Part III, B: Profit forecasts in capital markets transactions and other profit guidance

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This document forms part of TECH 04/20CFF Guidance for preparers of prospective financial information.

Part III, B: Profit forecasts in capital markets transactions and other profit guidance

1. INTRODUCTION

1. This application note is primarily intended to assist directors making profit forecast statements for inclusion in an investment circular (where regulation applies to such profit forecast statements), and also those involved in the preparation of such profit forecasts and the supporting unpublished PFI. However, there are also a number of circumstances where directors will give profit guidance to investors in a less prescribed form. In such cases, the attributes and principles of useful PFI remain applicable, and so the guidance in this application note should be applied to the extent relevant (disregarding those elements of the guidance that are driven by regulation and not applicable in the specific circumstance).
2. In particular, directors have an overriding obligation to keep markets informed. Notifications to the markets of information about, or of changes in, a company's expectations in relation to its future performance (eg, 'profit warnings') constitute PFI as defined in the guidance. In these cases, it follows that the guidance in this application note should be applied to the extent relevant. Where the form and content of disclosure is not specifically prescribed by regulation (as is the case with ordinary course profits guidance in the UK), directors will need to carefully consider what constitutes a reasonable level of disclosure.
3. Additionally, this application note should be used proportionately when preparing profit guidance or forecasts or projections for users other than public investors, for example, banks or other private investors, where the level of rigour applied to the internal processes adopted in the preparation of the PFI supporting the profit forecast would be expected to be similar.
4. This application note should be considered and read together with Parts I and II of the guidance.

2. REGULATORY REQUIREMENTS

2.1 Overview of regulation

5. While capital markets regulation does not typically require a published profit forecast (see 2.2 for definition) to be made in connection with a transaction, where the directors choose to issue a profit forecast, regulation applies to that statement.
6. Furthermore, where the issuer has published a profit forecast prior to issuing an investment circular in connection with a transaction, capital markets regulation may require that the investment circular includes the profit forecast. Typically, this would include further disclosure of the basis of preparation and the assumptions underlying the profit forecast. Regulation typically requires the directors to provide a statement setting out whether or not the profit forecast is still valid at the time of the investment circular, and an explanation as to why it is no longer valid if that is the case. If the directors consider the previously published profit forecast no longer valid, they may choose to provide an updated profit forecast in the investment circular, or to withdraw the forecast entirely and disclose the reasons for its withdrawal.
7. Examples of regulatory requirements, which include those in the UK and member countries of the European Union, are set out in Annex B.

2.2 Definition of a profit forecast and scope of application note

8. In capital markets regulation the definition of a profit forecast typically includes any disclosure from which a profit (or loss) figure can be derived, and can be for all or part of a business. This includes statements such as 'We expect this year's profit before taxes to be between £30 million and £50 million' as well as purely narrative statements such as 'The profit/loss is expected to be higher than/lower than/in line with the previous year'.

9. The interpretation of the definition of a profit forecast can often involve some debate, and may require case-by-case discussion with the relevant regulatory authority. To assist directors in the context of an EU prospectus, ESMA has released detailed guidance in relation to the definition of profit forecasts (see Annex B).

10. 'Profit estimate' is a term used by certain regulators. A profit estimate is typically for a financial period that has expired but for which the results have not yet been published. This guidance remains applicable to a profit estimate to the extent it is supported by unpublished PFI, ie, after the financial period has expired but before actual results are available for the full period.

2.3 PFI in relation to profit forecasts

11. The profit forecast statement published in an investment circular is itself PFI. The profit forecast statement is also, however, supported by underlying PFI, including unpublished financial projections that form the basis for the statement; these are referred to in this Part as the supporting unpublished PFI. While the focus for a profit forecast will inevitably be on the income statement, it is expected that the supporting unpublished PFI will also include a forecast balance sheet and cash flow statement.

