

*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

### Presentation of alternative performance measures

ESMA is requesting comments on the draft guidelines on presentation of alternative (i.e. non-IFRS) performance measures. The guidelines are intended to replace the 'CESR Recommendation on Alternative Performance Measures' published by CESR in 2005. ESMA requests comments by 14 May 2014.

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

In relation to the amended Transparency Directive, ESMA has published a request for comments on the technical standard in respect of the major shareholding notification obligation. ESMA requests comments by 30 May 2014. Requests for comments on proposals relating to the European electronic access point to national central storage facilities and single electronic reporting format for listed companies (e. g. XBRL) are also expected in late 2014 or early 2015.

### Level 2 regulation relating to the Markets in Financial Instruments Directive and Regulation

ESMA's Investor Protection and Intermediaries Standing Committee, Secondary Markets Standing Committee and Market Data Reporting Working Group are preparing level

2 regulation relating to the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). ESMA will be requesting comments in late spring.

### Technical standards relating to the Central Securities Depositories Regulation

ESMA has published a discussion paper on technical standards relating to the Central Securities Depositories Regulation. In this paper, comments are requested on the provisional proposals for the content of the technical standards. The technical standards will deal with settlement discipline and matters relating to the authorisation of central securities depositories. ESMA requests comments by 22 May 2014. A request for comments on more detailed proposals is planned to be published later in 2014.

### Level 2 regulation relating to the Market Abuse Regulation

At the end of 2013, ESMA published a discussion paper on level 2 regulation relating to the Market Abuse Regulation. ESMA's Market Integrity Standing Committee will analyse the comments received and prepare a request for comments on more detailed proposals. The request for comments will be published later during the course of 2014.

## Preparation of prospectuses on bond issues

### Volume of corporate bonds increased

Number of corporate bond issues has increased in Finland in recent years. The increased activity on the bond markets has also been reflected in the number of prospectuses approved by FIN-FSA. Over 2009–2011 there were less than 10 bond prospectuses per annum. In 2012 there were already 15 prospectuses, and in 2013 there were a total of 20. Bonds issued by listed companies, for which these prospectuses are drawn up, have generally been of a value in the range of EUR 50–200 million.

### In what situations must a prospectus be drawn up for the issuing of bonds?

The offering of bonds to the public requires a prospectus approved by FIN-FSA when the value of the bonds on offer is at least EUR 1.5 million. If the amount offered over a period of 12 months is below EUR 1.5 million, no prospectus is required. If the amount offered is at least EUR 5 million, an EU prospectus is required. A national prospectus is sufficient in the case of smaller-value issues.<sup>1</sup> In the following couple of paragraphs, the term 'prospectus' refers to the EU prospectus.

The Securities Markets Act includes numerous exemptions to the requirement to draw up a prospectus. For example, if a bond issue is not aimed at the public, but just at a narrow group of investors or at qualified investors, no prospectus is required for the offering of bonds. A prospectus is similarly not required for bond issues where the offer amounts to a value of at least EUR 100,000 per investor.

Even in cases where the bond offer as such does not require a prospectus, a prospectus is always required when bonds are listed on the stock exchange. To underline, the requirement to draw up a prospectus arises separately when securities are offered and when they are listed on the stock exchange. Most bond prospectuses approved by FIN-FSA are actually drawn up for the latter reason.

<sup>1</sup> A national prospectus is drawn up for securities offers at least EUR 1.5 million and less than EUR 5 million.

### Lower requirements on the First North bond market

The First North bond market was launched in Finland in January 2014. It is an alternative marketplace provided by NASDAQ OMX that imposes lower requirements and responsibilities on its listed companies than the main marketplace. The First North bond market was created especially for SMEs.

To list bonds, it is sufficient to prepare a company description in accordance with the rules of the First North Bond Market. In conjunction with the listing, the company description can also be used to offer bonds for public subscription to a maximum value of under EUR 5 million.<sup>2</sup> The requirements as to the content of the company description are lower than for FIN-FSA-approved prospectuses. If the public offer is for at least EUR 5 million, an EU prospectus in accordance with the Securities Markets Act must be prepared and presented for approval by FIN-FSA.

In addition to drawing up a company description or an EU prospectus, listing on First North also requires the application process to include assistance of a Certified Adviser. A further requirement is that the bonds have been entered in a book-entry system. Companies are required, as a general rule, to have a financial statements history of at least two years. On the other hand, IFRS reporting is not a requirement, in contrast to companies listed on the stock exchange. Bonds listed on the First North Bond Market can be issued by a private limited company, whereas stock exchange companies must be public limited companies.

