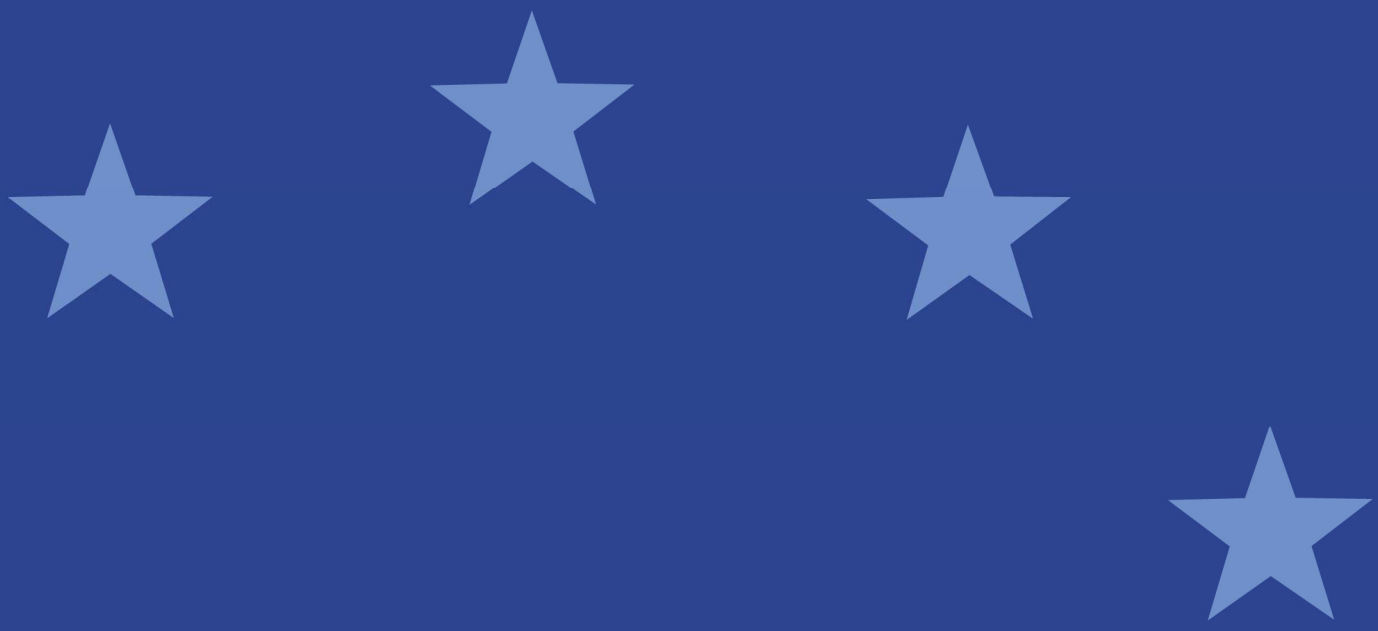
esma European Securities and Markets Authority

Guidelines

ESMA Guidelines on Alternative Performance Measures



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I. Scope

Who?

1. These guidelines are addressed to:

   - issuers defined as natural persons or legal entities governed by private or public law, other than States, whose securities are admitted to trading on a regulated market and who are required to publish regulated information as defined by the TD.

     In the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market.

   - persons responsible for the prospectus under article 6 (1) of the Prospectus Directive.

2. These guidelines apply to all competent authorities (CAs) under the Transparency Directive or the Market Abuse Regulation or the Prospectus Directive.

What?

3. These guidelines 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 to the market in accordance with the Transparency Directive and disclosures issued under the requirements of article 17 of the Market Abuse Regulation, for example ad-hoc disclosures including financial earnings results.