2.4 ESMA Guidance

12. The ESMA Guidance (as defined in the Glossary) on the requirements for profit forecasts included within EU prospectuses may also be pertinent to other regimes. In particular, the ESMA Guidance states that:

    - A profit forecast should follow the core principles of PFI, that is, it should be understandable, reliable, comparable and relevant. The application of these core principles to profit forecasts is discussed further in section 3.
    - Additional comparative financial information or narrative disclosure may be necessary to facilitate comparability of profit forecasts or estimates, for example, if a significant transaction affects the historical or forecast period or if a change in accounting policies might impact the comparability of financial information.

13. These themes are also reflected in the guidance of regulators, including, for example, in FCA Technical Notes (see Annex B).

2.5 Directors' accountability, including satisfying regulatory obligations

14. In most regulatory regimes the directors are responsible for the profit forecast statement and, accordingly, should be fully engaged in the preparation process. This includes considering and approving the profit forecast statement (including the assumptions upon which it is based), the supporting unpublished PFI and the assessment of the risks to achieving the profit forecast.

15. Capital markets regulation imposes standards on the content of information included in investment circulars, and on the processes and procedures adopted by the directors in preparing such information. Such UK and EU regulatory obligations that apply to profit forecast statements are set out in Annex B.

16. While the obligations in various regulations are articulated differently, the spirit of the obligations and standards of care are broadly aligned, and require that the process adopted by the directors is sufficiently robust. Typically:

- there should be clear disclosure of assumptions upon which the profit forecast has been based;
- the basis of accounting should be consistent with the accounting policies of the issuer; and
- the profit forecast should be prepared on a basis comparable with the historical financial information that will be subsequently reported.

17. Regulation may require that the profit forecast be publicly reported on by a reporting accountant, stating for example that, in its opinion, the profit forecast or estimate has been properly compiled on the basis stated and that the basis of accounting is consistent with the accounting policies of the issuer. Regulation may also require other statements to be made by one or more of the reporting accountant, the financial adviser and the directors regarding the preparation of the profit forecast. Where the directors are required to make a statement, this is typically required to confirm that the forecast has been properly compiled on the basis stated.

18. One of the principal issues that will concern directors is ensuring that they are highly confident that a forecast will be achieved and that there is very little risk that it will not. Accordingly, this guidance requires that directors should undertake appropriate and robust procedures to ensure that the PFI is free from material error or omission and reflects a forward-looking analysis of the business based on facts known (or that ought reasonably to have been known) to the preparer at the time of preparation, and consider carefully the form of the profit forecast statement to limit the risk that the profit forecast is subsequently called into question. This guidance sets out principles and processes for the preparation of profit forecasts and the supporting unpublished PFI which help the directors to satisfy their obligations and meet user expectations. Notwithstanding this, users should recognise the inherent uncertainties of PFI set out in paragraph 6 of Part I.

19. The guidance does not address legal obligations and directors should obtain legal and professional advice as appropriate.

3. APPLYING ATTRIBUTES AND PRINCIPLES TO PROFIT FORECASTS

3.1 'Relevant' attribute and 'user needs' principle

20. Broadly, a profit forecast should be relevant to users and have predictive value if it:

    - has an ability to influence economic decisions of investors and is provided on a timely basis so as to influence such decisions and assist in confirming or correcting past evaluations or assessments;
    - is drawn up on a relevant and appropriate basis that enables the user to assess the prospects of the issuer. If preparation of the forecast on the most relevant and appropriate basis is not practicable, then this should be made clear through disclosure; and
    - is for an appropriate profit measure.

3.2 'Reliable' attribute and 'business analysis' principle

21. Users of profit forecasts expect that an issuer will achieve a profit forecast that it publishes. If it fails to do so, and the difference is material, then, depending on applicable regulation, the directors may be required to disclose in the next annual report the relevant figure and explain any material variance so as to enable the forecast and actual results to be directly compared. Following this guidance will help the directors to demonstrate that, notwithstanding the inherent uncertainties of PFI, they are acting responsibly by only making a profit forecast that they are highly confident will be achieved.

22. To the extent that a profit forecast relates to a financial period that has begun but not ended at the date of issue, it will include financial information relating to the expired part of the period. Normal considerations applicable to the integrity of published historical financial information will apply to any historical financial information incorporated into a profit forecast.

