit Forecasts Based on Pro Forma Financial Information) and (7. Guidelines [9] / [10]: Outstanding Forecasts Prepared Under a Different Accounting Framework).

Q8: Do you agree with ESMA's proposed deletion of Guideline 15 and the associated adjustments in the section about historical financial information? Are there other changes necessary in this section? If so, please explain why.

We support the deletion of Guideline 15 and the associated consequential amendments, including the removal of references to the three-year period and the deletion of the "statement of changes in equity" reference in the relevant sub-section.

We ask ESMA to address the analogous two-year scenario in the final Guidelines. Where an issuer changes its accounting framework between the two now-required years, the three-year illustrative example that would previously have guided practitioners has been deleted without replacement. An explicit worked example of how restatement should be approached in the two-year context would prevent the deletion from creating an unintended guidance gap.

See our illustrative worked examples in Annex I (8. Historical Financial Information: Accounting Framework Change Within the Two-Year Period).

We further ask ESMA to confirm that inclusion of three years of historical information is still allowed, on a voluntary basis. While it has previously been confirmed this is possible, certain NCAs have (initially) objected to the inclusion of additional historical information in a prospectus (with the suggestion that an additional document be prepared for non-EU investors, such as institutional investors (QIBs) in the US, if they require three years of historical financial information). It would therefore be appreciated if the guidelines could make very clear that this is a choice for the issuer, which would also avoid that EU investors receive less information than non-EU investors.

Q9: Do you agree with ESMA's proposal to delete and update Guideline 41? If not, please explain your reasoning.

We support this proposal. Guideline 41 was both duplicative of Item 7.4 of Annex 1 and imposed a disclosure obligation (requiring the percentage of related party transactions as a proportion of assets and liabilities) that went beyond the requirements of that item, which is limited to turnover. Related party disclosure already required under IAS 24 within consolidated financial statements is sufficient. A separate prospectus section is duplicative.

We would nonetheless welcome ESMA's confirmation that this deletion does not inadvertently narrow disclosure of related party transactions entered into after the period covered by the historical financial information but before the date of the registration document; a period previously captured expressly

by Guideline 41 but not necessarily addressed by IAS 24 disclosure embedded in historical financial statements alone.

Q10: Do you have any suggestions to further amend Guideline [35] concerning related party transactions? If so, please explain your suggestion(s).

Guideline [35]

We observe that paragraph 158 of the consultation paper states that for issuers using an equivalent third-country accounting framework to IFRS, their own framework's definition of related party transactions should be consulted. This leaves unaddressed issuers that apply neither IAS 24 nor a framework formally recognised as equivalent under Commission Decision 2008/961/EC, which may affect issuers from jurisdictions not covered by that Decision. We recommend ESMA confirm that IAS 24 should be applied directly as the definitional framework for prospectus purposes regardless of the issuer's home GAAP, to close this potential gap.

Feedback on Remaining Guidelines (2.2.6)

- **Pro forma financial information - Guideline [14]:** aggregation of sub-threshold transactions (previously raised, unresolved). Paragraph 78 of the consultation paper, which carries over the guidance that multiple sub-25% transactions must be treated on an aggregated basis and that pro forma information should be provided unless it is "disproportionately burdensome," was the subject of industry concern when this approach was first introduced. The FCA, when adapting the equivalent ESMA guideline into UK prospectus rules, declined to carry this provision forward on the same basis, concluding that its practical application was insufficiently certain and potentially disproportionate for smaller transactions. We consider this issue (and the absence of clearer guidance on when the disproportionate burden exception applies) merits ESMA's attention, and we encourage ESMA to consider whether additional worked examples or clearer calibration of the "disproportionately burdensome" test are appropriate in the final Guidelines.

- **Working capital statements - Guideline [29]:** minimum net proceeds. The Guideline provides that offer proceeds may only be counted toward working capital where the offering is underwritten on a firm commitment basis or covered by irrevocable undertakings. Market participants (including through feedback on the FCA's adaptation of the prior ESMA Guidelines) have raised the question of whether certain classes of issuer, such as new closed-ended investment funds, should be permitted in appropriate circumstances to rely on minimum net proceeds when calculating their working capital, even where firm underwriting or irrevocable undertakings are not in place. This reflects an established market practice for this specific issuer type that the current drafting does not accommodate. We draw this to ESMA's attention as a point that may merit consideration in the final Guidelines.

Q11: Do agree with ESMA’s proposal to incorporate the Guidelines on risk factors under the Prospectus Regulation with the Guidelines on prospectus disclosure? If not, please explain your answer.

We support the incorporation of the risk factors Guidelines (ESMA31-62-1293) into the general prospectus disclosure Guidelines.

Annex I

ILLUSTRATIVE WORKED EXAMPLES

1. Guideline [1]: Management Report Consistency ("Impracticability")

Illustrative example 1: Third-country subsidiary or associate management reports.