4. By way of derogation from the aforementioned paragraph these guidelines do not apply to APMs:

   - disclosed in financial statements as defined in section II of these guidelines;

   - disclosed in accordance with applicable legislation, other than the applicable financial reporting framework[1], that sets out specific requirements governing the determination of such measures. Therefore, the guidelines do not apply to measures included in prospectuses such as pro forma financial information, related party transactions, profit forecasts, profit estimates, working capital statements and capitalisation and indebtedness for which the specific requirements of the prospectus regime apply. Similarly, the guidelines should not be applicable to prudential measures including measures defined in the Capital Requirements Regulation and Directive – CRR/CRD IV.

When?

5. These guidelines apply to APMs disclosed by issuers or persons responsible for the prospectus when publishing regulated information or prospectuses on or after 3rd July 2016.

II. References and definitions

Legislative references

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.
Market Abuse Regulation	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).
Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency

[1] While these Guidelines do not apply to financial statements they do apply to other sections that make up the annual and half-yearly financial reports, in particular management reports or interim management reports as relevant.

	requirements in relation to information about issuers whose securities are traded on a regulated market and amending Directive 2001/34/EC[2].
Directive implementing the Transparency Directive	Directive 2007/14/EC, of 8 March 2007, laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading.

Abbreviations

APM	Alternative Performance Measure
EEA	European Economic Area
ESMA	European Securities and Markets Authority
GAAP	Generally Accepted Accounting Principles
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards
CAs	Competent Authorities

Definitions

Unless otherwise specified, terms used and defined in the Transparency Directive, Prospectus Directive and Market Abuse Regulation have the same meaning in these guidelines. Some of the terms defined are recalled hereunder for the ease of reference. In addition, the following definitions apply:

Applicable financial reporting framework	For the purpose of these guidelines any of the following: (i) International Financial Reporting Standards (IFRS) as adopted in the EU pursuant to Regulation (EC) No 1606/2002 on the application of international accounting standards or (ii) the accounting requirements stemming from the transposition of the European Accounting Directives (78/660/EEC, and 83/349/EEC or 2013/34/EC) into the legal system of the Member States of the European Union or (iii) Generally Accepted Accounting Principles (GAAP) laying down equivalent requirements in accordance with Commission Regulation (EC) No 1569/2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to

[2] As last amended by Directive 2013/50/EU. Insofar as relevant, until the time for transposition of Directive 2013/50/EU has run out, references to the Transparency Directive shall be read in accordance with its provisions as in force before their amendment by Directive 2013/50/EU.

	Directive 2003/71/EC and 2004/109/EC of the European Parliament and of the Council for issuers that are exempted from the requirement of preparing IFRS as endorsed in the EU.
Financial statements	For the purposes of these guidelines, financial statements refer to annual, half-yearly financial statements and additional periodic financial information prepared in accordance with the applicable financial reporting framework and disclosed by issuers or persons responsible for the prospectus in accordance with the Transparency Directive or the Prospectus Directive.
Prospectus	For the purposes of these guidelines, prospectus refers to a document prepared in accordance with Directive 2003/71/EC.
Issuer	For the purpose of these guidelines an issuer is a natural person or a legal entity governed by private or public law, other than a State, whose securities are admitted to trading on a regulated market. In the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market.
Regulated information	All information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under the Transparency Directive, under the Market Abuse Regulation, or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of the Transparency Directive (transposition of the Transparency Directive)[3].
Securities	Transferable securities as defined in Article 4(1), point 18, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments with the exception of money-market instruments, as defined in Article 4(1), point 19, of that Directive having a maturity of less than 12 months, for which national legislation may be applicable

III. Purpose

6. The guidelines are aimed at promoting the usefulness and transparency of APMs included in prospectuses or regulated information. Adherence to the guidelines will improve the comparability, reliability and/or comprehensibility of APMs. Issuers or

[3] As of 3 July 2016 references to Directive 2003/6/EC shall be construed as references to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC and shall be read in accordance with the correlation table set out in Annex II of this Regulation.

persons responsible for the prospectus which comply with these guidelines will provide a faithful representation of the financial information disclosed to the market.