3.2.1 Sensitivity analysis, risks and opportunities

23. Where, in considering the sensitivity analysis, the directors conclude there is insufficient certainty of achieving the profit forecast, then the directors should consider whether it is appropriate and not misleading to publish that forecast. In these circumstances, if a profit forecast has already been published then the directors will need to consider whether to update the profit forecast to reflect the latest available information, or to state that the profit forecast is no longer valid and withdraw it. In both cases, it is expected that the directors will give a clear explanation of the reasons for the amendment or withdrawal of a profit forecast.

3.2.2 Other aspects of reliability

24. The concept of neutrality is relevant to profit forecasts because of the scope for providing forecast information for particular captions from a profit and loss account so as to convey a particular message. Selection of the most appropriate profit measure should be driven by consideration of what is most useful to the investor and take into account applicable regulation.

25. The concept of neutrality is also pertinent because of the risk that the forecast period introduces potential bias. For example, if the level of profits in the forecast period were not sustainable or if losses were expected in the subsequent period, supplementary disclosures should be considered.

26. Ranges can be used to indicate a level of uncertainty in relation to a forecast but they can be hard to interpret. Care should be taken to ensure the disclosure of a range does not undermine the reliability of the profit forecast, for example by presenting a range when the directors' best estimate is at one end of that range.

3.3 'Understandable' attribute and 'reasonable disclosure' principle

3.3.1 Form of the profit forecast

27. The wording of the profit forecast itself is central to its understandability. There is significant variation in the phraseology used in published earnings guidance of what may or may not subsequently be deemed a profit forecast. This is partly driven by the lack of regulation governing the release of earnings guidance in the ordinary course of business (that is, prior to the publication of an investment circular) in many regulatory regimes.

28. The directors should pay particular attention to the form of profit forecast issued, and consider the interpretation of the forecast by investors and/or potential investors. A particular difficulty arises with unspecific or ambiguous profit forecasts. For example:

    - if it is stated that 'profits will be less than those of last year', and the relative figures are £100 million and £10 million respectively, there would be concern that without amplifying the statement to give a meaningful indication of the scale of the drop in profit the statement would not be understandable and may be considered misleading;
    - if reference is made to 'a substantial improvement in profit this year' the increase should be by an amount that is sufficient to ensure that the statement remains understandable and not misleading;
    - disclosing a minimum or a floor may imply that the most likely outcome is close to that number;

- in cases of relatively high uncertainty that are subject to a broad range of likely outcomes, the use of a maximum or minimum might be misleading. In such circumstances, a carefully considered range may be more appropriate and provide more understandable and useful information for investors.

29. Disclosure of an exact profit figure is rare, given the uncertainty associated with the exact figure that will be achieved. This is particularly relevant when the profit forecast is published in an investment circular, given the rigorous expectations applicable to such profit forecasts.

30. It is also important that useful information is not obscured through the inclusion of immaterial items or the use of headings or financial measures which are not meaningful to, or may be misunderstood by, the intended users. For example, if a profit forecast is presented as a single figure for profit before tax, and the figure is arrived at after taking into account a significant non-recurring item of income, such as a profit from the sale of a fixed asset, it should be considered whether additional disclosure is necessary to make the profit forecast understandable.

3.3.2 Disclosure of assumptions upon which the profit forecast is based

31. Disclosure of the principal assumptions upon which the issuer has based its profit forecast is often required, including, for example, by the ESMA Guidance, the FCA and the City Code. In particular, the assumptions should:
    - be clearly segregated between assumptions relating to factors which the directors/issuer can influence and assumptions relating to factors which are exclusively outside the influence of the directors/issuer;
    - be readily understandable by investors;
    - be specific and precise; and
    - not relate to the general accuracy of the estimates underlying the profit forecast.

32. Care should be taken when disclosing assumptions. While appropriate disclosure will improve the understandability of the profit forecast, disclosure of a large number of insignificant assumptions is likely to compromise that understandability. The directors should ensure the disclosure draws attention to those assumptions that could materially change the outcome of the forecast.