Issuer A's management report, prepared in accordance with Article 19 of the Accounting Directive, incorporates narrative commentary on a material associate located in a third country, which is itself based on management accounts prepared under local GAAP rather than IFRS. Achieving line-by-line consistency between that commentary and the IFRS-based historical financial information in the prospectus would require re-opening and restating the associate's audited third-country accounts. This is not a reasonable step for the persons responsible for the prospectus to take in the context of a prospectus transaction, and accordingly it would be impracticable, within the meaning of this Guideline, to achieve full consistency on this point.

Illustrative example 2: Post-restructuring management reports.

Issuer B completed a material spin-off of a reporting segment six months before the date of the prospectus. The management report for the last full financial year, prepared before the spin-off, describes the performance of the group including the divested segment. Because the group's composition has fundamentally changed, it is not merely difficult but conceptually impossible to align the historical commentary in the management report with the post-spin-off group structure and financial information presented elsewhere in the prospectus. The persons responsible for the prospectus should identify the relevant paragraphs of the management report affected by the restructuring and explain that consistency cannot be achieved because the underlying group structure to which the commentary relates no longer exists.

Illustrative example 3: Sustainability assurance opinions with differing consolidation scope.

Issuer C's management report includes a sustainability reporting assurance opinion prepared in accordance with the Accounting Directive. Because the issuer is in the early years of CSRD implementation, the scope of consolidation covered by the assurance opinion differs from the scope of consolidation reflected in the historical financial information included in the prospectus. Reconciling the sustainability metrics in the assurance opinion to the financial consolidation scope used elsewhere in the prospectus would require a scope realignment exercise that is impracticable within the prospectus preparation timetable. The persons responsible for the prospectus should disclose the difference in consolidation scope and explain why metric-level consistency is not achievable.

2. Guideline [2]: Content Standard for Issuers Not Subject to the Accounting Directive

For the avoidance of doubt, this Guideline applies both to issuers that are not subject to, and to issuers that are not required to prepare a management report under, Article 4 of the Transparency Directive and/or Chapters 5 and 6 of the Accounting Directive.

Where this Guideline applies, the necessary information referred to in Article 6(1) PR and Article 15a(2) PR that would normally be addressed in a management report will typically include, to the extent material and available from the issuer's home-market reporting framework:

- a fair review of the development, performance and position of the issuer's business during the period(s) covered by the historical financial information;
- a description of the principal risks and uncertainties facing the issuer, to the extent not otherwise addressed in the risk factors section of the prospectus;
- material events arising since the end of the last financial period covered by the historical financial information that are relevant to an investor's assessment of the issuer; and
- a description of likely future developments in the business of the issuer, to the extent such information is available and has otherwise been made public by the issuer.

3. Guidelines [3] / [5]: Identification of Profit Forecasts: Endorsement of Market Consensus

Illustrative example: Active endorsement versus general awareness of consensus.

- Statement constituting a profit forecast: "*The Board confirms that current analyst consensus for FY[X] EBITDA of €140–€150 million is a reasonable reflection of the Group's expectations*." This statement actively and specifically endorses a defined consensus range as representing the issuer's own expectation. Because a minimum and maximum figure can be derived from the endorsed consensus range, this constitutes a profit forecast for the purposes of these Guidelines, notwithstanding that no new figure has been generated by the issuer itself.

(a) Statement not constituting a profit forecast: "*The Group is aware that published analyst estimates for FY[X] exist but does not endorse, adopt or comment on the accuracy of any particular estimate or range.*" This statement acknowledges the existence of external market expectations without actively adopting a specific figure or range as the issuer's own view, and accordingly does not, of itself, constitute a profit forecast.

The distinguishing factor is whether the issuer has made an active, specific endorsement of a particular consensus figure or range (including, for example, by reviewing, commenting on, or otherwise placing its explicit or implicit stamp of approval on a third party's estimate before or after

its publication) as opposed to a general, passive acknowledgment that market expectations exist without adoption.

4. Guidelines [4] / [5]: Substance-Over-Form Test: Sub-Annual Statements Combined with Margin Data

Illustrative example: Sub-annual revenue statement combined with a previously disclosed margin figure.

Issuer D previously disclosed, in its most recent annual report, a stable EBITDA margin of approximately 20%. In a trading update incorporated into, or referenced by, a prospectus, Issuer D states: "*Revenue for the first half of the current financial year is expected to be approximately €500 million, broadly in line with the issuer's historically stable margin profile*."

Applying the substance-over-form test in Guideline [4], because the statement (i) specifies a figure for a defined sub-annual period, and (ii) is combined with a previously disclosed, stable, and currently applicable margin figure from which a floor or ceiling for sub-period EBITDA can be derived (approximately €100 million), the combined effect of the two pieces of information is capable of constituting a profit forecast for that sub-period, even though no profit or EBITDA figure is stated directly in the trading update itself.

By contrast, where an issuer makes a directional revenue statement without a sufficiently specific, stable or currently applicable reference margin (for example, where margins have fluctuated materially in recent periods, or where the previously disclosed margin pre-dates a material change in the business) a profit figure cannot reliably be derived, and the revenue statement alone should not, without more, be treated as a profit forecast. The test under Guideline [4] requires both the mathematical capacity to derive a floor or ceiling and sufficient specificity and directional intent on the part of the issuer; the mere theoretical availability of third-party calculable data is not, by itself, sufficient to convert a revenue statement into a profit forecast.

