AUTORITÉ
DES MARCHÉS FINANCIERS

AMF Position n° 2007-17

Questions and answers on profit forecasts

Reference texts: EC Regulation n° 809/2004 of 29 April 2004, Annex 1 § 13 / Annex 4 § 9 / Annex 9 § 8 / Annex 10 § 13 / Annex 11 § 8

1. If a listed company publishes turnover and profit "objectives" for N when it announces its yearly results (N-1), must it publish the auditor's statement setting out the assumptions?

Position:

No, the company is not required to publish the auditor's report when it announces its profit forecasts. The company does however have the permanent duty to make accurate, precise, fair disclosures to the market.

***It should be noted that if in N an issuer announces a "profit objective" for N, the AMF considers that this is in fact a forecast, within the meaning of European regulation n° 809/2004. In order to avoid any confusion, issuers are urged to choose appropriate terminology when publishing financial forecasts*.**

If at a later date this company files a registration document *and uses its registration document to draw up a prospectus,* and if the period concerned by the previously-published profit forecasts is not covered by historical financial information published in the meantime, it must then include the assumptions in the prospectus, as well as the auditor's report. The company can also decide not to maintain the profit forecasts published previously and in this case must explicitly state this in the prospectus.

2. When an issuer publishes a press release announcing a turnover objective for N with an operating profit range for N and then publishes a second announcement indicating that it maintains its turnover objective but has abandoned its profit range, can this be considered as a profit forecast?

Position:

It would not be a profit forecast, since turnover alone is not generally a basis for caculating profit.

However, if the issuer maintained the operating profit information, it could be qualified as a profit forecast if it were sufficiently precise. In a transaction, the issuer should then give the reasons why it abandoned its profit forecast in regard to the information on operating profit.

An issuer that has abandoned its profit forecast may not make a new announcement presenting this invalidated financial forecast as a new profit forecast.

3. An issuer that has announced a profit forecast then decides not to maintain it because it considers it to be overstated. In such cases must the issuer make a market disclosure?

<u>Position:</u>

This situation is explicitly provided for in the decision tree which specifies that if a prospectus is drawn up, the issuer must make a specific statement explaining that it does not maintain its profit forecast.

If the issuer does not maintain its profit forecast because it is anticipating that this figure will be lower than the information disclosed to the market, it must accordingly inform the market of the change.

4. The decision tree provides for a situation in which profit forecasts are partially covered by the published financial statements. How should the idea of partially covered forecasts be illustrated?

<u>Position:</u>

The following two situations can illustrate the notion of partially covered forecasts:

- **At the start of fiscal period N, an issuer announces a profit forecast for two periods, N and N+1. When a prospectus is published in N+1, the forecast previously announced for N will be covered by the historical information published. The issuer must specify whether the profit forecast given for N+1 is maintained or not;**
- **At the start of fiscal period N, an issuer announces a profit forecast covering fiscal period N, and draws up a prospectus for H2 N including the half-yearly financial statements. The issuer must then explicitly specify whether the half-yearly financial statements are sufficient to supplant the profit forecast given for N. If the issuer considers that this forecast is not out of date, it must update or confirm it.**

5. In the analysis criteria used to characterise a forecast, the Position of 10 July 2006 indicates that the indicators should be read as a function of a time horizon. How can this principle be illustrated?

The time horizon must be taken into account to distinguish forecasts from other forward-looking information. The longer the time horizon, the less possible it is to determine a probable level of profit.

Position:

- If in N an issuer gives information about a profit level in N or information enabling calculation thereof, it is presumed to have provided a forecast.

- If in N an issuer gives information about a profit level in N+1 or information enabling calculation thereof, it should be considered as having provided a forecast. It may however prove that this information is not sufficiently reliable and precise, and must then use appropriate vocabulary describing a trend or an objective so that there is no possible confusion with a forecast. But if this information was given on a date close to the year-end, for example after the publication of the half-yearly financial statements for N, there is a presumption of profit forecast.

- If in N an issuer gives information about a profit level in N+2 (or a longer time horizon) or information enabling calculation thereof, it should not, in general, be considered as having provided a forecast. It must consequently use appropriate vocabulary describing a trend or an objective so that there is no possible confusion possible with a forecast.

This general principle applies to both types of profit indicator (direct and indirect approach).

a) The data are declared as being forecasts, or the issuer directly presents a profit level.

- If in N an issuer publishes precise quantitative information about the forecast level of operating profit for several fiscal periods s (N, N+1 and N+2), it has presented a forecast.

- If in N an issuer publishes quantitative information about its operating profit for N+2, this may be a forecast if the data is sufficiently reliable and precise. If this is not the case or if the issuer does not wish to publish a forecast, it must communicate in general terms so that there is no possible confusion with a forecast.

b) The data are indirect profit forecasts. For example, in N an issuer publishes forecast turnover for fiscal periods N, N+1 and N+2.

- If other forward-looking information can be used to determine a probable profit level for N (for example, the estimated margin rate in N is 15%), this information is a profit forecast as the combination of the two items of information allows a calculation of the profit level.

- If other forward-looking information is presented for N+1 (stability of the expected margin rate for N+1), it is also possible to combine the two items of information for N+1 and to calculate a profit level for this fiscal period. But the issuer – if it deems appropriate – can also qualify its statements and indicate that the information does not offer a sufficiently high degree of certainty to be a profit forecast.

- If other forward-looking information is presented for N+2, it should not be considered a forecast unless it is possible to calculate profit (stability of margin maintained in N+2). However, the issuer can prove that this information is not sufficiently precise to be a forecast.

- If in N an issuer publishes information about average growth in its EBITDA up to N+2, this may be a profit forecast if the data is precise. If the issuer considers that the information does not represent a sufficiently reliable profit level, it must indicate this clearly and adopt general terms in order to avoid any confusion with a forecast.