

*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 discuss the following topics:

■ Topical matters at ESMA	1
■ Market manipulation – what it includes	2
■ Procedures relating to application of the Market Abuse Regulation	3
■ Forthcoming changes to prospectus regulations regarding securities offerings and listings	4
■ Examples of the notification of major shareholdings posted on the FIN-FSA website	5
■ Disclosure and notification of the choice of home Member State for the periodic disclosure obligation	6
■ Events for listed companies in 2015	7
■ Follow the Financial Supervisory Authority on Twitter	7

## Topical matters at ESMA

### Level 2 and 3 regulation relating to the Markets in Financial Instruments Directive and Regulation

In mid-December, ESMA submitted to the European Commission the implementing technical standards relating to the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR) and dealing, inter alia, with trading halts, reporting of positions in commodity derivatives and authorisations of data reporting services providers.

ESMA is also finalising guidelines on complex financial instruments, knowledge and competence requirements for investment service providers' personnel and packaged products (cross-selling).

### Level 3 regulation relating to the Market Abuse Regulation

ESMA is preparing guidelines on market soundings and delayed disclosure of inside information.

### Level 2 regulation relating to the Packaged Retail Investment and Insurance Products Regulation (PRIIPs)

The Joint Committee of European supervisory authorities is inviting comments on draft technical standards relating to the PRIIPs Regulation. The closing date for comments is 29 January 2016.

#### For further information, please contact

Ville Kajala, Senior Policy Advisor, tel. +358 10 831 5226.

## Market manipulation – what it includes

FIN-FSA supervises trading in issuers' financial instruments. A precondition for the functioning of the securities markets is that investors can place confidence in the markets and market participants. Market abuse erodes this confidence. FIN-FSA's supervision of trading seeks both to prevent abuse and to conduct retrospective investigations when abuse occurs. Trading supervision focuses on suspected cases of market abuse, i.e. abuse of inside information and market manipulation.

In supervising market manipulation, FIN-FSA pays attention to exceptional transactions and trades that do not appear to be in line with usual business practices. FIN-FSA's own findings or notifications received from the stock exchange or investment service providers can give cause to examine the financial purpose of orders submitted and transactions undertaken in a trading session and whether these are genuine. Investment service providers are, for their part, responsible for supervising their own customers' trading.

### What is meant by market manipulation

Market manipulation means activities of which the ultimate purpose is, directly or indirectly, to artificially influence the supply of, demand for or price level of a financial instrument by inflating, deflating or maintaining the price of said instrument for a particular action or purpose.

Manipulation may be committed, inter alia, by submitting a misleading order to purchase or sell, conducting a fictitious transaction or pursuing other deceptive procedure or action that provides false or misleading information on the supply of, demand for, or price of a financial instrument.

Manipulation also refers to actions securing the value of a financial instrument at an abnormal or artificial level and the publication or other dissemination of false or misleading information on a financial instrument where the person who published or disseminated the information knew, or ought to have known, that the information was false or misleading.

### Why market manipulation is prohibited

The Securities Markets Act defines and prohibits market manipulation. It is regulated as a punishable act under the Criminal Code. In the Criminal Code, the preconditions for punishability are generally a perpetrator's intention of

gaining a benefit and the intentionality of the act. These preconditions need not be met in the case of violation of the prohibition prescribed in the Securities Markets Act. Consequently, even if the act is not committed for gaining a benefit or prices manipulated intentionally, the prohibition against market manipulation under the Securities Markets Act may still be breached, for which FIN-FSA is entitled to impose an administrative sanction.

The purpose of the prohibitions and rules concerning market manipulation is to enhance and promote market transparency and strengthen investor confidence in the integrity of the securities markets. Such rules are also necessary for ensuring that market participants can operate on a level playing field and on the basis of the same information. Market participants must be able to trust that the information available and transactions undertaken on the markets are real and genuine. Investors acting upon, and placing confidence in, distorted prices, supply or demand base their investment decisions on false information.

Typical of manipulative activities is that they are, in terms of practices and contents, distinct from ordinary market trading and, overall, deviate from the generally accepted code of conduct on the securities markets. Compliance with the code of conduct means activity according to such generally accepted principles and rules as are deemed to represent a correct and fair business practice for all the parties involved.

### Examples of manipulative activities

The operational practices described below may serve to provide the markets with false or misleading signals of genuine supply, demand or prices, thus causing investors to make their investment decisions on mistaken grounds.

Manipulative behaviour includes orders aimed at influencing e.g. either the opening or closing prices of shares or merely maintaining the share price level. For instance, a share transaction may be undertaken just slightly before close of trading at a price different from the previous level.

Influence may also be exercised so that an investor places an order and, while this order is still valid, places another reverse order. However, the last order is not intended to be executed at all, being rather intended to only give a misleading picture of the supply of, or demand for, the shares in

question at a certain price level and to influence the realisation of the first order at a price that is more advantageous to the investor.

