

ESMA PUBLIC STATEMENT: GUIDELINES ON ALTERNATIVE PERFORMANCE MEASURES (APMs) AND QUESTIONS & ANSWERS

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Summary

The European Securities and Markets Authority (ESMA) issued Guidelines on Alternative Performance Measures (APMs) (Guidelines on APMs) aimed at promoting the usefulness and transparency of APMs included in prospectuses and/or regulated information for listed issuers. An APM is a financial measure of historical or future financial performance, financial position, or cash flows, other than a financial measure defined or specified in the applicable financial reporting framework. The Guidelines on APMs are applicable on or after 3 July 2016.

The Guidelines on APMs were issued based on the Transparency Directive's objective of providing equivalent investor protection at EU level and the underlying principle of providing a true and fair view of an issuer's assets, liabilities, financial position and profit or loss pursued by the provisions. At the same time, ESMA considered that a common approach to APMs was necessary to ensure consistent, efficient and effective supervisory practices and a uniform and consistent application of the Transparency Directive (TD) (and by extension the Market Abuse Regulation(MAR)).

ESMA plays an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, ESMA develops Questions and Answers (Q&As) as when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines.

There are 17 Q&As for ESMA's Guidelines on APMs, which cover:

1. The definition of APMs and basis of their calculation;
2. The prominence of APMs;
3. The use of the 'compliance by reference' principle;
4. The scope of the Guidelines on APMs;
5. Application of the scope exemption;
6. Definition of the APM 'organic growth';
7. How to carry out reconciliations; and
8. How to apply the fair review principle.

This IFRB summarises the main points in the Guidelines on APMs and Q&As. The full documents can be accessed from the following links:

<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-guidelines-alternative-performance-measures>

<https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-qa-under-alternative-performance-measures-guidelines>

STATUS

Updated when new questions are received.

EFFECTIVE DATE

Immediate

ACCOUNTING IMPACT

Common approaches and practices in the application of the ESMA Guidelines on APMs.

Guidelines on APMs

Scope

The Guidelines on APMs are addressed to issuers and persons responsible for the prospectus under article 6(1) of the Prospectus Directive and apply to all competent authorities (CAs) under the Transparency Directive (TD), the Market Abuse Regulation (MAR) or the Prospectus Directive (PD).

Application

The Guidelines on APMs apply in relation to APMs disclosed by issuers or persons responsible for the prospectus when publishing regulated information and prospectuses (and supplements). Examples of regulated information are management reports disclosed in accordance with the TD and disclosures issued under the requirements of article 17 of the MAR (i.e. ad-hoc disclosures including financial earnings results).

The Guidelines on APMs do not apply to APMs disclosed in financial statements or disclosed in accordance with applicable legislation such as pro forma financial information, related party transactions, profit forecasts, profit estimates, working capital statements and capitalisation and indebtedness for which the specified requirements of the prospectus regime apply.

Effective date

When publishing regulated information or prospectuses on or after 3rd July 2016.

Purpose

The guidelines set out a common approach towards the use of APMs and are expected to benefit the users and to promote market confidence.

Definition of an APM

An APM is a financial measure of historical or future financial performance, financial position, or cash flows, other than a financial measure defined or specified in the applicable financial reporting framework. Examples include operating earnings, cash earnings, earnings before one-time charges, earnings before interest, taxes, depreciation and amortisation (EBITDA), net debt, autonomous growth or similar terms denoting adjustments to line items of statements of comprehensive income, statements of financial position or statements of cash flows.

The Guidelines on APMs are not applicable to:

- measures defined or specified by the applicable financial reporting framework such as revenue, profit or loss or earnings per share;
- physical or non-financial measures such as number of employees, number of subscribers, sales per square metre (when sales figures are extracted directly from financial statements) or social and environmental measures such as greenhouse gases emissions, breakdown of workforce by type of contract or by geographic location;
- information on major shareholdings, acquisition or disposal of own shares and total number of voting rights; or
- information to explain the compliance with the terms of an agreement or legislative requirement such as lending covenants or the basis of calculating the director or executive remuneration.

Disclosure principles

The APMs should be defined using their components as well as the basis of calculation adopted, including details of any material hypotheses or assumptions used as well as whether the APM or any of its components relate to the (expected) performance of the past or future reporting periods.

Presentation

APMs should be disclosed as follows:

- in a clear and readable way,
- given meaningful labels reflecting their content and basis of calculation to avoid conveying misleading messages to users,
- not use overly optimistic or positive labels,
- not use labels, titles or descriptions of measures defined in the applicable financial reporting framework that are the same or confusingly similar, and
- not mislabel items, such as restructuring costs or impairment losses, as non-recurring, infrequent or unusual.

