

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:

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Topical matters at ESMA

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

The European Securities and Markets Authority (ESMA) is currently finalising its advice to the European Commission and its drafts of technical standards relating to the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). ESMA is to submit its advice to the Commission by the end of 2014. A consultation on the draft technical standards will be published in December 2014.

Level 2 regulation related to the CSD Regulation

ESMA invites comments on Level 2 regulation related to the Central Securities Depositories Regulation (CSDR). Comments are requested on both the proposed advice to the Commission and the draft technical standards. In addition, ESMA requests comments on the ESMA Guideline related to the CSDR. Any comments are requested to be submitted by 19 February 2015.

Level 2 regulation related to the Market Abuse Regulation

ESMA is presently analysing comments received on the technical standards and advice to the Commission relating to the Market Abuse Regulation. ESMA is to submit its advice to the Commission in early 2015 and to prepare the draft technical standards by summer 2015.

Technical standards relating to amendment of the Transparency Directive

ESMA is preparing a consultation on the proposals relating to the networking of European electronic access point to national central storage facilities. The consultation is to be published in December 2014. In addition, ESMA is preparing a consultation on proposals concerning the financial statement reporting by listed companies in an electronic reporting format (e.g. XBRL). Comments on the proposals are expected to be requested in early 2015.

Report on high-frequency trading (HFT)

ESMA has published an economic report on high-frequency trading (HFT) in EU equity markets. This is the first study of HFT in EU trading venues.¹

¹ Link: <http://www.esma.europa.eu/content/ESMAs-Economic-Report-No-1-2014-High-frequency-trading-activity-EU-equity-markets>.



Market participants engaging in derivatives trading and the obligations of EMIR

The European Market Infrastructure Regulation¹ (EMIR) entered into force on 16 August 2012. The Regulation and the technical standards supplementing it are directly applicable EU legislation, hence no separate national legislation will be provided on them.

The main obligations under the Regulation are:

- risk management requirements for derivatives trading
- central counterparty clearing for certain OTC derivatives (in preparation)
- reporting of all derivatives transactions to trade repositories.

To whom do EMIR regulations apply?

EMIR regulations apply to all market participants engaging in derivatives trading, both in the financial sector and other sectors.

Compliance with EMIR regulations is supervised in Finland by FIN-FSA.

Financial or non-financial counterparty?

The obligations under EMIR regulations vary depending on whether the market participant belongs to the financial sector or other sectors. Financial counterparties refer to entities supervised by FIN-FSA, such as banks and investment firms. All other than financial counterparties are to comply with the obligations set for non-financial counterparties in EMIR regulations.

Do derivatives positions exceed the threshold values under EMIR?

The EMIR obligations for non-financial counterparties also depend on whether their derivatives positions exceed the threshold values determined in the regulations. The threshold values are calculated separately for credit, equity, interest rate, currency and commodity derivatives.

Any market participant exceeding the threshold values must have certain OTC derivatives cleared by a central counter-

party. A more detailed technical standard on the matter is still in preparation.

Risk management requirements relating to trading on OTC derivatives

All market participants trading on OTC derivatives must, as a minimum requirement, comply with the basic risk management provisions of EMIR. These risk management provisions are concerned with:

- a procedure for settling disagreements between participants, in advance
- procedures for confirming derivatives transactions
- matching of the derivatives position, at least annually or more frequently, based on the volume of transactions.

Financial counterparties and other market participants exceeding the threshold values must, in addition to complying with these obligations, also comply with the more extensive risk management obligations under EMIR, such as the daily marking-to-market of the derivatives position and the exchange of collateral between the counterparties.

Intra-group derivatives transactions may receive an exemption from the regulatory obligations

Corporations operating as a group may, subject to certain requirements, apply for an exemption from the mandatory central securities depository clearing or exchange of collateral between the counterparties.

Reporting of derivatives to trade repositories

All derivatives transactions, both in stock exchanges and comparable trading venues, as well as OTC transactions must be reported to a trade repository receiving reporting.

The reporting obligation has started from derivatives contracts outstanding on 16 August 2012. The reporting obligation applies to both counterparties of a derivatives transaction, but the reporting may be delegated for example to a bank functioning as a counterparty, other financial-market participant or a third party. There are no exemptions from the reporting of transactions.