Manipulative behaviour may also take the form of fictitious transactions (wash trades). In these transactions, the buyer and the seller are either the same person or closely related. In this case, no actual surrender of ownership, nor de facto transfer of ownership, takes place even if it might outwardly seem so, and the markets may get a false or misleading picture of the supply of, or demand for, financial instruments. The misleading nature of wash trades arises because other market participants do not know that the transactions undertaken are not genuine securities trades involving taking or averting market risk. In order to prevent such transactions from providing the markets with a false or misleading picture, they should not be undertaken e.g. in the order book via online banking facilities; instead, they should be transmitted to brokers for execution outside the order book as contractual trades.

'Pump and dump' schemes may also be considered as manipulative behaviour. A person acquires, either independently or acting in collaboration with others, a target company's shares via aggressive purchases and, in so doing, boosts (pumps) the price of the shares. Having aroused investors' interest and caused the price to rise, the person sells (dumps) the shares to investors at the manipulated price.

Market manipulation may also manifest itself in the dissemination of false or misleading information to the market via Internet discussion forums, for instance. A person may disseminate negative or positive information with intent to trigger a price change favourable to him/herself or influence other people's buying or selling behaviour. Anyone may make him/herself guilty of this 'information manipulation' if s/he knew, or ought to have known, that the information was false or misleading.

### **For further information, please contact**

Laila Hietalahti, Market Supervisor, tel. +358 10 831 5244.

## **Procedures related to the application of the Market Abuse Regulation**

The Regulation of the European Parliament and of the Council on market abuse (Market Abuse Regulation, MAR) entered into force on 3 July 2014, with application due to commence on 3 July 2016. The MAR is directly applicable regulation.

### **Preparation of Level 2 regulation still pending**

There is extensive Level 2 regulation related to the MAR. The European Securities and Markets Authority (ESMA) has prepared regulatory technical standards on, inter alia, the technical procedures relating to the disclosure and delayed disclosure of inside information, the formats and templates for the publication of transactions by persons discharging managerial responsibilities and of persons closely associated with them, and the format and manner of updating insider lists. ESMA published and submitted the drafts to the Commission for approval on 28 September 2015. The regulatory technical standards will be issued, after adoption by the European Parliament, as Commission Regulations. ESMA's published drafts for regulatory technical standards may be amended before final approval. The Commission will have the regulatory technical standards translated into the Member States' official languages.

FIN-FSA has provided information on changes required under the MAR in [Market newsletters 1/2015](#) and [2/2015](#) and in the events for listed companies in December 2015.

### **Practical procedures for notification and publication of managers' transactions**

The (draft) regulatory technical standard regarding managers' transactions requires that Member States' competent authorities define and communicate on their respective websites the procedures for submission to the authorities of notifications of transactions by managers and closely associated persons. FIN-FSA will publish the procedures for submission of notifications on its website during the course of spring 2016.

FIN-FSA is working on an electronic service project which should be used in the submission of notifications of transactions by managers and closely associated persons. However, the project will not reach completion by summer

2016, and for this reason FIN-FSA is currently planning a substitute procedure for the transition period. The aim is for notifications to be submitted to FIN-FSA on a form that can be filled in electronically. Information may be submitted in Finnish, Swedish or English. Mangers and closely associated persons may authorise the issuer or any other party to submit notifications to FIN-FSA on their behalf.

### **A separate release category for public disclosure of transactions by managers and closely associated persons**

The publication of transactions by managers and closely associated persons is expected to occur in a manner similar to the public disclosure of inside information, and the information is to be delivered to the officially appointed mechanism (OAM).

FIN-FSA's discussions with the Helsinki Stock Exchange led to the conclusion that a separate release category 'Managers' transactions' will be established for the publication of transactions by managers and closely associated persons and should be used for such public disclosure.

### **Insider lists**

Issuers or parties acting on their behalf or on their account are obliged to maintain lists of those persons who have access to inside information (insider lists).

The (draft) regulatory technical standard concerning insider lists includes an annex with templates for deal-specific/ event-based lists, permanent insider lists and SME Growth Market companies' insider lists. These are not, however, actual forms on which the information is to be submitted. Therefore, FIN-FSA will prepare separate forms for the information that needs to be submitted to FIN-FSA separately upon request for trading supervision purposes.

FIN-FSA will provide further details of the technical layout of the forms on its website and in its Market newsletter during spring 2016.

### **For further information, please contact**

Pia Ovaska, Legal Adviser, tel. +358 10 831 5296.