Reconciliations

A reconciliation should be disclosed of the APM to the most directly reconcilable line item, subtotal or total presented in the financial statements of the corresponding period, separately identifying and explaining the material reconciling items. When a reconciling item cannot be extracted directly from the financial statements, the reconciliation should show how the figure is calculated.

Explanation on the use of APMs

The use of APMs should be explained in order to allow users to understand their relevance and reliability.

Prominence and presentation of APMs

APMs should not be displayed with more prominence, emphasis or authority than, and should not distract from, measures directly stemming from financial statements.

Comparatives

APMs should be accompanied by comparatives for the corresponding previous periods. In situations where APMs relate to forecasts or estimations, the comparatives should be in relation to the last historical information available.

Consistency

The definition and calculation of an APM should be consistent over time. In exceptional circumstances where an APM is redefined, the issuer should:

- i. explain the changes;
- ii. explain the reasons why these changes result in reliable and more relevant information on the financial performance, and
- iii. provide restated comparative figures.

If an issuer stops disclosing an APM, the issuer should explain the reason for considering that this APM no longer provides relevant information. If an issuer, replaces an APM with another one that better achieves the same objectives, issuers should explain why the new APM provides reliable and more relevant information compared to the previous APM used.

Compliance by reference

Except in the case of prospectuses, which are covered by a separate regime for incorporation by reference, and for those EU member states which do not permit the compliance by reference, disclosure principles set out in the Guidelines on APMs may be replaced by a direct reference to other documents previously published which contain these disclosures on APMs and are readily and easily accessible to users. In this case, compliance with the guidelines is to be assessed reading the documents together. Compliance by reference should not be understood as allowing the removal of those comparatives and replacement with references.

Questions and Answers**Question 1 - Applicability of ESMA's Guidelines on Alternative Performance Measures (APMs) to prospectuses comprising documents published before and on/after 3 July 2016**

Question: ESMA's Guidelines on APMs (ESMA/2015/1415) apply to APMs disclosed by issuers or persons responsible for the prospectus when publishing regulated information or prospectuses on or after 3 July 2016, cf. paragraph 5 of the Guidelines on APMs. Given that a prospectus can be formed by a combination of a registration document and a securities note, and a summary where applicable, and that prospectuses or base prospectuses can incorporate by reference the information contained in a previously approved registration document, do the Guidelines apply:

- to a registration document containing APMs which was published before 3 July when that registration document is combined with a securities note published on/after 3 July?
- to a registration document (or prospectus) containing APMs which was published before 3 July when the information contained in that registration document is incorporated by reference into a prospectus or base prospectus published on/after 3 July?
- to a supplement containing APMs published on/after 3 July when the prospectus or registration document was published before 3 July?

Answer: The applicability of the Guidelines on APMs is determined with reference to the publication date of the prospectus.

Question 2 - Measures presented simultaneously inside and outside financial statements

Question: The Guidelines on APMs excludes from its scope the APMs disclosed in the financial statements (as defined in section II). Do the Guidelines on APMs apply to APMs simultaneously presented inside and outside financial statements?

Answer: Yes. The Guidelines on APMs apply to all financial measures which fall within the definition in the Guidelines on APMs and are disclosed outside financial statements but in documents within the scope of regulated information.

Question 3 - Financial measures calculated using exclusively figures stemming from financial statements

Question: Do the Guidelines on APMs apply to financial measures such as financial ratios calculated using exclusively figures directly stemming from financial statements?

Response: Yes, unless a) these measures are defined or specified by the applicable financial reporting framework or b) financial measures fall within the exception provided for APMs disclosed in

accordance with applicable legislation, other than the applicable financial reporting framework.

Question 4 - Interim financial reports

Question: Do the Guidelines on APMs apply to interim financial reporting?

Answer: The Guidelines on APMs apply to interim financial reporting if it falls under the definition of regulated information set out in the TD.

Question 5 - Segment information

Question: Do the Guidelines on APMs apply to measures presented in segment information?

Answer: Unless the measures presented in segment information are defined or specified in the applicable financial reporting framework, the Guidelines on APMs apply to these measures if they are presented outside financial statements (e.g. management report).

Question 6 - Labels used on APMs

Question: Do the Guidelines on APMs apply to other labels than 'non-recurring', 'infrequent' or 'unusual' which are specifically referred to in paragraph 25 of the Guidelines on APMs?

Answer: Yes, the Guidelines on APMs apply to all labels of APMs used by issuers or the persons responsible for prospectus. Although the Guidelines on APMs do not prescribe which labels can or cannot be used, the labels used should (i) be meaningful; (ii) not be misleading; and (iii) reflect the content and the basis of calculation of the APMs.

Question 7 - Concept of 'corresponding previous periods'

Question: How should the concept of 'corresponding previous periods' in relation to financial reports, ad-hoc disclosures or prospectuses be applied by issuers or the persons responsible for the prospectus?

Answer: Figures should be presented for all periods.