5. Guideline [5]: Statements That Are Not Profit Forecasts

Provided that the stated conditions as to specificity of level and period are not independently met, the following types of statement, by themselves, do not constitute profit forecasts:

(a) a general statement of medium- to long-term strategic ambition that is not tied to a specific financial period;
(b) qualitative statements about market conditions, competitive positioning, or industry trends, falling within the scope of trend information under item 3.5.1 of Annex 1, that do not specify a level of profitability;

- a revenue or turnover statement for a specific period that is not accompanied by a sufficiently specific and currently applicable margin or cost indicator from which a profit figure can reliably be derived (see the worked example under Guidelines [4]/[5] above); and
- a restated description of a previously published, currently withdrawn or lapsed forecast, provided that the restatement is clearly presented as historical information and does not reaffirm or update the forecast for current purposes.

6. Guideline [8]: Profit Forecasts Based on Pro Forma Financial Information

Illustrative example: Profit forecast based on pro forma financial information.

Issuer E has recently completed a material acquisition and prepares a profit forecast for the current financial year on the basis that the acquired business had been part of the Group for the entirety of the comparative historical financial information (i.e., on a pro forma basis), consistent with the pro forma financial information included elsewhere in the prospectus.

Because pro forma financial information is, by its nature, hypothetical and illustrative of a situation that did not actually exist, a forecast built on that basis cannot be "reliable" in the sense of being verifiable against actual historical results for the combined entity. Accordingly, for the purposes of this Guideline, the "reliable" principle is satisfied for a pro-forma-based forecast where:

(a) the pro forma adjustments underlying the forecast are prepared on a basis consistent with the pro forma financial information requirements applicable to the prospectus (satisfying the "comparable" principle);

(b) the forecast assumptions for factors outside management's control are reasonable, and assumptions within management's control are consistent with the issuer's stated accounting policies, with any expected cost savings or synergies identified and explained, and any significant offsetting dis-synergies or integration costs also being separately addressed to avoid the presentation of a misleading net figure; and

(c) the hypothetical basis of preparation, and the fact that it does not represent actual combined historical performance, is clearly disclosed.

Compliance with these three elements satisfies the "reliable" principle for pro-forma-based forecasts, notwithstanding that the forecast is not, and cannot be, benchmarked against actual historical combined results.

7. Guidelines [9] / [10]: Outstanding Forecasts Prepared Under a Different Accounting Framework

Illustrative example: Target forecast prepared under a different accounting framework from the acquirer group.

Issuer F (the acquirer, reporting under IFRS) is required to address an outstanding profit forecast previously published by Target G (reporting under US GAAP) in connection with a proposed acquisition. The persons responsible for the prospectus must confirm whether the Target G forecast remains valid.

In assessing validity, the persons responsible for the prospectus should: (a) identify any material measurement or recognition differences between US GAAP and IFRS that are relevant to the forecast; and (b) disclose the nature and, where quantification is reasonably practicable, the expected direction and approximate magnitude of any material impact of those differences on the figures in the outstanding forecast. A full line-by-line restatement of the forecast onto an IFRS-consistent basis is not required provided that the nature and expected direction of any material difference is clearly disclosed alongside the forecast. The "clean" consistency statement contemplated by Guideline [9] should accordingly be read subject to, and alongside, any such disclosed explanation, rather than as an unqualified confirmation of validity. Where quantification is not reasonably practicable, a qualitative explanation of the nature and likely direction of the difference is sufficient to satisfy the disclosure obligation.

8. Historical Financial Information: Accounting Framework Change Within the Two-Year Period

Illustrative example: Accounting framework change within the two-year historical financial information period.

Issuer H is required to include historical financial information for two financial years (FY[X-1] and FY[X]) and changes its accounting framework during that two-year period. In such circumstances, the persons responsible for the prospectus should:

(a) present and prepare the most recent of the two years (FY[X]) under the new accounting framework only; and

(b) present and prepare the earlier of the two years (FY[X-1]) under the new accounting framework as well, to the extent necessary to provide a comparable basis for investors to assess period-on-period performance.

However, where restating FY[X-1] would itself be impracticable, this Guideline should be applied in a manner consistent with international best practice. For these purposes, and in line with the principles of IFRS 1 (First-Time Adoption of International Financial Reporting Standards), impracticability applies when the entity cannot restate the comparative period without disproportionate cost or effort.
In such circumstances, and consistent with the approach taken in other major jurisdictions where full retrospective restatement is not feasible, the persons responsible for the prospectus may instead present the earlier year under the previous accounting framework, provided that it is accompanied by:

(a) a clear narrative explanation of why a full restatement was impracticable by reference to the "disproportionate cost or effort" standard; and

- a discussion of the principal qualitative and, where reasonably available, quantitative effects of the change in accounting framework on the financial information, to assist investors in understanding the lack of direct comparability between the two presented periods.

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