

SUBMISSION ON DISCLOSING NON-GAAP FINANCIAL INFORMATION

7 APRIL 2017





CHAPMAN TRIPP SUBMISSION ON DISCLOSING NON-GAAP FINANCIAL INFORMATION

- 1 The Financial Markets Authority (*FMA*) proposes to update its guidance note regarding the disclosure of non-GAAP financial information.
- 2 The main focus of our submission is the change to the guidance regarding the prominence of non-GAAP financial information. We are generally supportive of the other proposed changes, so have only commented where we have something to add.
- 3 We have consulted with a number of our clients in preparing this submission and have sent our affected clients a copy of our initial commentary, a copy of which is available here: <http://www.chapmantripp.com/publications/fma-updates-non-gaap-disclosure>
- 4 Please contact us should you wish to discuss our submissions and the reasoning behind them.



RACHEL DUNNE – PARTNER
T: +64 9 357 9626
M: +64 27 553 4924
E: rachel.dunne@chapmantripp.com



ROGER WALLIS – PARTNER
T: +64 9 357 9077
M: +64 27 478 3192
E: roger.wallis@chapmantripp.com



Section	Response
Scope	<p>We have occasionally encountered suggestions that any “financial” information that is not presented in accordance with GAAP falls within the scope of the guidance note (such as operational measures (e.g. number of employees or subscribers) or comparisons of GAAP financial information to operational measures (e.g. revenue per unit)).</p> <p>The 2012 guidance note has useful commentary at paragraph 18 on the types of information which are not the subject of the guidance. It would be useful if this list was carried forward to assist in countering these misapprehensions as to the scope of the FMA’s guidance.</p>
Defining the non-GAAP financial information	<p>We suggest that the revised guidance recognise that the explanation of the reasons for presenting the non-GAAP financial information, together with the statement that it does not have a standardised meaning and whether it has been subject to audit or review, may be provided outside the document, as per the change the FMA has made in relation to the reconciliation to GAAP.</p> <p>This would allow entities to present all of their further information about non-GAAP financial information in a single document, rather than having to repeat some, but not all, of this information in each document in which the non-GAAP financial information appears.</p>
Non-GAAP financial information: Prominence	<p>The revised guidance note states: “Entities should not present non-GAAP financial information with undue and greater prominence, emphasis or authority than the most directly comparable GAAP financial information”. From the commentary to the revised guidance note, we understand that this guidance is meant to say “undue OR greater prominence”.</p> <p>This is out of line with comparable jurisdictions which require that the non-GAAP measure not be presented with more prominence than the most directly comparable GAAP financial information (or in the alternative that the corresponding GAAP financial information be published with equal or greater prominence). We refer in particular to:</p> <ul style="list-style-type: none"> • the IOSCO statement referenced in the commentary to the revised guidance note • the United States Securities Exchange Commission requirements (see Item 10(e)(1)(i)(A) of Regulation S-K and question 102.10 at https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm), and • the ASIC guidance (see paragraph RG230.60 to RG230.64 of ASIC regulatory guide 230). <p>“Undue” prominence appears to be a more subjective test than “greater” prominence. In addition, if the guidance note is amended to read “undue OR greater” as per the commentary it becomes possible that non-GAAP measures can be presented less prominently than the comparable GAAP information but still have “undue” prominence (with no further guidance as to when this would be the case).</p> <p>We suggest the FMA remove the word “undue” and provides further guidance as to the circumstances in which non-GAAP financial information will have greater prominence than GAAP financial information, which is included in the equivalent guidance from both the SEC and ASIC.</p>



Section	Response
Pro forma financial information: Presentation and reconciliation	<p>We suggest that the guidance state that some or all of the pro forma financial information noted under presentation and reconciliation can be presented outside the relevant document by way of cross reference.</p> <p>Having to include a full reconciliation to GAAP financial information in each document in which pro forma financial information appears may not be the most user-friendly or practical way to present this information, as the FMA has recognised with the proposed changes to the reconciliation for other non-GAAP financial information.</p>
Consistency & other minor tidy ups	<p>The pro forma financial information section refers to “statutory financial information” – a term that is not otherwise used.</p> <p>For consistency, we suggest that this should be changed to “GAAP financial information”.</p> <p>We also suggest deleting the term “issuers” from the glossary (as the only place the word appears is in one of the footnotes in the introduction section).</p>

AUCKLAND

23 Albert Street
PO Box 2206, Auckland 1140
New Zealand

T +64 9 357 9000
F +64 9 357 9099

WELLINGTON

10 Customhouse Quay
PO Box 993, Wellington 6140
New Zealand

T +64 4 499 5999
F +64 4 472 7111

CHRISTCHURCH

119 Armagh Street
PO Box 2510, Christchurch 8140
New Zealand

T +64 3 353 4130
F +64 3 365 4587