33. A further aspect of understandability is the disclosure relating to the degree of uncertainty inherent in the information. For example, the disclosure of an assumption may not make the profit forecast understandable if the significance of that assumption is not apparent from the disclosure made.

34. Accordingly, the segregation of assumptions in relation to factors which the directors can influence from assumptions which are exclusively outside of their influence also aids understandability.

35. What constitutes reasonable disclosure will therefore depend upon the particular circumstances of each profit forecast but will need to take into consideration:
    - sources of uncertainty and the assumptions made in relation to these uncertainties;
    - the factors that will affect whether assumptions will be borne out in practice; and
    - alternative outcomes, being the consequences of assumptions not being borne out.

3.3.3 Alignment and interaction with risk factors and other disclosures elsewhere in the investment circular

36. Disclosures elsewhere in the investment circular should be aligned and consistent with the profit forecast (and vice versa). There is particular potential for overlap between the business analysis and risk factors sections of an investment circular and the profit forecast.

37. While disclosure of risk factors elsewhere in the investment circular provides useful context, it is not a substitute for the explicit disclosure of the principal assumptions upon which the profit forecast is based or the uncertainties that it is exposed to. It is important that the supporting unpublished PFI underpinning the profit forecast includes sufficient consideration of the potential impact of the issuer's principal risk factors and, where these may materially affect the published result, the directors should consider additional disclosure to the profit forecast.

3.4 'Comparable' attribute and 'subsequent validation' principle

38. For PFI to be comparable, it should be capable of subsequent validation by comparison with the outcomes in the form of historical financial information and, hence, the profit forecast should be prepared on a consistent basis with historical financial information, and this is often prescribed by regulation.

39. A profit forecast is an example of PFI that satisfies the subsequent validation principle and is clearly capable of being reported against. Indeed the directors may be required to reproduce the profit forecast in their next annual report, together with the actual result for the same period as covered by the profit forecast, including, if applicable, an explanation of why the profit forecast was not met.

40. In general, a statement in the form that 'future profits will increase by £x million' will satisfy the subsequent validation principle provided that the base figure for the comparison is clear; for example, profits for the previous financial year. However, satisfying the subsequent validation principle may be more problematical for a statement in the form of 'future profits will be £x million higher if a company does y instead of z'. If the company does y, and there has never been an indication of the outcome expected if it had done z, it will be difficult to know if actual profits have turned out to be £x million higher. Disclosure of the expected future profits under each of the alternative scenarios would be one way to address this problem.

41. It should be noted that, in certain circumstances, the assumptions upon which the profit forecast is based may reduce the comparability of the profit forecast, for example, where the forecast is for the acquirer in an acquisition investment circular, and it was prepared for the existing business only. The directors may still be required to disclose actual results on the same basis, depending on applicable regulation and the forecast should still enable this subsequent validation to be made.

4. PREPARING PFI IN CONNECTION WITH PROFIT FORECASTS AND OTHER PROFIT GUIDANCE (AND THE SUPPORTING UNPUBLISHED PFI)

42. Part II identifies core procedures for the preparation of PFI, in the form of illustrative practical considerations and techniques, which are applicable to the preparation of all PFI. These should be applied as appropriate, in the context of a profit forecast.

43. In preparing the profit forecast itself, as well as the supporting unpublished PFI on which it is based, the techniques and considerations in section 4.1 which are specific to profit forecasts should also be considered and applied where appropriate.

44. Directors should assess those that are likely to be relevant having regard to the size, complexity, predictability and particular circumstances of the group, the industry, the general economic environment, and the transaction that is the subject of the investment circular. For example, the level of detail and analysis needed for a stable business operating in a predictable market issuing its profit forecast near the end of the relevant financial period will be less than that required for an embattled trading group issuing its forecast at or before the start of the relevant financial period. The procedures are not exhaustive or prescriptive: others may be applicable.

4.1 Illustrative practical considerations and techniques specifically applicable to profit forecasts

45. The applicable practical procedures and considerations set out in Part II should be undertaken in addition to the following procedures which are specific to profit forecasts and the supporting unpublished PFI.

