

European Banking Authority
Tower 42 (level 18)
25 Old Broad Street
London EC2N 1HQ
United Kingdom
www.eba.europa.eu

Chris Barnard
Germany

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- **Your Ref: EBA Consultation Paper on the draft guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013**

Dear Sir.

Thank you for giving us the opportunity to comment on your EBA Consultation Paper on the draft guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013. You are proposing guidelines under Part Eight of Regulation (EU) 575/13 on: how institutions have to apply materiality in relation to the disclosure requirements of Title II of this Part (Article 432(1)); how institutions have to apply proprietary and confidentiality in relation to the disclosure requirements of Titles II and III of this Part (Article 432(2)); and on Institutions assessing more frequent disclosures of Titles II and III of this Part (Article 433). Given the lack of consistency practiced by entities in this area, particularly regarding materiality, I will make some general comments regarding materiality, and then discuss some more detailed points.

What is the nature of materiality?

Materiality is related to relevance in the sense that material information is relevant to the fair presentation of the financial position of the reporting entity. Materiality can be considered a subset of relevance, or rather, a threshold which determines whether information is relevant. It is both an entity-specific consideration, and a user-specific consideration, and therefore depends on the particular reporting entity's situation and the perceived (or stated) tolerances of users. This dual dependence does not easily permit a rules-based or uniform quantitative materiality threshold, rather a principles-based, entity- and user-specific materiality threshold.

Who should define the threshold of materiality?

Given the nature of materiality, which depends on the nature and magnitude of a particular item in relation to a particular reporting entity's situation, it demands a principles-based, entity- and user-specific consideration in order to determine its threshold. This should only reasonably be determined by the particular individual reporting entity and its auditors before the event.¹ It cannot be reasonably determined by regulators or standard-setters uniformly or in isolation. Should a question of materiality arise after the event, its implications and consequences will certainly depend on the process and due consideration given to materiality by the reporting entity and its auditors before the event.

Is there a need for more guidance in this regard?

The executive summary states that "the assessments of regulatory disclosures that the EBA has performed since 2009 have shown that the materiality, proprietary and confidentiality concepts were implemented differently by different institutions", and that "concerns have been raised in various forums about the use of the concept of materiality by institutions, pointing out that guidance and transparency on this concept were needed to ensure that it is properly implemented".² I accept that this is the case, and would therefore welcome further guidance and fundamental principles here.

Answers to specific questions raised by the EBA

Q3) Should the guidelines be developed more on what is expected from institutions when an item of information is assessed as material?

I believe that the concept of materiality is understood by the parties. Given the entity- and user-specific nature of materiality, and its significance, it is not clear that it is consistently applied in practice. Should a question of materiality arise after the event, it may need to be settled by regulators or the courts. However, we should certainly aim to manage the expectations of all parties regarding materiality in order to minimise the number of such cases, and so additional guidance would be useful. However, such guidance should not be so specific as to pre-empt the responsibility of the individual reporting entity and its auditors to determine materiality thresholds.

Q4) Do you agree with the principles and indicators to be considered in the assessment of materiality? Which additional principles or indicators, if any, would you like to see considered?

The important point is that we should manage users' expectations concerning the nature, amount, timing and uncertainty of cash flows and the financial position of the entity.

¹ Individual users will have their own views after the event, which the reporting entity must pre-consider in its determination of the threshold.

² See Consultation Paper, Section 2. Executive Summary, pages 4-5.

Please note that the comments expressed herein are solely my personal views

Particularly concerning netting of misstatements, I would be very concerned about large but offsetting amounts which had no impact on profit (for example) compared with smaller individual amounts which had an impact on profit.

Finally I support that the same considerations should apply to notes which do not relate directly to financial statement items but are nonetheless of significance for the overall assessment of the financial statements of a reporting entity as apply in determining the materiality applying to items which relate directly to financial statement items.

Yours faithfully

C.R.B.

Chris Barnard