

*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 Supervision of Markets and Conduct of Business Department.*

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

■ Topical matters at ESMA	1
■ Impact on practices of listed companies from supervisory visits inspecting compliance with disclosure obligation	2
■ Events for listed companies	5
■ FIN-FSA interest group survey results published	5

## Topical matters at ESMA

### Technical standards relating to prospectus approval, publication, advertising and referenced information

ESMA requests comments on technical standards under the Prospectus Directive in relation to prospectus approval, publication, advertising and referenced information. ESMA's responsibility to draw up technical standards in these subject areas has been legislated for in the Omnibus II Directive. ESMA requests comments to arrive no later than 19 December 2014.

### Guideline on definition of a commodity derivative

ESMA requests comments on the guidelines relating to definition of a commodity derivative. The definition of what constitutes a commodity derivative affects particularly obligations under the European Market Infrastructure Regulation (EMIR) on OTC derivatives. ESMA requests comments by 5 January 2015.

### Technical standards regarding compulsory specification of central counterparty for OTC derivatives

ESMA has forwarded to the Commission a draft of the first technical standard regarding the compulsory specification of a central counterparty for OTC derivatives under EMIR and is currently analysing comments received on the sec-

ond draft technical standard regarding credit default swaps (CDS). In addition, ESMA requests by 6 November 2014 comments on a third technical standard, relating to currency forwards payable in cash.

### Technical standard relating to the EU's Capital Requirements Regulation

ESMA requests comments on a draft technical standard relating to the EU's Capital Requirements Regulation. The technical standard specifies the main indices and recognised exchanges referred to in the provisions on calculation of credit risk. ESMA requests comments by 1 November 2014.

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

ESMA is currently analysing comments received in response to the discussion paper and request for comments relating to the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). ESMA is scheduled to advise the Commission by the end of 2014 and to prepare draft technical standards by summer 2015.

## Technical standards relating to amendment of Transparency Directive

ESMA has forwarded to the Commission draft technical standards on the notification obligation. The estimated timing of the request 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) will be late 2014 or early 2015.

## Level 2 regulation relating to PRIIPs Regulation

The European Supervisory Authorities' Joint Committee's Sub-committee on Consumer Protection and Financial Innovation has begun preparation of technical standards relating to the Packaged Retail Investment and Insurance Products Regulation (the PRIIPs Regulation). The related discussion paper is due to be published in late 2014.

## Impact on practices of listed companies from supervisory visits inspecting compliance with disclosure obligation

As part of its supervision of listed companies' compliance with the disclosure obligation, FIN-FSA conducts supervisory visits to inspect companies' disclosure practices. Companies are selected for supervisory visits based on certain risk criteria, including size and business sector, changes in corporate management and FIN-FSA's observations from previous inspections. FIN-FSA also seeks to meet companies listing on the main list during the listing process. At these meetings, FIN-FSA reviews issues relevant to listed companies' disclosure obligation, insider issues and IFRS supervision.

Visits to inspect compliance with the disclosure obligation include a regular review of the following areas:

- aims of the disclosure obligation, and responsible persons
- drafting and approval of stock market releases
- disclosure policy
- monitoring of financial performance, future prospects and profit warnings
- reports on the obligation of regular disclosure
- communication with capital markets.

After a supervisory visit, the company is sent a supervision letter in which FIN-FSA presents guidance and recommendations on matters discussed during the visit.

FIN-FSA is also conducting a follow-up questionnaire survey on how the guidance and recommendations in the supervision letter have affected companies' operating practices. Companies are requested to indicate whether they have altered their operating practices in regard to managing their disclosure obligation in line with the guidelines and recommendations contained in the supervision letter, and, if so, how. Respondents are also requested to give any possible reasons why they have not changed their practices in the manner recommended by FIN-FSA. The follow-up is conducted approximately two years after the supervisory visit. Follow-up on the visits made in 2011 and 2012 was

conducted towards the end of 2013. The next follow-up will be conducted towards the end of 2014 and focus on supervisory visits in 2013.

### Account of supervisory visits in 2011 and 2012

In 2011 and 2012, FIN-FSA made a total of 13 supervisory visits. Visits were made to nine small-cap companies and four mid-cap companies. Their business sectors were as follows:

- healthcare (three companies)
- industrial goods and services (eight companies)
- technology (one company)
- consumer goods (one company)

### Disclosure policy

The key principle in the disclosure obligation is consistent disclosure. FIN-FSA considers that a written disclosure policy assists company management in pursuing a consistent approach. FIN-FSA recommends that issuers of securities define the operating principles and methods according to which they will communicate with the capital markets.<sup>1</sup> These should be brought together to form a written disclosure policy. Each issuer can then publish relevant portions of its disclosure policy on its website.<sup>2</sup>

Eight of the companies visited already had a disclosure policy, either recorded in a specific document or with the principles applied in fulfilling the disclosure obligation included within some other company policy. According to the responses to the follow-up survey, six companies adjusted and expanded their disclosure policy following the visit. Companies added to their disclosure policies such things as how they had defined the material matters to be disclosed, what the terms used in their profit forecasts meant, the degree of permitted latitude (earnings corridor) in their earnings forecasts and the situations in which they would issue a profit warning. Two companies drew up a disclosure policy following the supervisory visit, and one company indicated it was considering doing so. Three companies still did not consider it necessary to prepare a separate, written disclosure policy. Two companies have published their disclosure policy on their website.

