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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 Q17]

Subject Matter
Application of the Fair review principle to APMs; Paragraphs 6, 8 and 22 of the APM Guidelines.

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 APM Guidelines even if they are correctly labelled?

ESMA Answer

30-10-2017

Original language

[ESMA32-51-370 APM Q17]

In accordance with paragraph 8, the APM Guidelines are based on the principle stated in Articles 4 and 5 of the Transparency Directive of providing a fair review of the development and performance of the business and the position of the issuer. In addition, the overall objective of the APM Guidelines, as prescribed in paragraph 6 of the Guidelines, is to contribute to transparent and useful information to the market and improve comparability, reliability and/or comprehensibility of APMs used.

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 Transparency Directive and be contrary to the overall objective of the APM Guidelines. 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. Therefore, depending on facts and circumstances, a biased measure of performance may not be compliant with the APM Guidelines.