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The Market Newsletter addresses topical matters concerning interpretations, regulation, as well as supervisory findings relating to listed companies' disclosure obligation, financial reporting enforcement, securities trading and insider issues. The newsletter is published by the Financial Supervisory Authority's Capital Markets Supervision.

## Changes to inside information disclosure practice

The Commission Implementing Regulation<sup>1</sup> associated with the Market Abuse Regulation (MAR) requires that when inside information is publicly disclosed it is clearly identified that the information communicated is inside information.

When the MAR came into force, the Financial Supervisory Authority (FIN-FSA) considered it sufficient that inside information be published in the "Inside Information" message category, because the releases are available in the said message category in the OAM (central storage facility for regulated information). The FIN-FSA considered the requirement of the Commission Implementing Regulation to be fulfilled when the basic information of a stock exchange release published on the basis of Article 17 of MAR contained the general title "Stock exchange release". The companies of the First North marketplace have used the title "Company announcement"<sup>2</sup>.

A shortcoming of the current practice, however, is that the message categories do not appear in media news feeds. They only appear in the OAM, to which First North companies are not even required to send their bulletins. In addition, the releases on issuers' websites do not usually indicate with which releases the company has disclosed inside information, which may make it difficult for the investor to understand what information the company has considered to be inside information.

### **In the future, information on the public disclosure of inside information should be visible in the release itself**

The FIN-FSA considers that the disclosure practice for inside information should be changed so that, in the future, "Inside information" is always entered in the basic information of a stock exchange release or company announcement when the public disclosure of inside information is involved. When inside information is publicly disclosed, the title "stock exchange release" should therefore no longer be used in the basic information of the release.

<sup>1</sup> Commission Implementing Regulation (EU) 2016/1055, Article 2(1) (b)(i).

<sup>2</sup> Market newsletter 5/2016.

In addition, issuers may, if they so wish, add to the release a free-form statement expressing that inside information on the basis of Article 17 of MAR is disclosed in the release.

Issuers should adopt the new disclosure practice as soon as possible.

## Information provided for the release distribution system is not basic information

The basic information of a stock exchange release is the name of the issuer, the date and time of publication of the release, the subject matter of the release, and a notification that it concerns regulated information<sup>3</sup>. The latter means that the basic information of the release must identify what regulated information is being disclosed.

The FIN-FSA draws companies' attention to the fact that the identifying information (for example title or date) of a release provided for the stock exchange release distribution system is not the basic information of the release. All of the above-mentioned basic information must be included in an issuer's actual stock exchange release or company announcement, even though the information may, in some respects, also be found in the distribution system information.

## No changes to the use of message categories

No changes will be made to the use of message categories. Inside information should, in principle, still be published in the "Inside Information" message category. If, however, the inside information concerns, for example, a public offer or changes in the company's management, the appropriate message category can be used instead of the "Inside information" category.

## Disclosure of inside information must not be combined with marketing of the issuer's activities

The FIN-FSA also draws companies' attention to the fact that stock exchange disclosures must be factual and clear. Marketing communications must be distinguished from stock exchange disclosures and must take place through different communication channels. This should be taken into account particularly when disclosing inside information, as Article 17 (1) of MAR explicitly states the issuer must not combine the disclosure of inside information to the public with the marketing of its activities.

Attention should also be paid to the prohibition on providing misleading information set out in chapter 1 section 3 of the Securities Markets Act. The FIN-FSA considers that a misleading picture may be formed as a result of, for example, the title of the stock exchange release, information missing from the release, the way the information in the release is presented or the emphases selected in the release.

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<sup>3</sup> Section 5.1(7) of the FIN-FSA's Regulations and Guidelines 6/2016: "The release issued for disclosure of regulated information shall clearly indicate the basic information, such as the name of the issuer, the release date and time, the subject of the release and a notification that it concerns regulated information."

## Disclosure of annual financial statements and management report

The FIN-FSA reminds issuers about the procedures in the disclosure of annual financial statements and management report.

In respect of the obligation to disclose periodic reports (half-yearly report (Securities Market Act 7:10), financial statements and management report (Securities Market Act 7:5 and Accounting Act 3:1), corporate governance statement (Securities Market Act 7:7) and disclosure of non-financial information (Accounting Act 3:3a)), it is sufficient to issue in a stock exchange release the key information contained in these reports as well as information that the report has been published. The release shall also indicate where the report is made available to investors. *The release that is filed with the operator of the relevant regulated market and the OAM shall be accompanied by a periodic disclosure report in full*, namely consolidated financial statements and notes, report of the board of directors, parent company's financial statements and notes, audit report, corporate government statement and a statement of non-financial information, if they have been issued as a separate report from the management report.

