



Circular FSMA_2015_17 of 4/12/2015

Guidelines on alternative performance measures: implementation by the FSMA

Scope:

The guidelines referred to in this document are the ESMA Guidelines on the alternative performance measures (APMs) disclosed by issuers or persons responsible for the prospectus when publishing regulated information and prospectuses (and supplements).

These guidelines apply to:

- issuers defined as natural persons or legal entities governed by public or private law, other than States, whose securities are admitted to trading on a regulated market, and who are required to publish regulated information¹ as defined by the Transparency Directive².

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, first paragraph of the Prospectus Directive³.

Summary/Objectives:

This document addresses the Guidelines of the European Securities and Markets Authority (hereafter referred to as "ESMA") on alternative performance measures (APMs), and their implementation by the FSMA.

Dear Sir or Madam,

¹ Regulated information is 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, first paragraph of the Transparency Directive (transposition of the Transparency Directive).

² Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

³ 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 and amending Directive 2001/34/EC.

Pursuant to Article 16 of the ESMA Regulation⁴, ESMA may issue guidelines addressed to competent authorities or financial market participants with a view to establishing consistent, efficient and effective supervisory practices within the European system of financial supervision and to ensuring the common, uniform and consistent application of Union law.

In accordance with paragraph 3 of Article 16 of the aforementioned Regulation, "the competent authorities and financial market participants shall make every effort to comply with those guidelines" and "within 2 months of the issuance of a guideline..., each competent authority shall confirm whether it complies or intends to comply with [it]. In the event that a competent authority does not comply or does not intend to comply, it shall inform [ESMA], stating its reasons".

Against that background, ESMA has issued guidelines on alternative performance measures. They shed light on ESMA's view of the way EU legislation is to be implemented when alternative performance measures are used in regulated information or prospectuses (and supplements).

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

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

The guidelines are based on the Transparency Directive, the Market Abuse Regulation and the Prospectus Directive. 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 an issuer's assets, liabilities, financial position and profit or loss pursuant to the provisions, ESMA considers that a common approach to APMs is necessary to ensure consistent, efficient and effective supervisory practices and a consistent application of the Transparency Directive (and by extension the Market Abuse Regulation).

In line with its aim of protecting the interests of investors 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.

⁴ Regulation (EC) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority.

These guidelines apply to all competent authorities under the Transparency Directive, the Market Abuse Regulation or the Prospectus Directive.

The guidelines comprise a number of principles that must be complied with by issuers and by persons responsible for the prospectus. Thus, APMs must:

- be defined in a clear and readable way;
- be accompanied by an indication whether they refer to the (expected) performance of the past or the future reporting period;
- be labelled in a meaningful and non-misleading manner;
- be reconciled to the most directly reconcilable line item, total or subtotal in the financial statements;
- be accompanied by an explanation of their use in order to allow users to understand their relevance and reliability;
- not be displayed with more prominence, emphasis or authority than measures directly stemming from financial statements;
- be accompanied by comparative figures for the corresponding previous periods;
- be calculated and defined in a way that is consistent over time.

If an issuer stops disclosing an APM, the issuer should explain why he or she considers that this APM no longer provides relevant information.

The FSMA considers that the guidelines further specify the application of the articles mentioned below, and has therefore decided to integrate the guidelines into its supervisory instruments. The articles in question are:

- Articles 5, 12 and 13 of the Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market;
- Article 24 of the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on a regulated market;
- Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.

Yours faithfully,

Jean-Paul SERVAIS
Chairman

Annex: - [FSMA_2015_17-01 / ESMA Guidelines on Alternative Performance Measures](#)