PLANNING

Applicable regulation

a. The directors should ensure that the profit forecast and supporting unpublished PFI which forms the basis for the profit forecast are prepared in accordance with the applicable regulatory requirements and guidance (taking into account the circumstances).

Engagement with advisers

b. Where a report is required from one or more external advisers, especially a public report on the profit forecast, the advisers should be engaged early in the process to enable appropriate involvement and input into the directors' planning process for the preparation of the profit forecast and the supporting unpublished PFI.

Board input and involvement

c. The directors are responsible for the profit forecast and should be involved and provide oversight throughout the preparation process, including approving the form and content of the published profit forecast and supporting disclosures of bases of preparation and principal assumptions (as well as the supporting unpublished PFI).

d. The process should be appropriately planned on a timely basis. In the case of an acquisition where the target's forecast is relevant to the profit forecast, for example, this will entail consideration of the practical issues involved in obtaining access to target information, if applicable.

Period covered by the supporting unpublished PFI

e. Supporting unpublished PFI should be prepared to cover the exact period(s) for which the profit forecast has been made.

f. Depending on the unpredictability and variability of the business and/or the industry in which it operates, it may also be appropriate to prepare supporting unpublished PFI for subsequent period(s), in order to assess whether further disclosure regarding the profitability of the business after the profit forecast period should be made.

Level of detail required in the supporting unpublished PFI

g. The level of detail required within the supporting unpublished PFI may vary depending on the circumstances of its preparation, the form of the profit forecast itself, the level of contingency available (see Execution, Contingency), and the time between publication of the profit forecast and the end of the relevant financial period.

h. Where the results of the business are predictable and the result is not sensitive to changes in circumstances, the level of detail required in the supporting unpublished PFI may be less than in circumstances where the margin for error is small and the trading results are subject to large fluctuations.

i. Similarly, where the profit forecast is published close to the end of the relevant financial period, the level of detail required in the supporting unpublished PFI may be less than in circumstances where the financial period has just begun or the profit forecast relates to a financial period entirely in the future. However, significant rigour will also need to be applied to the determination of any actual results for past periods forming part of the overall profit forecast period.

j. It is expected that a forecast balance sheet and/or cash flow statement should be prepared as part of the supporting unpublished PFI to assess, for example, the unwinding of provisions/accruals and their impact on profit.

EXECUTION

Supporting unpublished PFI should be prepared on the appropriate basis

a. The basis of preparation (which should be disclosed in the profit forecast) should be applied consistently across the supporting unpublished PFI, including all relevant subsidiary and other undertakings that comprise the group or business that is the subject of the profit forecast.

b. Regulation may not require the profit forecast to be prepared on the basis that the transaction (eg, acquisition, disposal, refinancing/reconstruction, purchase of own shares, rights issue, placing) has been completed, since the statement has often been made prior to contemplation of the transaction.

Basis of preparation

c. The profit forecast should be prepared:

- using accounting policies consistent with the accounting policies of the issuer; and
- on a basis comparable with the historical financial information.

d. Where the issuer changes its accounting policies (whether due to adoption of a new standard or amending its existing accounting policies), sufficient disclosure should be made to enable comparability and subsequent validation upon release of the actual results.

Historical information included in the forecast

e. If the profit forecast is published part way through the financial period to which the forecast relates, it should be based on the latest available actual results together with the directors' profit forecast thereafter.

f. Consistent with the profit forecast as a whole, the actual results forming part of the profit forecast should be prepared using accounting policies that are consistent with those of the issuer and on a basis consistent with other historical financial information.

Other forecast information/regulatory requirements

g. The directors should consider other forms of forecast information that directly contribute to the issuer's ability to achieve its profit forecast. These may be industry-specific requirements, for example regulatory capital and solvency requirements in the financial services sector, to the extent that these affect the profitability of the business.