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## Observations on disclosure of alternative performance measures – follow-up to 2017 review

In autumn 2017, the FIN-FSA reviewed how listed companies had applied in their financial reports (annual report or management report and financial statements) for 2016 the ESMA Guidelines on Alternative Performance Measures<sup>4</sup>. The review covered the financial reports of 20 listed companies and found that many companies had room for improvement in the disclosure of alternative performance measures (APMs). There were shortcomings in compliance with nearly all aspects of the ESMA Guidelines. The FIN-FSA's observations on the disclosure of APMs and recommendations on good practices were outlined in Market newsletter 4/2017.

In autumn 2018, the FIN-FSA conducted a review of the financial reports for 2017 of the same listed companies with the purpose of gaining an understanding of whether the companies had developed their approach to disclosing APMs. In this follow-up review, the FIN-FSA assessed compliance with the ESMA Guidelines particularly with respect to APM disclosure principles (Paragraphs 20–25), reconciliations (Paragraphs 26–29) and explanation of the use of APMs (Paragraphs 33–34). Not all of the requirements of the Guidelines, such as the prohibition on displaying APMs with more prominence than measures directly stemming from financial statements, were included in the evaluation. In addition, the FIN-FSA paid attention to the disclosure location of APMs.

Of the group of 20 listed companies, there were both those who had increased the amount of information on APMs in their financial reports and those who had reduced the amount of information. Several companies marked APMs more clearly in their reports than the previous year. In some cases, however, a company had selected only a limited set of all of the APMs used by the company that met the ESMA definition as the APMs about which the company disclosed information according to the ESMA Guidelines. The reason for the limited selection might be that companies do not consider many of the performance measures to be APMs covered by the ESMA Guidelines.

<sup>4</sup> <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>.

## Information on APM-specific justifications has increased

Of the sample of 20 listed companies, six did not provide any justifications for the disclosure of APMs nor indicate where such justifications may have been disclosed previously. The FIN-FSA reminds issuers that justifications for the disclosure of APMs may be provided in the manner permitted by the ESMA Guidelines (Paragraph 45 of the Guidelines) also by referring to some earlier report that is available to investors on the issuer's website.

A few companies refined their approach to disclosing APMs in such a way that, instead of providing a general justification, they provided separate justifications for each APM they used. In connection with prospectus supervision, the FIN-FSA has also found that such an approach to disclosing APMs has increased. Providing APM-specific justifications gives useful information on the purpose for which an APM is used.

## New APMS were adopted

In the 2017 reports, the companies mainly disclosed the same APMs as they had disclosed in 2016. Some companies had adopted new APMs, and they were almost without exception performance measures in which items affecting comparability were adjusted, such as

- comparable EBITDA
- comparable return on equity
- comparable result after taxes
- net debt/comparable EBITDA

The FIN-FSA reminds issuers that under the ESMA Guidelines adjustment items should be defined. It is recommended that definition and identification of adjustment items should be done in advance, and that use of adjustment items should be consistent from one financial period to another.

## More reconciliation statements presented, but shortcomings still observed

According to the FIN-FSA's findings, presentation of reconciliation statements was clearer and were presented for more APMs than last year. In connection with calculation formulas or reconciliation statements, a number of companies also disclosed where in the primary financial statement items or notes the components of the APM could be identified. The FIN-FSA recommended such an approach to disclosure in Market newsletter 4/2017.

Some companies continued to present reconciliation statements only for comparable operating profit and EBITDA. With respect to these companies' performance measures, however, certain performance measures could be identified for which presentation of reconciliation statements would have improved investor information.

According to the ESMA Guidelines, a reconciliation of the APM to the most directly reconcilable line item, subtotal or total presented in the financial statements should be presented. An exemption from the presentation of a reconciliation statements could only be made in a situation where the APM is a total or subtotal presented in the primary financial statements or the APM has been disclosed in notes that have been reconciled to the primary financial statements.

## Location of information presented on APMs could be improved

The FIN-FSA outlined its observations on the annual reports of listed companies in Market newsletter 3/2018.<sup>5</sup> The most common shortcoming in presentation related to the separation of the audited financial statements, management report and other information. A few of the 20 companies of the previous review moved their APMs and calculation formulas into the management report. Several companies continued to present performance measure tables and calculation formulas between the management report and the financial statements without, for example, header or footer information on the page revealing to which part of the annual report these performance measures belonged and whether they were part of the audited financial statements. Some companies presented APM tables and/or formulas in the notes to the financial statements.

In addition to the above, APM information in accordance with the ESMA Guidelines, such as reconciliations, justifications and definitions, were presented in several locations within the annual report. For this reason, it might have been difficult to obtain a comprehensive picture of the APMs used by a company. The FIN-FSA recommends that, as far as possible, the APM information would be aggregated, which does not necessarily mean presenting it in just one location. APMs could consist of figures presented only outside the financial statements, or they may be derived from the financial statements (for example segment reporting information or performance measures calculated by subtracting/adding primary financial statement line items), in which case the presentation of information required by ESMA may naturally be as part of the financial statements. The FIN-FSA draws attention to the fact that APMs, together with information in accordance with the ESMA Guidelines, are in principle information to be presented outside the financial statements. The FIN-FSA reminds issuers that the Ministry of Finance decree<sup>6</sup> requires that certain performance measures, their calculation formulas and, if necessary, calculation bases must, however, be presented in the management report or the financial statements.