### Tripartite prospectus gives flexibility to issuing

The prospectus can consist of one or three documents. The single prospectus is suited to a single offer and listing. If a company plans several issues within the space of a single year, the tripartite prospectus gives flexibility. The company can prepare in advance a registration document containing information on the issuer. For each issue, a separate securities note shall be prepared. This provides information on the security on offer and on the offer itself. As well as the

<sup>2</sup> Securities can be offered within the European Economic Area within any 12 month period for an aggregate consideration of under EUR 5 million.



securities note, each issue must also be accompanied by a summary that provides in table form the most important information contained in the registration document and the securities note.

The tripartite prospectus allows the company to issue different products during the life of the registration document by preparing a securities note and summary for each product. The registration document remains valid for 12 months from the date of its approval. For it to be usable in the manner described above, it must be kept up to date by supplementing it as necessary. In practice, in connection with new issues, supplements to the registration document are entered in the securities note.

If a company plans a large number of issues within the space of a single year, it may draw up a base prospectus. Use of a base prospectus eases and accelerates implementation of the issues, as it obviates the need to seek separate FIN-FSA approval of documentation for each individual issue (with the exception of possible supplementary information). Base prospectuses are covered by detailed provisions requiring, among other things, that the risks and calculation formulas plus model terms for all products offered are presented in the base prospectus itself. Base prospectuses are used mainly by banks.

## **Bond prospectuses are narrower than share prospectuses**

Compared with share prospectuses, bond prospectuses are narrower in scope. Bond prospectuses have to present financial data from just two years, compared with three years for share prospectuses. Also, bond prospectuses do not have to provide an account of the issuer's operating and financial status (Operating and Financial Review, OFR).

Prospectuses must contain the minimum information listed in the annexes to the Prospectus Regulation.<sup>3</sup> Normally, when drawing up a prospectus for a bond issue, the following annexes listed in the Prospectus Regulation are used: registration document, Annex IV; securities note, Annex V and summary, Annex XXII. These requirements apply when the denomination per unit of the Bonds is under EUR 100,000 (the generally used denomination per unit being EUR 1,000).

<sup>3</sup> Commission Regulation (EC) No. 809/2004 with amendments, consolidated version 28 August 2013.

## **Model documentation drawn up to facilitate the use of bonds**

In 2013, the Confederation of Finnish Industries and the Advisory Board of Finnish Listed Companies drafted model terms and conditions (model documentation) for bonds in order to make it easier to use them as an alternative source of corporate funding. The aim behind the model terms is particularly to lower the threshold for smaller companies to issue bonds. The model documentation can be accessed on the websites of the aforementioned organisations. They have been drafted in English and are also to be translated into Finnish.

When using the model terms and conditions, it should be noted that they do not contain all the information required of bond offerings in the Prospectus Regulation (e.g. subscription period, payment and delivery of bonds). When using a prospectus to offer bonds, the prospectus should contain all the information required by the Prospectus Regulation.

## **Proportionate disclosure regime for SME prospectuses**

SMEs and listed companies with a low market value<sup>4</sup> can draw up a prospectus with lower requirements. These relate to the information to be provided on the issuer. The securities note must be prepared according to the normal content requirements, and the summary according to the relevant parts of the normal summary requirements. In drafting the bond prospectus, the issuer can then use the following annexes consistent with the Prospectus Regulation: the registration document, annex XXVI; the securities note, annex V and the summary, annex XXII.

The requirements are lower in respect of financial information, which is required only for a single year. Moreover, financial information does not need to be included in the prospectus even as referred documents; it is enough if it is clear from the prospectus where the most recent financial statements and interim report can be accessed.

## **With FIN-FSA consent, the bond prospectus may be in English**

As a general rule, prospectuses in Finland are in either Finnish or Swedish. FIN-FSA may, on application by the

<sup>4</sup> SMEs and companies with a low market value are defined by Ministry of Finance Decree in respect of prospectuses referred to in chapters 3–5 of the Securities Markets Act (1019/2012).

issuer, give consent for a bond prospectus to be drawn up in English. Approval must be sought at the same time as approval for the prospectus itself. If FIN-FSA grants approval for the prospectus to be in English, the summary should still be in Finnish or Swedish. If the prospectus is in English, the financial information it provides on the company (financial statements and interim reports) should also be in English.

## Approval of the prospectus

FIN-FSA decides on the approval of the prospectuses of new issuers within 20 banking days.<sup>5</sup> In other cases, the period for approval is 10 banking days. In practice, the approval timetable is discussed with the drafters and reasonable effort is made to accommodate their wishes. During the approval period, FIN-FSA comments on the proposal in writing. The drafter of the prospectus responds to these comments, also in writing, and makes any required changes to the prospectus.

