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Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation
Guidelines on Alternative Performance Measures

Topic
Alternative Performance Measures (APM)

Historic Question Reference
[ESMA32-51-370 APM Q1]

Subject Matter
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 Alternative Performance Measures (ESMA/2015/1415) apply to APM's 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. 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?

ESMA Answer

20-12-2016

Original language

[ESMA32-51-370 APM Q1]

As set out in paragraph 5 of the Guidelines (cited above), the applicability of the Guidelines is determined with reference to the publication date of the prospectus.

As such, where a registration document containing APMs was published before 3 July and that registration document is combined with a securities note published on/after 3 July, the Guidelines do not apply to the registration document but only to the securities note and the summary, where applicable. Equally, where the information contained in such a registration document is incorporated by reference into a prospectus or a base prospectus published

on/after 3 July, the Guidelines do not apply to the registration document but only to the remainder of the prospectus or base prospectus.

Where a registration document containing APMs was approved but not published before 3 July and that registration document is combined with a securities note published on/after 3 July, or the information contained in that registration document is incorporated by reference into a prospectus or a base prospectus published on/after 3 July, the Guidelines apply to the registration document as well as to the securities note and the summary, where applicable, or to the prospectus/base prospectus. In these instances, the registration document should be updated through the mechanism set out in Article 12(2) of the Prospectus Directive.

Where a prospectus or registration document published before 3 July is supplemented on/after 3 July and the supplement contains APMs, the Guidelines apply to the supplement.