Question 8 - Interim financial statements

Question: Do the Guidelines on APMs apply to quarterly financial figures included in ad-hoc disclosures published by issuers in accordance with article 17 of the MAR when there is no requirement under the TD to publish interim financial statements (e.g. quarterly financial statements)?

Answer: Yes

Question 9 - Concept of prominence

Question: How should an issuer apply the principle of 'prominence' as included in the Guidelines on APMs?

Answer: As the Guidelines on APMs do not define the concept of prominence, issuers should use their judgment when complying with this principle. This judgement should be made on a case-by-case basis depending on the documents where the APMs are included. The notion of prominence is, in essence, qualitative and not merely quantitative.

Question 10 - Compliance by reference (not applicable to prospectuses which are covered by a separate regime)

Question: What are the limits for the compliance by reference principle?

Answer: Issuers may use the compliance by reference in order to avoid repetition of information in regulated information documents (e.g. ad-hoc disclosures presented in accordance with article 17 of MAR). However, the reference principle cannot be used when complying with the following requirements:

- Comparatives
- Meaningful labels to the APMs used
- Prominence and presentation of APMs
- Consistency (however, the explanations required by paragraph 41 of the APM guidelines may be complied with by reference)

Question 11 - Definition of an APM

Question: Is 'result of operating activities' an APM for the purpose of the Guidelines on APMs?

Answer: Unless the applicable financial reporting framework defines or specifies 'result of operating activities', this measure is an APM for the purpose of the Guidelines on APMs. Despite the fact that there is a reference in paragraph 55 of the Basis for Conclusion of IAS 1 *Presentation of Financial Statements* to 'results of operating activities', operating results or results from operating activities are not defined or specified in IFRS. Therefore, under the IFRS framework, measures labelled as 'operating results', 'results of operating activities' or other similar labels are within the scope of the Guidelines on APMs when presented outside financial statements

Question 12 - Definition of APMs

Question: Do financial measures originally defined or specified in the applicable financial reporting framework and adjusted with the aim of isolating the effect of foreign currency on these measures qualify as APMs?

Answer: Yes. Any adjustments to a financial measure defined or specified in the applicable financial reporting framework transform that measure into an APM.

Question 13 - Scope of the Guidelines on APMs

Question: Does a segment measure of profitability - which is determined on different accounting basis than the basis defined or specified in the applicable reporting framework - fall within the definition of an APM in the Guidelines on APMs?

Answer: Yes

Question 14 - Application of the scope exemption

Question: In which circumstances is the scope exemption of the Guidelines on APMs applicable (i.e. issuers are not required to apply the Guidelines on APMs when APMs are used to explain the compliance with the terms of an agreement or legislative requirement such as lending covenants or the basis of calculating the director or executive remuneration)?

Answer: The exception is only applicable when an issuer uses APMs solely to explain compliance with terms of an agreement or

legislative requirement. If issuers use simultaneously an APM to explain the compliance of terms of agreement or legislative requirement and to provide information on/describe its performance in a given period, this APM is within the scope of the Guidelines on APMs.

Question 15 - Definition and basis of calculation

Question: How should an issuer define the APM measure 'Organic growth'?

Answer: The Guidelines on APMs require issuers to provide users with definitions of the APMs used and their components as well as the basis of calculation adopted, including details of any material hypotheses or assumptions used. When providing a definition and disclosure on the basis of calculation of an APM indicating the 'Organic Growth' of an issuer's total revenues, the issuer shall present not only the total change in revenues that can be derived from the financial statements, but also the disaggregation of the other components that together with the change in revenue attributable to 'Organic Growth', add up to the total revenue change.

Question 16 - Reconciliation

Question: Do the Guidelines on APMs require a numeric reconciliation of the APM to 'the most reconcilable line item, total or subtotal' presented in the financial statements or is it sufficient to include a qualitative explanation of the items which adjust the financial statement's figures?

Answer: The Guidelines on APMs foresee that 'the reconciliation should show how the figure is calculated'. The reconciliation should separately identify and explain the material reconciling items.

Question 17 - Application of the Fair view principle to APMs

Question: May APMs representing a biased measure of performance (i.e. a measure that includes one-off gains but disregards one-off related losses) violate the Guidelines on APMs even if they are correctly labelled?

Answer: The Guidelines on APMs are based on the principle stated in Articles 4 and 5 of the TD of providing a fair review of the development and performance of the business and the position of the issuer. Depending on facts and circumstances, presenting biased APMs which are adjusted to exclude only one-off losses but including, where applicable, one-off gains of the same nature and occurring during the same period may violate the principles set out in articles 4 and 5 of the TD and be contrary to the overall objective of the Guidelines on APMs. Depending on facts and circumstances, this may be true irrespective of whether these APMs are correctly labelled as the fair labelling may not compensate for the fact that the APMs provided an unfair review of the development and performance of the business and the position of the issuer.



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