



## THE CNMV REMINDS LISTED COMPANIES THAT THEY SHOULD EXPLAIN BETTER THEIR ALTERNATIVE PERFORMANCE MEASURES SO AS NOT TO CONFUSE INVESTORS

17 April 2023

The CNMV has prepared a series of observations and criteria it considers relevant to remind to listed companies using Alternative Performance Measures (APMs<sup>1</sup>) whenever they publish financial information in their financial and non-financial reports, prospectuses, and results presentations.

APMs are financial performance measures that are not defined by accounting or any other regulations, therefore not being standardised, such as EBITDA, non-recurrent operating earnings or free cash flow. In this case, it is essential that the entities provide sufficient information for investors to understand that represented by the financial data in order to enable their comparability and reliability.

The CNMV seeks to improve the level of compliance with the ESMA Guidelines on Alternative Performance Measures, after having identified a series of faults and detecting ample room for improvement.

Likewise, the CNMV reiterates the importance of using APMs appropriately and expects issuers to observe and follow the contents of this statement, applying the Guidelines published by ESMA with greater rigour than that observed up to now.

In this context, the CNMV considers it appropriate to give a reminder on the following Guidelines:

- **It is imperative that** issuers **review all the financial performance data** included in their different public information [Price-sensitive Information, Other Relevant Information (ORI), prospectuses, annual or half-yearly financial statements], **including the financial performance measures disclosed in the Non-Financial Statement (NFS)**, and analyse if they comply, where applicable, with the APM definition and, consequently, if the ESMA Guidelines are to be followed.

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<sup>1</sup> <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>

- One of the basic and fundamental principles of the Guidelines is that APMs **will not be displayed with more prominence, emphasis or authority than measures** directly stemming from financial statements and, consequently, APMs should not distract from the presentation of the measures directly stemming from financial statements.

Generally, it is understood that APMS have more prominence when the explanations regarding the issuer information starts with these measures, awarding this information a preferential and highlighted location, or when the development of the company is mainly explained with these measures.

- **It is necessary to disclose the information following the criteria established by the ESMA Guidelines** regarding its definition, reconciliation, relevance of use, presentation of comparative information, its consistency, etc., for all the data included that fulfils the definition of an APM.

Alternatively, it will be considered equally appropriate to include an express indication of compliance with the Guidelines by means of a **direct reference** to other documents previously published which contain these disclosures and are readily and easily accessible to users. Should the issuer choose to comply based on these references, the latter will guide the user by means of a **direct hyperlink** to the information, allowing complete access to same **without having to go through a succession of links** until reaching the final information.

- With regard to financial measures using **an ESG rating<sup>2</sup>** (for example, green turnover, sustainable CapEx, etc.) and considering their novelty, it is reminded they will likewise be considered APMs if they were not determined according to the binding standards, included in the applicable regulations, such as the European Union Taxonomy Regulation (EU) or its Sustainable Finance Disclosure Regulation<sup>3</sup> (SFDR).

Issuers **should be prudent when presenting APMs that use ESG-referenced names**, as users may erroneously perceive them as being compliant with the Taxonomy Regulation or the SFDR. In order to ensure that the use of ESG labels does not lead to confusion, issuers will clearly state whether an ESG financial indicator is determined in accordance with the Taxonomy Regulation or the SFDR, or the implementing regulations thereof.

For this purpose, issuers are recommended to use one or both of the following methods:

- a) Indicating the APM is “not taxonomy” or “not SFDR”;

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<sup>2</sup> Relating to environmental, social or governance issues.

<sup>3</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council, of 18 June 2020, on the establishment of a framework to facilitate sustainable investment, and Regulation (EU) 2019/2088 of the European Parliament and of the Council, of 27 November 2019, on sustainability-related disclosures in the financial services sector, respectively.

b) Adding a footnote explaining that the APM is not calculated according to the Taxonomy Regulation or the adverse impact indicators of the SFDR, in accordance with question 20 of the ESMA Q&A document<sup>4</sup>.

Issuers are reminded to include detailed explanations on the calculation methodology and the purpose for using each APM that has a an ESG-referenced name, in such a way the explanations allow users to understand their use, relevance and reliability.

Finally, issuers are encouraged to take into account the considerations on voluntary information regarding taxonomy reporting on the Sustainable Finance Platform.

To promote further harmonisation both in the practical and supervisory application of these measures, apart from the aforementioned Guidelines, ESMA has published the update already indicated in its APM Q&A document.

### Cross-cutting analysis

The CNMV also recommends issuers closely read the actions and conclusions of the cross-cutting analysis of the accounts for 2021, to review in greater depth the degree of compliance with the ESMA Guidelines. These were published as part of the *Report on the supervision of the annual financial reports and main areas of review of the annual accounts for the following year, financial year 2020 (Page 39)*<sup>5</sup>.

Among other aspects, several clarifications are included on the financial data found within the scope of the definition of APMs.

The CNMV, which back in 2015 already informed on the adoption of the ESMA Guidelines as part of its supervision and investor protection duties, has closely supervised these measures since then, sending numerous requests and reminders to the entities. However, it confirms there is still ample room for improvement. The importance of complying with the Guidelines on APMs was reiterated when publishing the common supervision priorities, both of ESMA and the CNMV, regarding financial and sustainability information, for financial year 2022, while also taking the opportunity to remind that:

- The aggregation of items used outside financial statements (for example, in the management report) are APMs, in accordance with the ESMA Q&A.
- The most significant reconciling items must be described and explained in detail (paragraph 26 of the Guidelines).
- The term “non-recurring”, or specific items, will not be used without an explanation of its origin and adequate justification of such nature.

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<sup>4</sup> [https://www.esma.europa.eu/sites/default/files/library/esma32-51-370\\_qas\\_on\\_esma\\_guidelines\\_on\\_apms.pdf](https://www.esma.europa.eu/sites/default/files/library/esma32-51-370_qas_on_esma_guidelines_on_apms.pdf)

<sup>5</sup> [https://www.cnmv.es/DocPortal/Publicaciones/Informes/IA\\_2020.pdf#page=39](https://www.cnmv.es/DocPortal/Publicaciones/Informes/IA_2020.pdf#page=39)

- The definition and calculation of an APM will be consistent over time (paragraph 41 of the Guidelines).

The CNMV will exercise its power to impose sanctions whenever it detects information published by issuers in the form of APMs that may confuse the public or contain inaccurate or untrue data, and it is determined that they entail an infringement of the legally established regulations on transparency or market abuse.