Adjusted profit measures

h. Where the profit forecast relates to profit before tax, consideration should be given to the identification and, where necessary, the disclosure of forecast non-recurrent items and tax charges if they are expected to be abnormally high or low.

i. Where the profit forecast relates to a profit measure other than profit before tax (for example, EBITDA), the directors should consider profit and loss items recognised outside of the relevant profit measure, for example expenses recognised outside of an adjusted profit measure, to ensure that these have been appropriately recognised outside of that profit measure.

j. The treatment of all profit and loss items recognised outside of the relevant profit measure should be consistent with the historical financial information and the group's accounting policies to ensure comparability.

Risks and opportunities

k. The process of preparing the supporting unpublished PFI should include an assessment of all risks and opportunities to achieving the profit forecast.

l. Directors and other senior members of financial and operational management with the necessary in-depth knowledge and experience of the business, its activities and the market, should be actively involved in the identification and ongoing monitoring of risks and opportunities to achieving the profit forecast.

m. The ongoing monitoring of the risks and opportunities should continue up to the date of approval and publication of the profit forecast, to ensure the latest available information is being taken into account.

Mitigating actions

n. In preparing the supporting unpublished PFI and considering whether this gives the required confidence to issue the profit forecast, the directors may take into account actions and discretionary items within their control that could be initiated in the forecast period in the event that the actual result starts to deviate from the forecast.

o. Examples of such mitigating actions include, but are not limited to, the following:

- bonus and other discretionary pay-outs (and therefore the associated income statement expense) where contractual commitments allow variation;
- delaying the introduction of new products or initiatives that will require front-loaded investment in operating costs; and
- delaying other operating expense items, such as non-essential events, travel, etc.

p. Mitigating actions should only be taken into consideration where management has a high degree of confidence that it would be able to effect those actions in the profit forecast period.

q. As with risks and opportunities, directors and other senior members of financial and operational management with the necessary in-depth knowledge and experience of the business, its activities and the market should be actively involved in the identification and ongoing monitoring of potential mitigating actions.

Contingency

r. To achieve a high degree of confidence in the PFI, the directors may consider it appropriate to maintain a contingency between the published profit forecast and the supporting unpublished PFI.

s. The level of contingency required will depend on a number of factors (for example, the sensitivity to key assumptions, the period of the forecast that is outstanding, and the wording of the profit forecast itself) and is a matter of judgement. Directors should take care to ensure that any contingency is not so large that it may cause the profit forecast to be misleading.

Sensitivity analysis

t. The directors should undertake sensitivity analysis to determine the impact on the forecast result in the event that the identified risks and opportunities crystallise during the relevant financial period.

u. Such sensitivity analysis involves measuring the impact on the forecast result of risks, opportunities and uncertainties and of changing relevant assumptions to provide the directors with an understanding of the critical assumptions that underpin the profit forecasts and their impact.

v. The extent of the analysis should be proportionate to the particular circumstances of the issuer and the risks it faces.

w. Typically, when assessing the overall net impact of sensitivities, it will only be appropriate to take account of upsides (ie, potential profit beneficial events which have not been accounted for in the base case forecast results), where the associated upside is a direct result of the downside sensitivity.

Overall consideration of whether a high degree of confidence has been achieved

x. There is no single measure that itself confirms a high degree of confidence has been achieved.

y. The directors should take into account a variety of different factors and indicators and other relevant information when considering whether they have sufficient certainty to issue the profit forecast. Examples of the key indicators in assessing the level of evidence obtained are as follows:

- the level of uncertainty associated with the trading forecasts of the business and the industry in which it operates;
- the timing of publication of the profit forecast compared with the time to expiry of the relevant financial period;
- the sensitivity of the forecast result to the key assumptions upon which it is based;
- the risks and opportunities to achieving the profit forecast, including the likelihood and magnitude of those risks and opportunities crystallising;
- the level of contingency maintained within the supporting unpublished PFI; and
- the actions available to management to influence the final result if risks or opportunities outside the control of the directors materialise.