7. ESMA is of the view that issuers or persons responsible for the prospectus who decide to provide APMs should do so in a way that is appropriate and useful for users' decision-making. Within the scope of its powers as set out in the ESMA Regulation, ESMA may issue guidelines under Article 16 of the ESMA Regulation in relation to the acts referred to in Article 1(2) of the ESMA Regulation, which include the Transparency Directive, the Prospectus Directive and the Market Abuse Regulation.

8. 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, ESMA considers that a common approach to APMs is necessary to ensure consistent, efficient and effective supervisory practices and a uniform and consistent application of the Transparency Directive (and by extension the Market Abuse Regulation).

9. In line with its aim of promoting protection of actual and potential investors, Article 5 of the Prospectus Directive sets out the principle that all information included in a prospectus shall be presented in an easily analysable and comprehensible form. ESMA is of the view that, where persons responsible for the prospectus decide to include APMs in a prospectus, this principle of comprehensibility dictates that such APMs should be defined, provided with meaningful labels and reconciled to financial statements and their relevance and reliability should be explained.

10. On the basis of the above considerations, ESMA has decided to issue these guidelines. The guidelines set out a common approach towards the use of APMs and are expected to benefit users and to promote market confidence.

IV. Compliance and reporting obligations

Status of the guidelines

11. This document contains guidelines issued under Article 16 of the ESMA Regulation addressed to issuers or persons responsible for the prospectus and CAs. In accordance with Article 16(3) of the ESMA Regulation, CAs and issuers or persons responsible for the prospectus must make every effort to comply with guidelines.

12. For the avoidance of doubt, these guidelines do not displace any obligations to comply with requirements set out in Regulations or under Directives. Accordingly, the requirements in MAR relating to prompt disclosure of information to the market or the public as required under the applicable laws and regulations should be complied with.

13. CAs with responsibilities for supervising the TD and MAR requirements should incorporate these guidelines into their supervisory practices and monitor whether issuers comply with them.

14. CAs with responsibilities in approving prospectuses should incorporate these guidelines into their supervisory practices to ensure that persons responsible for the prospectus comply with them.

Reporting requirements

15. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA to corporate.reporting@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

V. Guidelines on Alternative Performance Measures

16. These guidelines set out principles in bold with subsequent explanatory, elaborating and exemplifying paragraphs. In order to comply with these guidelines issuers or persons responsible for the prospectus have to comply with the guidelines as a whole.

What is an APM?

17. **For the purpose of these guidelines an APM is understood as 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.**

18. APMs are usually derived from (or based on) the financial statements prepared in accordance with the applicable financial reporting framework, most of the time by adding or subtracting amounts from the figures presented in financial statements. Examples of APMs 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 flow.

19. In accordance with the definition in paragraph 17, these guidelines 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 meter (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;

- 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

20. **Issuers or persons responsible for the prospectus should define the APMs used and their components as well as the basis of calculation adopted, including details of any material hypotheses or assumptions used. Issuers or persons responsible for the prospectus should also indicate whether the APM or any of its components relate to the (expected) performance of the past or future reporting period.**

Presentation

21. **Issuers or persons responsible for the prospectus should disclose the definitions of all APMs used, in a clear and readable way.**

22. **APMs disclosed should be given meaningful labels reflecting their content and basis of calculation in order to avoid conveying misleading messages to users.**

23. For example, issuers or persons responsible for the prospectus should not use overly optimistic or positive labels such as ‘guaranteed profit’ or ‘protected returns’.

24. Issuers or persons responsible for the prospectus should not use labels, titles or descriptions of measures defined in the applicable financial reporting framework that are the same or confusingly similar when referring to APMs.

25. Issuers or persons responsible for the prospectus should not mislabel items as non-recurring, infrequent or unusual. For example items that affected past periods and will affect future periods will rarely be considered as non-recurring, infrequent or unusual (such as restructuring costs or impairment losses).

Reconciliations

26. **A reconciliation of the APM to the most directly reconcilable line item, subtotal or total presented in the financial statements of the corresponding period**

should be disclosed, separately identifying and explaining the material reconciling items.