¹ Regulation on OTC derivatives, central counterparties and trade repositories EU 648/2012 (EMIR = European Market Infrastructure Regulation).



Selection of trade repository receiving reporting

Derivatives transactions must be reported to a trade repository approved by the European Securities and Markets Authority (ESMA). Currently, there are six trade repositories operating within the EU, which are listed at: <http://www.esma.europa.eu/page/Registered-Trade-Repositories>.

Obtaining a LEI required for the reporting

The reporting of derivatives transactions requires a Legal Entity Identifier (LEI), which is an international company identifier that will also be adopted into more comprehensive use in the future.

In Finland, LEIs are granted by the National Board of Patents and Registration. Further information on the LEI and on how to obtain one is available on the website of the National Board of Patents and Registration at <http://www.ytj.fi/Mika-on-LEI-tunnus>. (In Finnish only)

Further information

The EMIR section on the FIN-FSA website: <http://www.finanssivalvonta.fi/fi/Saantely/Saantelyhankkeet/EMIR/Pages/Default.aspx>. (In Finnish)

The EMIR section on the ESMA website: <http://www.esma.europa.eu/page/post-trading>.

The topic has also been addressed previously in the Market newsletters [2/2012](#) (In Finnish), [4/2012](#) (in Finnish) and [2/2013](#).

Main questions relating to EMIR regulations from the point of view of a market participant

- Does the market participant engage in derivatives trading?
- Is the market participant a financial or non-financial counterparty?
- Do its derivatives positions exceed the threshold values?
- Do the OTC derivatives in the position fall within the scope of central counterparty clearing? (Regulations are in preparation and involve transitional periods)
- Is the risk management of derivatives trading in line with EMIR?
- Does the market participant have intra-group derivatives transactions, which may be subject to exemption rules?
- Has a LEI been obtained?
- Has the trade repository to receive the reporting already been chosen and has reporting commenced?
- Does the market participant report itself or is reporting outsourced to an external participant or service provider?



Regulation on credit rating agencies also imposes obligations on issuers

Use of several credit rating agencies

The EU Regulation on credit rating agencies (EU) No 1060/2009 has been amended by Regulation No 462/2013 of the European Parliament and of the Council. The amendment of the Regulation entered into force on 20 June 2013. Article 8d of the amended Regulation imposes additional requirements on issuers, where they are using two or more credit rating agencies. Where an issuer or a related third party intends to appoint at least two credit rating agencies for the credit rating of the same issuance or entity, it must consider appointing at least one credit rating agency with no more than 10% of the total market share, which can be evaluated as capable of rating the relevant issuance or entity. Any decision not to appoint such a credit rating agency with no more than 10% market share must be documented.

FIN-FSA supervises compliance with the provisions of the Regulation on credit rating agencies. ESMA will publish a list on its website on registered credit rating agencies announcing each agency's share of the total market and what kind of credit ratings they have issued.

References in prospectuses to credit ratings

The amendment of the Regulation on credit rating agencies also amended Article 4 of the Regulation on the use of credit ratings. According to the amended Article 4, where a prospectus contains a reference to a credit rating or credit ratings, the issuer, offeror, or person asking for admission to trading on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether or not such credit ratings are issued by a credit rating agency established in the Union and registered under the Regulation on credit rating agencies. FIN-FSA supervises compliance with this provision in connection with its prospectus approval process.

Events for listed companies in 2014

In December, FIN-FSA organised two events relating to financial reporting by listed companies. The events were attended by approximately 160 people in total. Both events included presentations on supervision observations made in 2014, financial statement information to be disclosed by companies in a weak economic situation as well as standards on business acquisitions and consolidation. The events also covered a review of the 10-year history of IFRS information. In addition, an introduction of ESMA's new supervisory guidance was made. Information on regulations concerning the issuer's disclosure obligation and on supervisory observations was also presented.

The presentation material from the events is available on the FIN-FSA's website (in Finnish) at <http://www.finanssivalvonta.fi/fi/Listayhtioille>.

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