Form of the profit forecast statement

z. The profit forecast should include disclosure of the following:

- the basis of preparation, including:
  - confirmation that the accounting policies used in preparing the profit forecast are consistent with the accounting policies of the issuer;
  - confirmation that the basis of preparation is consistent with the issuer's historical financial information; and

  - the underlying audited or unaudited actual and/or forecast data upon which the profit forecast has been based.
- the principal assumptions upon which the profit forecast is based (see below):
  - the treatment of any one-off or transaction-specific items that the directors consider to be relevant, material and to contribute to the understandability of the profit forecast; and
  - if applicable, confirmation that the profit forecast has been compiled or properly compiled on the basis of the assumptions stated and the basis of accounting used is consistent with the issuer's accounting policies.

aa. If the forecast or estimate is of any profit measure other than profit before tax (eg, an adjusted profit measure), the reasons for presenting another figure from the profit and loss account should be disclosed and clearly explained.

Disclosure of principal assumptions

bb. The principal assumptions disclosed in the profit forecast should:

- be clearly segregated between those that are exclusively outside the influence or control of the directors and those that are within the influence or control of the directors;
- be readily understandable by investors ie, they should not include overly technical language that may in fact reduce the understandability of the profit forecast;
- be specific and precise; and
- not relate to the general accuracy of the estimates underlying the profit forecast.

EVIDENCE AND DOCUMENTATION

a. Key elements of the process should be evidenced through contemporaneous documentation.

b. Sufficient documentary support should be obtained including for the business analysis and plans, forecast results, key assumptions, risk and opportunities, mitigating actions, sensitivity analysis, contingency and for the overall conclusion as to whether a high degree of confidence has been achieved.

c. The directors should formally document and approve the profit forecast, together with the underlying supporting unpublished PFI, in the form of a board memorandum or paper.

Annex B: Profit forecasts in capital markets transactions and other profit guidance

1. UK

1.1 Summary of UK regulation relating to profit forecasts

PRR (which implement and incorporate the Prospectus Regulation and the Delegated Regulation), LR, AIM Rules, NEX Exchange Growth Market Rules and the City Code require that in certain circumstances an investment circular (prospectus, circular, admission document, offering document, etc.) contains a profit forecast.

Investment circulars, documents and announcements that may include a profit forecast	Regulation Reference
For a prospectus containing a registration document for equity securities	Delegated Regulation Annex 1 Section 11
For a prospectus containing a registration document for secondary issuance of equity securities	Delegated Regulation Annex 3 Section 7
For a prospectus containing a registration document for retail non-equity securities	Delegated Regulation Annex 6 Section 8
For a prospectus containing a registration document for wholesale non-equity securities	Delegated Regulation Annex 7 Section 8
For a prospectus containing a registration document for secondary issuance of non-equity securities	Delegated Regulation Annex 8 Section 7
For a prospectus containing an EU Growth registration document for equity securities	Delegated Regulation Annex 24 Item 2.7
For a prospectus containing an EU Growth registration document for non-equity securities	Delegated Regulation Annex 25 Item 2.5
Class 1 circular	LR 13.5.32 R LR 13.5.33 R
All documents regulated by the PRR or the LR	Delegated Regulation Article 1 'Definitions' Item (d)
AIM Admission Document	AIM Rules – Schedule Two paragraph (d) AIM Rule 17
NEX Exchange Admission	NEX Exchange Growth Market: Rules - Admission of shares, Appendix 1 Table A Item 2.7 - Admission of debt securities, Appendix 1 Table B Item 2.6
Document or Announcement covered by the City Code	The City Code, Section K, Rule 28 and definitions

1.2 Summary of regulatory guidance applicable to directors

ESMA Update of the CESR Recommendations on the Consistent Implementation of Commission Regulation (EC) No. 809/2004 Implementing the Prospectus Directive (ESMA Guidance)	
Para 38-50	Profit forecasts or estimates

