

New stock exchange directive on use of alternative performance measures

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Introduction

On 8 June 2018 the SIX Group Regulatory Board published a new directive on the use of alternative performance measures (APMs).

An 'alternative performance measure' is a financial measure of historical or future financial performance, financial position or cash flow other than a financial measure defined or specified in the applicable recognised accounting standards (eg, Swiss generally accepted accounting principles or international financial reporting standards).

Further, APMs allow issuers to provide the market with customised information on a company's activity and performance. Examples of APMs include:

- operating earnings;
- cash earnings;
- earnings before non-recurring expenses;
- earnings before interest, tax, depreciation and amortisation;
- net debt;
- organic growth; and
- similar terms designating adjustments to line items of income statements and statements of comprehensive income, balance sheets or cash flow.

APM usage has become increasingly common in listed entities' marketing communications, with many listed companies publishing APMs in addition to their financial reporting pursuant to applicable reporting standards.

To mitigate the risk of investors being misled by APMs due to their variety and limited comparability, the SIX Group Regulatory Board will issue a regulation which:

- sets out principles for using APMs; and
- requires related disclosures to be clear and transparent.

Who is subject to the directive?

The directive applies to all issuers whose equity securities are listed on the SIX Swiss Exchange and whose registered offices are in Switzerland. Issuers whose registered offices are not in Switzerland also fall within the scope of the directive if their equity securities are listed on the SIX Swiss Exchange, but not in their home country (Article 2).

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The extent to which individual issuers are affected by the new regulation depends on the range and complexity of the APMs that they use.

When does the directive enter into force?

The directive is applicable for the first time to annual statements for financial years beginning on or after 1 January 2019 (Article 10).

What publications are covered by the directive?

The directive applies to information which is published on a periodic or event-related basis in connection with the maintenance of listing and contains APMs – for example:

- annual reports;
- management commentary; and
- press releases.

It does not apply to:

- prospectuses relating to the listing of securities; and
- investor presentations.

Although the directive does not (directly) apply to listing and offering prospectuses and investor presentations, it will nevertheless affect future prospectuses – for example, where an issuer has used APMs for the first time in a prospectus or in an earlier investor presentation (eg, an initial public offering) and where APMs used in a prospectus will continue to be used in regular reporting (Article 4).

Requirements

Labels and explanation

The directive sets out that all APMs must have clear and comprehensible definitions, as well as meaningful labels that reflect the content and basis of calculation. Misleading labels must be avoided. Whether a label (eg, 'non-recurring expense') is misleading is determined by the specific circumstances (Article 5).

Reconciliation statement

For certain APMs (ie, those that are based on a measure included in financial statements prepared in accordance with recognised accounting standards and which have been adjusted by adding or omitting specific items), a reconciliation statement must also be published. This must explain significant reconciliation items relative to a comparable measure defined by accounting standards (Article 6).

Presentation

APMs must not be presented with more prominence than measures defined in financial statements prepared in accordance with recognised accounting standards. In addition, certain APMs must be balanced with measures under the applicable accounting standards (Article 7).

Consistency

Comparative information must be disclosed and the APM must be applied and calculated consistently from year to year. If an entity does not apply this principle, it must make a corresponding disclosure and adjust its comparative information, or explain why it has not done so, in accordance with the 'comply or explain' approach (Article 8).

Use of references

The information required under the directive may also be provided in the form of a reference to other publicly available documents (eg, a footnote or web link) (Article 9).

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