## Prospectus approval commands a processing fee

FIN-FSA collects a processing fee for the approval of prospectuses. The single bond prospectus attracts a fee of EUR 2,600. The fee for the tripartite prospectus has two parts: approval of the registration document for EUR 1,600 and approval of the securities note and the summary for EUR 1,100. Approval of a supplement to the prospectus attracts a fee of EUR 1,100, while approval of a base prospectus attracts a fee of EUR 3,700, which also covers any supplements. A table of FIN-FSA's processing fees is available at: [http://www.finanssivalvonta.fi/en/About\\_us/Powers\\_funding/Funding/Processing\\_fees/Pages/Default.aspx](http://www.finanssivalvonta.fi/en/About_us/Powers_funding/Funding/Processing_fees/Pages/Default.aspx).

## New European prospectus register

The European Securities Markets Authority (ESMA) has opened a prospectus register/database, which provides information on all securities prospectuses and their supplements approved by supervisors within the EEA. The register also contains hyperlinks to each prospectus.<sup>1</sup>

The address of the ESMA prospectus register is <http://registers.esma.europa.eu/publication/start>.

FIN-FSA has forwarded to the ESMA register data and hyperlinks on all the prospectuses it has approved since 1 January 2012 and will continue in the future to forward details of each prospectus or supplement it approves. In addition, FIN-FSA keeps prospectuses it has approved available in its own prospectus register.

The address of the FIN-FSA prospectus register is [http://www.finanssivalvonta.fi/en/Listed\\_companies/Prospectuses/Prospectus\\_register/Pages/Default.aspx](http://www.finanssivalvonta.fi/en/Listed_companies/Prospectuses/Prospectus_register/Pages/Default.aspx).

Neither register is a channel for publication of prospectuses. Issuers are responsible for the publication, and they, generally publish their prospectuses on their own websites. For this reason, new prospectuses are not available from the FIN-FSA or ESMA registers immediately after approval, but only once the issuers have first published them. Information pertaining to each prospectus is retained in the ESMA register for at least 12 months, prospectus data older than this is not necessarily available.

<sup>5</sup> An approval period of 20 banking days concerns situations in which an issuer's securities have not previously been offered to the public or admitted to trading on a regulated market.

<sup>1</sup> As the IT system for the ESMA register is new, it is possible that some prospectuses have not yet been entered in it.



## Act on Alternative Investment Fund Managers into force in Finland on 15 March 2014

The European Commission proposal for Directive on Alternative Investment Fund Managers (AIFMD) was issued on 29 April 2009. Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers will be transposed into Finnish law by the Act on Alternative Investment Fund Managers (162/2014) (Act on AIFM).

The number of alternative investment fund managers operating in Finland at the moment the new regulation came into force is estimated to be less than one hundred, and the number of alternative investment funds under their management is estimated to be around 300–400. The volume of assets under their management is estimated to be in the region of EUR 15–20 billion.

### A broad spectrum of alternative investment funds

Typical Finnish alternative investment funds are equity funds, real estate funds and all types of special mutual funds.

Alternative investment funds are not restricted to a specific legal form. In Finland, it can be, for example, a contractual fund (special investment fund) or an alternative investment fund in the form of a limited partnership or a limited liability company (often equity or real estate funds). In other EU Member States, alternative investment funds have their own legal forms.

In principle, an alternative investment fund can invest without limitations in financial instruments, i.e. securities and derivatives, and also in other investment assets, such as precious metals, housing company shares and real estate.

### More relaxed regulation of special investment funds' investment policies

Regulation of alternative investment funds does not impose on the investment policies of special investment funds similar limits as the previous, relatively tight regulation on investment limits imposed in Finland under the Mutual Funds Act, which also applied to special investment funds. FIN-FSA no longer confirms the rules of special investment funds or changes therein. It remains to be seen how the various actors exploit this opportunity, and what sort of new products the change brings onto the market.

### Act on AIFM regulates organisation of fund managers' activities – not investment

Act on AIFM primarily regulates the activities of alternative investment fund managers and the organisation of said activities, in contrast to the UCITS Directive, which additionally regulates the investment activities of investment funds (incl. permitted investments and minimum requirements for the decentralization of investment).

Alternative investment fund managers must either have an operating licence or, if the assets to be managed are below the statutory limits (EUR 100 million/EUR 500 million), it is in principle adequate to apply for registration. Managing an alternative investment fund without an appropriate licence or registration is punishable by law (Act on Alternative Investment Fund Managers, section 22:5: alternative investment fund offence, punishable by a fine or up to one year in prison). In 2013, the number of special investment funds registered in Finland declined by 26. The reduction was due particularly to the fact that fund management companies changed special investment funds into mutual funds compliant with the UCITS Directive.