ESMA Questions and Answers – Prospectuses (ESMA Q&A)	
Question 20	Supplement to prospectuses: profit forecast
Question 25	Profit forecasts or estimates
Question 102	Definition of profit forecasts
FCA Technical Notes	
FCA / TN / 340.2	Profit forecasts and estimates
Premium listing of equity shares: Continuing obligations	
LR 9.2.18 R (2)	Reproduction and explanation of a profit forecast in the next annual report and accounts: LR 9.2.18 R (2)(a) – publication of unaudited financial information LR 9.2.18 R (2)(b) – produce and disclose the actual figures for the same period LR 9.2.18 R (2)(c) – where there is a difference of 10% or more, provide an explanation of the difference
AIM Rules: Disclosure of miscellaneous information	
AIM Rules for Companies; Rule 17	Notification of any material change between actual trading performance or financial condition and any profit forecast, estimate or projection made public
Disclosure Guidance and Transparency Rules	
DTR 2.2	Disclosure of inside information via Regulatory Information Service DTR 2.2.3 – Identifying inside information DTR 2.2.6 – Information which is likely to be considered relevant to a reasonable investor's decision
Market Abuse Regulation	
MAR Article 17	Article 17(1) – Informing the public of inside information

1.3 Summary of other relevant regulation and guidance

Role of Sponsor: Premium Listing – LR	LR 8.4.2 R – Application for admission LR 8.4.8 R – Application for admission: further issues LR 8.4.12 R – Class 1 circulars, refinancing and purchase of own equity shares LR 8.4.15 R – Applying for a transfer between listing categories

Role of Nominated Adviser to AIM traded companies	AIM Rules for Nominated Advisers OR1 Schedule Three – responsibility to maintain regular contact with the AIM company in order to advise the AIM company on its obligations under the AIM Rules for Companies and to identify any breaches, including in respect of Rule 17 disclosures
Reporting accountants	Standard for Investment Reporting 1000 – Investment reporting standards applicable to all engagements in connection with an investment circular (SIR 1000) Standard for Investment Reporting 3000 - Investment reporting standards applicable to public reporting engagements on profit forecasts (SIR 3000)

1.4 Regulatory obligation – standards of care required

Capital markets regulation in the UK imposes standards on the content of information (including profit forecasts) included in investment circulars, and on the processes and procedures adopted by the directors in preparing such information including:

- the LR and PRR require the directors to ensure that, to the best of their knowledge, the information contained in the investment circular is in accordance with the facts and the investment circular contains no omission likely to affect its import; and
- the ESMA Guidance requires that due care and diligence must be taken to ensure that profit forecasts or estimates are not misleading to investors.

2. EU

2.1 Summary of EU regulation relating to profit forecasts

The European Commission has established a requirement for companies making a public offer within the EU or seeking admission to a European regulated market to prepare a prospectus.

The Delegated Regulation specifies the contents of a prospectus:

Investment circulars that may include a profit forecast	Regulation Reference
For a prospectus containing a registration document for equity securities	Annex 1 Section 11
For a prospectus containing a registration document for secondary issuances of equity securities	Annex 3 Section 7
For a prospectus containing a registration document for retail non-equity securities	Annex 6 Section 8
For a prospectus containing a registration document for wholesale non-equity securities	Annex 7 Section 8
For a prospectus containing a registration document for secondary issuances of non-equity securities	Annex 8 Section 7

For a prospectus containing a registration document for equity securities (EU Growth prospectus)	Annex 24 Item 2.7
For a prospectus containing a registration document for non-equity securities (EU Growth prospectus)	Annex 25 Item 2.5

2.2 Summary of regulatory guidance applicable to directors

ESMA Update of the CESR Recommendations on the Consistent Implementation of Commission Regulation (EC) No. 809/2004 Implementing the Prospectus Directive (ESMA Guidance)	
Para 38-50	Profit forecasts or estimates
ESMA Questions and Answers – Prospectuses (ESMA Q&A)	
Question 20	Supplement to prospectuses: profit forecast
Question 25	Profit forecasts or estimates
Question 102	Definition of profit forecasts

2.3 Regulatory obligation – standards of care required

The Prospectus Regulation imposes standards on the content of information (including in relation to profit forecasts) included in investment circulars, and on the processes and procedures adopted by the directors in preparing such information including:

- the Prospectus Regulation requires the directors to ensure that, to the best of their knowledge, the information contained in the investment circular is in accordance with the facts and the investment circular contains no omission likely to affect its import; and
- the ESMA Guidance requires that due care and diligence must be taken to ensure that profit forecasts or estimates are not misleading to investors.