

# Market newsletter 4/2013

December 2013

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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. Articles other than those pertaining to IFRS enforcement will appear mainly in English. The newsletter is published by FIN-FSA's Market Supervision.*

## In this newsletter we will discuss the following topics:

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## Topical matters at ESMA

### Discussion paper relating to Market Abuse Regulation

ESMA has published a discussion paper on implementing measures under the Market Abuse Regulation. The paper requests comments on preliminary proposals or regulatory options for the content of possible implementing measures. The measures will cover the following areas: trading in own shares (buy-back programmes), stabilisation, market sounding, indicators of market manipulation, accepted market practices, reporting of suspicious transactions or orders, public disclosure of insider information (ongoing disclosure) and delaying of disclosure, insider registers, managers' transactions, investment recommendations and reporting of violations. ESMA requests comments by 27 January 2014. Comments on more detailed proposals will be invited later in the course of 2014.

### Regulatory technical standard on situations requiring publication of a supplement to a prospectus

ESMA's Corporate Finance Standing Committee is putting the final touches to the draft regulatory technical standard on specific situations that require publication of a supplement to a prospectus. The technical standard will define the situations in which a supplement will always be required. Comments on the draft technical standard were invited in spring 2013.

### Technical standards relating to reform of the Transparency Directive

ESMA's Corporate Finance Standing Committee and Corporate Reporting Standing Committee have begun preparation of technical standards relating to reform of the Transparency Directive. The standards relate to the major shareholding notification obligation, the network of national officially appointed mechanisms for storage of regulated information and listed companies' financial reporting in electronic format (eg XBRL). Comments on drafts for the technical standard on the major shareholding notification obligation are expected to be invited early in 2014, comments relating to network of national officially appointed mechanisms for storage of regulated information and listed companies' financial reporting towards the end of 2014 or early in 2015.

### Presentation of alternative performance measures

ESMA's Corporate Reporting Standing Committee is preparing a guideline on presentation of alternative (non-IFRS) performance measures. This is intended to replace the Recommendation on Alternative Performance Measures published by CESR in 2005. Comments on the draft guideline will be invited early in 2014.



## **MiFID and MiFIR level 2 regulation**

ESMA's Investor Protection and Intermediaries Standing Committee and Secondary Markets Standing Committee have begun preparation of level 2 regulation linked to the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). ESMA will invite comments on level 2 regulation once the European Parliament and the Council have reached agreement on the content of the Directive and Regulation.

## **Reform of Transparency Directive will alter periodic reporting and major shareholding notification obligation**

Directive 2013/50/EU amending the Transparency Directive was adopted at the end of October. The changes it requires in respect of the periodic reporting and major shareholding notification obligation must be transposed into national legislation by November 2015 at the latest. In Finland, implementation of the changes will require amendments to the Securities Markets Act and the Ministry of Finance decrees issued thereunder.

### **Basic principle half-yearly reporting**

The amended Directive sets out from the principle that listed companies will in future be required to publish only a half-yearly interim report. However, provided they comply with the requirements provided in the Directive, Member States may continue in future to require publication of quarterly reports. In such cases, the Member State must separately assess whether such a requirement could lead to short-termism or raise the threshold for the listing of SMEs. Stock exchange rules may also be equipped with minimum requirements exceeding those contained in the Directive.

According to the amended Directive, listed companies will have to adopt an electronic reporting format (XBRL reporting) for their financial reporting as from 2020. The transition to an electronic reporting format will, however, also require that ESMA perform a more precise cost-benefit analysis and prepare more precise technical standards for the reporting format. ESMA must perform the analysis and forward a draft for the technical standards to the Commission by the end of 2016.

The amended Directive also requires that listed companies operating in the extractive industry or logging of primary forests report annually on the payments they make to different countries. The content of such reporting is laid out more precisely in the new Accounting Directive (2013/34/EU) adopted in June 2013.

### **Major shareholding notification obligation extended to cover cash-settled derivatives**

With regard to the major shareholding notification obligation, the most significant change is that in future the obligation

will also apply to derivatives contracts in respect of securities traded on regulated markets that allow settlement in cash on maturation of the contract. Moreover, the rules for calculating notification thresholds and exemptions to the notification obligation have been specified more precisely. ESMA has commenced preparation of the technical standards relating to the notification obligation. Comments on these are likely to be invited during spring or summer 2014.

### **Access from a single web portal to all European storages of regulated information**

According to the amended Directive, ESMA must develop and maintain a web portal providing access to all European storages of regulated information. In future, it will be possible to use this web portal to access stock market releases from all European listed companies. The aim is for the web portal to be operating from the beginning of 2018.

### **Securities Market Association publishes new Takeover Code**

The Securities Market Association<sup>1</sup> has published a new Takeover Code, which comes into effect on 1 January 2014. This replaces the recommendation on procedures to be observed in respect of public takeover bids issued by the Takeover Panel of the Central Chamber of Commerce in 2006. The new code gives recommendations regarding the activities of the offeror and the target company as well as the latter's management and shareholders in respect of public takeover bids.

According to the Securities Markets Act (SMA), a listed company must directly or indirectly belong to an independent body representing the economy on a wide basis and established in Finland which has issued a recommendation to promote compliance with good securities markets practice on the actions of the management of the offeree company with regard to a takeover bid and on structures based on contract relating to maintenance of control or to guide the corporate-law procedures to be complied with in takeover situations. In Finland, the Securities Market Association is such a self-regulatory body.

The SMA requires that both the offeree and the target company indicate whether they undertake to comply with the recommendation given by the self-regulatory body and, if not, explain grounds therefor.

<sup>1</sup> Link:<http://www.arvopaperimarkkinayhdistys.fi>.



## Events for listed companies in 2013

In December, FIN-FSA organised two events relating to financial reporting by listed companies, attracting participation by a total of 160 persons (2012: 140). At these events were discussed supervisory observations regarding IFRS supervision in 2013, related party disclosures, problems and development needs in respect of the information contained in notes to financial statements and major IFRS initiatives. In addition, the results of ESMA's report on the comparability of financial institutions' IFRS financial statements were presented. Participants at this event were also informed of the most significant changes to the regulations and guidelines in relation to the disclosure obligation on issuers, observations from FIN-FSA's investor inquiry and forthcoming regulatory changes in respect of the disclosure obligation.

The presentation material (in Finnish) from these events is available from the FIN-FSA web service at: <http://www.finanssivalvonta.fi/fi/Listayhtiolle/Pages/Default.aspx>.

**For further information, please contact**

Market Supervision, telephone +358 10 831 5585.