<sup>1</sup> FIN-FSA's Regulations and Guidelines 7/2013, section 4.2, paragraph (6).

<sup>2</sup> FIN-FSA's Regulations and Guidelines 7/2013, section 4.2, paragraph (7).

### Specification of matters to be disclosed

Under chapter 6, section 4 of the Securities Markets Act (SMA), issuers of securities must make public decisions and factors significantly affecting the value of their securities without undue delay. According to FIN-FSA's interpretation, issuers assess for themselves which decisions and factors they should disclose and what effect different decisions and factors could have on the value of their securities.<sup>3</sup> FIN-FSA has noted on supervisory visits that there are no universally applicable criteria as to what is material information to be disclosed; it is a matter specific to each company and business sector. The materiality of information can be assessed case-by-case, while taking care to ensure consistency of disclosure. FIN-FSA considers it important that each company itself assess its materiality criteria and update them as necessary. The criteria can be entered in the disclosure policy.

In six of the visited companies, the relevant criteria had already been defined, at least in general terms. According to the survey responses, after the supervisory visit, eight companies defined their criteria more precisely and specified them in their disclosure policies. Five companies indicated they would be following their earlier practices and continuing to decide their stock exchange disclosures on a case-by-case basis.

### Future prospects and assessment of when to issue a profit warning

FIN-FSA recommends that, as far as possible, companies should define internally the latitude they will permit in their earnings forecasts (the earnings corridor). In particular, it would be a good idea to define an earnings corridor in connection with a broad earnings forecast, to create consistency in the issuing of profit warnings and to be able to issue them without undue delay, as referred to in chapter 6, section 4 of the SMA. Additionally, FIN-FSA considers that definition of the terms used in the earnings forecast should support consistent disclosure and the assessment of significant changes in earnings development. For this reason, we would recommend that, as far as possible, companies should define internally what the terms used in earnings forecasts (e.g. 'level', 'grow') mean in euro or percentage terms.

<sup>3</sup> FIN-FSA's Regulations and Guidelines 7/2013, section 5.2, paragraph (5).



Of the companies visited, 11 issued an earnings forecast, and two a general outlook. As a rule, the companies had not given quantitative definitions of the terms used in their earnings forecasts. Following the supervisory visits, however, five companies specified more closely in their disclosure policies the scale of the changes meant by the terms used in their earnings forecasts. Six companies had defined the earnings corridor for their earnings forecast either before or immediately after the supervisory visits, while the remainder still did not consider this necessary. In their responses, the reasons companies gave included the view that their present practices were sufficient to ensure consistency in the issuing of profit warnings.

### Regular reports on the disclosure obligation

Under chapter 7, section 11 of the SMA, the explanatory statement within interim reports must communicate significant facts, events and business activities that have affected the company's earnings development and financial position. Such factors could be, for instance, the causes of changes in turnover, factors that have affected profitability or changes in the financial position of an issuer.<sup>4</sup> According to FIN-FSA's interpretation, the obligation is not met if the company's earnings development and financial position are presented in the explanatory statement only through numerical performance measures, without further verbal analysis.<sup>5</sup>

During the supervisory visits, FIN-FSA devoted particular attention to how extensively companies disclosed in their financial reports the factors that had influenced their financial performance during the review period and the development of their financial position. FIN-FSA took the view that a majority of the companies should have expanded their explanatory statement. Based on the supervisory observations made by FIN-FSA, the companies have endeavoured to take this into account.

### Summary

Based on the follow-up survey conducted after the supervisory visits, it would appear that companies have reassessed their disclosure procedures since the visits and, as far as

possible, taken into account the guidelines and recommendations in FIN-FSA's supervision letters. FIN-FSA considers it positive that, for example, a majority of the companies have now drawn up a disclosure policy or expanded and further specified their already existing policy.

<sup>4</sup> FIN-FSA's Regulations and Guidelines 7/2013, section 9.2.3, paragraph (16).

<sup>5</sup> FIN-FSA's Regulations and Guidelines 7/2013, section 9.2.3, paragraph (17).

## Events for listed companies

An information event on financial reporting by listed companies will be organised, as in previous years, at the beginning of December. Provisional dates are 4 December and 8 December 2014, to be confirmed later. Invitations to the event will be sent closer to the time to the financial managers of listed companies and persons who left their contact details at previous such events.

## FIN-FSA interest group survey results published

The results of the 2014 FIN-FSA interest group survey have been published as a FIN-FSA News release on 21 August 2014. The release can be read on the FIN-FSA website at [http://www.finanssivalvonta.fi/en/Publications/news\\_releases/Pages/12\\_2014.aspx](http://www.finanssivalvonta.fi/en/Publications/news_releases/Pages/12_2014.aspx).

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