Performance measures are, in principle, company-specific. For this reason, it is difficult to take a detailed view on the location and manner of information presented on them. As APMs are important investor information, the FIN-FSA expects that companies pay sufficient attention to their presentation both at the level of those responsible for reporting and at board of directors and audit committee level.

## Enforcement concerning APMs in 2019

In October 2018, ESMA published a statement on European common enforcement priorities for 2018 annual financial statements and management reports. In the statement, ESMA emphasises specific aspects of the ESMA Guidelines on APMs, namely the definition and explanation of APMs and the principle of prominence.<sup>7</sup>

The FIN-FSA monitors disclosure of APMs as part of ongoing enforcement of disclosure requirements and prospectus supervision, and takes the above-mentioned ESMA statement into account in its enforcement.

In connection with the follow-up review, compliance with the ESMA Guidelines' requirements concerning the prominence of performance measures was not assessed, but the FIN-FSA in this context draws companies' attention to the balanced disclosure of APMs. Above all, the liberal use of APMs may lead to the overemphasis of these performance measures. In addition, the FIN-FSA reminds companies that the

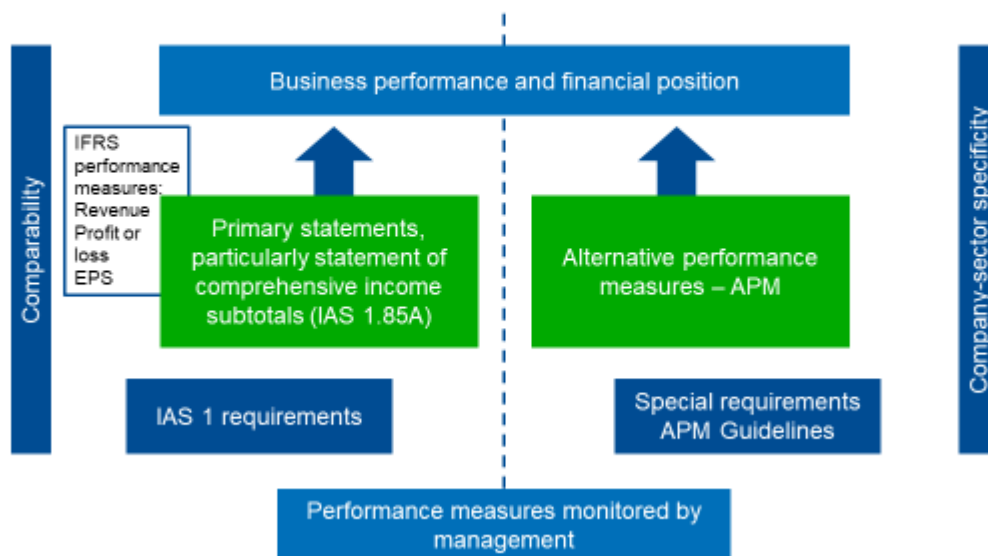
<sup>5</sup> [Market newsletter 3/2018](#).

<sup>6</sup> *Decree of the Ministry of Finance on the Regular Duty of Disclosure of an Issuer of a Security (1020/2012), Section 5.*

<sup>7</sup> [https://www.esma.europa.eu/sites/default/files/library/esma32-63-503\\_esma\\_european\\_common\\_enforcement\\_priorities\\_2018.pdf](https://www.esma.europa.eu/sites/default/files/library/esma32-63-503_esma_european_common_enforcement_priorities_2018.pdf).

adoption of new IFRSs, and in particular IFRS 16 Leases, may lead to changes in the bases for calculating APMs. Such changes should be explained in accordance with the ESMA Guidelines.

**Figure 1. Information in financial reports provided with the aid of primary financial statement subtotals and other performance measures**



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## New Commission provisions on prospectus content and ESMA Q&A published

On 15 March 2019, the European Commission published Level 2 provisions relating to the Commission Prospectus Regulation (2017/1129) on the offering and listing of securities. The provisions concern the form and content of securities market prospectuses as well as the marketing of securities offerings. Further information is available on [European Commission website](#).

On 27 March 2019, ESMA published a [Q&A document](#) on the new Prospectus Regulation.

## Topical matters at ESMA

Planning an international share issue? The [ESMA website](#) offers a compilation of information on European countries' monetary thresholds in offers of securities below which there is no obligation to publish a prospectus.

Q&As published by ESMA has been supplemented by Brexit-related questions and answers: [Disclosure requirement](#) and [prospectuses](#).