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ESMA Issues COVID-19 Q&A on Alternative Performance Measures

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On April 17, 2020, the European Securities and Markets Authority (ESMA) provided guidance on the application of alternative performance measures (APMs) in the context of the COVID-19 pandemic by issuing Q&A 18 on its Guidelines on APMs.

Guidelines on APMs

In June 2015, ESMA issued its Guidelines on APMs with the objective of ensuring equivalent investor protection and the consistent provision of a true and fair view on the assets, liabilities, financial position and profit/loss of issuers across all EU member states.

In its related Q&A, ESMA provides – and keeps updated – additional guidance on the information that issuers should publish when disclosing APMs in management reports, additional periodic financial information results, registration statements and prospectuses.

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 onetime charges, 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.

By definition, APMs exclude financial measures defined or specified in accordance with the applicable financial reporting framework.

Q&A 18

In Q&A 18, ESMA reflects on how an issuer should present the impact of COVID-19 for the purposes of the Guidelines on APMs.

ESMA acknowledges that issuers may decide to disclose new, or to adjust, APMs in disclosures, financial reports and/or prospectuses. ESMA reminds issuers that, according to the guidelines, the definition and calculation of an APM should be consistent over time. Therefore, ESMA recommends that issuers use caution when making adjustments to APMs used and/or when including new APMs solely with the objective of depicting the impacts that COVID-19 may have on their performance and cash-flows.

ESMA reminds issuers that, when disclosing APMs, they should ensure that such measures:

- Provide a fair review of the development and performance of their business and financial position
- Do not to provide a misleading signal of the price of their shares or other financial instruments in contravention of the prohibition on market manipulation in Article 12 of the EU Market Abuse Regulation

In addition, ESMA reminds issuers that, before making adjustments to previously used APMs or including new APMs, issuers should carefully assess whether the intended adjustments or new APMs would provide transparent and useful information to the market, improve comparability, reliability and/or comprehensibility of APMs and of the financial information disclosed to the market.

In this respect, ESMA observes that it may not be appropriate to include new APMs or to adjust previously used

APMs when the impacts of COVID-19 have a pervasive effect on the overall financial performance, position and/or cash flows of an issuer as these new or adjusted APMs may not provide reliable and more useful information to the market and may mislead users' understanding of the true and fair view of the issuer's assets, liabilities, financial position and profit or loss.

Therefore, rather than adjusting existing APMs or including new ones, ESMA urges issuers to improve their disclosures and include a narrative in any disclosures, financial reports and/or prospectuses explaining:

- How COVID-19 impacted/is expected to impact their operations and performance (e.g., how the specific circumstances related to COVID-19 affected the assumptions and estimates used in the determination of inputs to APMs)
- The level of uncertainty
- The measures already implemented/being implemented to address COVID-19

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