### Authorised fund managers must organise their activities to comply with the regulations

An authorised fund manager must organise its activities so as to comply with the regulations and must have sufficient resources both technically and in respect of number of staff and competencies. It must also organise management of risks and liquidity, reporting to authorities and monitoring of compliance with the regulations for the alternative investment funds it manages. An authorised fund manager cannot be just a shell corporation, nor can key functions, portfolio management or risk management be outsourced to an unauthorised actor. An authorised alternative investment fund manager must name, for each alternative investment fund it manages, a depositary that is responsible for safekeeping of the investment assets or keep a record of them where safekeeping is not possible. The depositary will also monitor the alternative investment fund's cash flows and the investment fund's compliance with statutory requirements.



## **Registration also possible – no strict organisational requirements**

The above-mentioned requirements for the organising of activities do not apply to alternative investment fund managers that have chosen simple registration. However, such fund managers still have to report on the investment activities of the funds under their management, in similar manner to managers authorised by licence. Alternative investment fund managers registered in Finland must comply with the same marketing rules as applicable to licensed fund managers.

## **Cross-border marketing of alternative investment funds to professional investors becomes easier**

Pan-European regulation of alternative investment fund managers makes it possible to market alternative investment funds to professional investors once the relevant notification has been made to the Member State intended as recipient of said marketing. Making it easier to market alternative investment funds in different Member States and across borders should increase the selection of funds on offer in Finland as well.

## **At national level, it is possible to permit the marketing of alternative investment funds to retail investors as well**

At national level, it is possible to permit the marketing of these funds to retail investors as well. This possibility has generally been applied differently in Member States. In Finland, the marketing of alternative investment funds to retail investors is broadly permitted, on condition that the fund manager is licensed and a key data prospectus has been drawn up for the fund. Moreover, it is possible to market an alternative investment fund to a defined group of retail investors with less strict requirements.

## **Different legal structures of funds present an additional challenge for investors**

Limited partnership real estate funds and equity funds have a detailed contract structure (partnership agreement), with which an investor must become thoroughly acquainted. Investors should note that subscription, redemption, purchase and sale processes vary considerably in practice

depending on the legal structure of the individual alternative investment fund (special investment fund or alternative investment fund in the form of a limited liability company or a limited partnership).

## Basic information in a stock market release

In FIN-FSA's Regulations and guidelines (7/2013), 'Disclosure obligation on issuers', there is a new regulation, based on the Transparency Directive, on the basic information to be provided in a stock market release. According to the new regulation,<sup>1</sup> a release issued for disclosure of regulated information is to clearly indicate 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. According to FIN-FSA's interpretation,<sup>2</sup> the last of these requirements is fulfilled when the basic details of the release on a financial statement release contain the words 'financial statement release', those of an interim report the words 'interim report', those of an interim management statement the words 'interim management statement' and those of the annual financial statements and management report the words 'annual financial statements and management report'. The general designation 'stock market release' should be used for releases disclosed under chapter 6, section 4, subsection 1 of the Securities Markets Act.

## Information for the distribution system

Regulated information is as a rule disclosed via some sort of distribution system. Within such a system, it is often necessary to attach to the release certain identification features such as, for example, a heading. Information required by the distribution system cannot, however, replace the basic information referred to in the FIN-FSA regulation. All the aforementioned basic information must be included in the issuer's stock exchange release, even if they could be extracted in part from the information in the distribution system and would appear twice in some news feeds.

## Release category in national storage facility

The Officially Appointed Mechanism (OAM) for the central storage of regulated information has been equipped with release classes for the classification of regulated information delivered to it, the purpose of which is to make it easier to locate information deposited in the OAM and thereby

enhance its usability. In some cases, the release class is the same as the release's basic information, but for the classification of stock exchange releases in particular there are several classes. It makes sense to select the release class so as to describe as well as possible the content of disclosed information. FIN-FSA recommends<sup>3</sup> that information on the voting rights attached to the share capital and the total number of shares is always disclosed in a separate release and stored in the OAM under the release class 'Changes in the share capital and voting rights', so the shareholders can find the information in the OAM as easily as possible.

The OAM also has release classes that do not correspond with the terminology of the Finnish Securities Markets Act (SMA): for example, reports under the regular reporting requirements also have the release classes 'Quarterly Report' and 'Half-Year Report'. However, these should not be used; instead the class 'Interim Report', based on the terminology of the SMA, should be employed.

1 Regulations and guidelines 7/2013 Disclosure obligation on issuers, section 11.2.1, paragraph 9.

2 Regulations and guidelines 7/2013 Disclosure obligation on issuers, section 11.2.1, paragraph 18.

3 Regulations and guidelines 8/2013, Reporting of significant holdings and voting rights, section 5.2 paragraph 8.

## Regulations and guidelines on disclosure obligation on issuers now also available in English

FIN-FSA's regulations and guidelines 7/2013, Disclosure obligation on issuers with its various appendices is now available on the FIN-FSA website in English. Regulations and guidelines can be found at <http://www.finanssivalvonta.fi/en/Regulation/Regulations/New/Pages/Default.aspx>.

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