27. **Issuers or persons responsible for the prospectus should also present the most directly reconcilable line item, subtotal or total presented in the financial statements relevant for that specific APM.**

28. Where reconciling items are included in financial statements, users should be able to identify them in those financial statements. Where a reconciling item cannot be extracted directly from the financial statements, the reconciliation should show how the figure is calculated.

29. Where an APM is directly identifiable from the financial statements no reconciliation is required. This applies for example when an APM is a total or subtotal presented in financial statements.

30. Where financial statements of the corresponding period are not yet published, APMs should be reconciled to the most directly reconcilable line item, subtotal or total which will be included in those financial statements when they are published (e.g. earnings results presented before financial statements).

31. Where financial statements of the corresponding period are not going to be published, APMs should be reconciled to the most directly reconcilable line item, subtotal or total which would be included in those financial statements if they were published. The most directly reconcilable line item, subtotal or total used to reconcile the APM should be calculated and presented consistently with the corresponding line item, subtotal or total included in the issuer's most recent published annual financial statements.

32. Where an APM presented is not reconcilable because it does not derive from the financial statements, such as profit estimates, future projections or profit forecasts, the issuer should provide an explanation about the consistency of that APM with the accounting policies applied by the issuer in the financial statements prepared in accordance with the applicable financial reporting framework.

Explanation on the use of APMs

33. **Issuers or persons responsible for the prospectus should explain the use of APMs in order to allow users to understand their relevance and reliability.**

34. Issuers or persons responsible for the prospectus should explain why they believe that an APM provides useful information regarding the financial position, cash-flows or financial performance as well as the purposes for which the specific APM is used.

Prominence and presentation of APMs

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

36. Presentation of APMs should not distract from the presentation of the measures directly stemming from financial statements.

Comparatives

37. **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.**

38. **Issuers or persons responsible for the prospectus should present reconciliations for all comparatives presented.**

39. Where it is impracticable to provide comparative figures, issuers or persons responsible for the prospectus should disclose its impracticability and explain why it is impracticable to provide those comparatives.

40. Where restating comparatives, issuers or persons responsible for the prospectus should only use information available at the end of the financial period for which the APM was presented, and should not incorporate effects of events occurring after that moment, i.e. hindsight should not be used when presenting restated comparatives.

Consistency

41. **The definition and calculation of an APM should be consistent over time. In exceptional circumstances where issuers or persons responsible for the prospectus decide to redefine an APM, 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.**

42. **If an issuer stops disclosing an APM, the issuer should explain the reason for considering that this APM no longer provides relevant information.**

43. When a specific APM is replaced by 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.

44. APMs included in prospectuses should be used consistently for the financial periods covered by the prospectus. These guideline should not extend to where the persons responsible for the prospectus decides to replace an APM or to stop presenting an

APM across different prospectuses in terms of time or the nature of securities being issued (e.g. persons responsible for the prospectus shall not be required to explain why different APMs are used in a prospectus for issuing equity securities and one for issuing non-equity securities taking into account the fact that the relevance of performance measurements may differ depending on the type of securities being issued).

Compliance by reference

45. **Except in the case of prospectuses which are covered by a separate regime for incorporation by reference[4] and except for those member states which do not permit the compliance by reference, disclosure principles set out in these guidelines 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. However, compliance by reference should not override the other principles of these guidelines**

46. APMs should be accompanied by the comparatives for the corresponding previous periods, thus the compliance by reference should not be understood as allowing the removal of those comparatives and replacement with references.

47. References made should direct users to the information required by these guidelines such as direct hyperlinks into the documents where the information may be accessed. This reference should be sufficiently precise such as identification of the specific page, section or chapter of the documents where this information can be read.

48. For the purpose of these guidelines, readily and easily access to the documents implies that investors will not need to register on websites, to pay fees to access this information or to search for these documents through a search facility or a succession of links.

[4] Article 11 of Directive 2003/71/EC.