## **Forthcoming changes to prospectus regulation regarding securities offerings and listings**

### **Commission submits a proposal for new securities prospectus regulation**

On 30 November 2015, the European Commission published a proposal for a new prospectus regulation of the European Parliament and of the Council, replacing the current Prospectus Directive as a whole. The overhaul of prospectus regulation was originally based on a scheme for reviewing the Prospectus Directive at five-year intervals and was made part of the Commission's Capital Markets Union (CMU) action plan.

The aim of the revision is to facilitate the operation of European capital markets by reducing the work and costs involved in preparing prospectuses for capital-raising purposes.

The new proposal would bring changes to the prospectus regulation, including:

- higher euro and percentage thresholds for the obligation to issue a prospectus
- easing or amending the requirements for prospectus contents in respect of
  - secondary issuances
  - the prospectus summary
  - descriptions of risk factors
  - small and medium-sized enterprises (SMEs)
- allowing the use of a new type of prospectus structure for companies frequently issuing securities (universal registration document).

The proposed prospectus regulation will be next considered by the European Parliament and by the Council, meaning that its contents may still change. In addition, the draft prospectus regulation gives, in many places, powers or orders to the Commission for the issuance of regulation at a more detailed level, and the preparation of such provisions will take time. Upon entry into force, the new Regulation would be directly applicable legislation in Finland and is likely to replace the current chapters 3–5 of the Securities Markets Act.

## Commission Delegated Regulation on prospectuses

On 30 November 2015, the European Commission also published the Commission Delegated Regulation on prospectuses. This proposal aims at specifying the Commission's currently valid Prospectus Regulation (provisions subordinate to the above-mentioned Prospectus Directive) with technical details regarding the approval process for prospectus applications, prospectus publication and advertisements. As current articles in the Commission's Prospectus Regulation regarding prospectus publication and dissemination of advertisements have been integrated as such into the new Delegated Regulation, the Delegated Regulation represents a combination of new and already valid legal texts. In FIN-FSA's view, the contents of the Delegated Regulation will not lead to significant changes in current practices, as most of the procedures now written into the Regulation in respect of the approval process for prospectus applications, for instance, have already been complied with. The Delegated Regulation will enter into force on the 20th day following that of its publication in the Official Journal of the European Union, i.e. in the early part of 2016.

Both proposals are available in English on the Commission's website at [http://ec.europa.eu/finance/securities/prospectus/index\\_en.htm](http://ec.europa.eu/finance/securities/prospectus/index_en.htm).

### For further information, please contact

Maria Rekola, Market Supervisor, tel. +358 10 831 5265.

## Examples of the notification of major shareholdings posted on the FIN-FSA website

The revisions to the Securities Markets Act regarding the obligation to notify changes in major shareholdings (flagging obligation) entered into force on 26 November 2015. This led to repeal of FIN-FSA's Regulations and guidelines 8/2013: Notification of significant holdings and voting rights.

Practical guidance for the flagging obligation is provided on the FIN-FSA website at [To listed companies.fi > Notification of major shareholdings](#). The website currently makes available a new notification form, with fill-in instructions in Finnish, Swedish and English. In addition, it gives answers to frequently asked questions (in Finnish only). Efforts have been made to explain and clarify the flagging obligation on various occasions with the help of examples, of which the website also provides a memorandum (in Finnish only).

Given repeal of Regulations and guidelines 8/2013 regarding the notification of significant holdings and voting rights, FIN-FSA will publish more practical guidance regarding the flagging obligation on its website in the early part of 2016.

### For further information, please contact

Marianne Demecs, Market Supervisor,  
tel. +358 10 831 5366.

## Disclosure and notification of the choice of home Member State for the periodic disclosure obligation

Amendments to the Securities Markets Act (SMA), effective since November 2015, changed the provisions governing issuers of securities other than shares in respect of the choice, disclosure and notification of the home Member State for the periodic disclosure obligation. In addition to the choice of home Member State and its disclosure, there is, among other things, a new requirement for notifying the competent authorities of the choice of home Member State and, where the issuer has not made a choice of home Member State, determination of the home Member State. The Act has also been clarified in such a way that regulation governing third-country issuers has been moved into a section of its own.

### Issuer of securities other than shares whose registered office is in a Member State of the European Economic Area (EEA Member State)

Pursuant to chapter 7, section 3 of the SMA, an issuer of a security other than a share, if the denomination or accounting par value of a security issued by it is at least EUR 1,000, must choose, as its home Member State for disclosure of periodic information, any of those EEA Member States in which the securities are admitted to trading on a regulated market or the EEA Member State in accordance with the issuer's registered office. The choice of home Member State is valid for at least three years at a time, under the criteria specified in the Act.

The issuer is required to publicly disclose the information on the EEA Member State it has chosen as home Member State for the disclosure of periodic information and to submit a notification of its choice of home Member State to the competent authority of the EEA Member State in which it has its registered office and to the competent authorities of all those EEA Member States in which the issuer's security is admitted to trading on a regulated market.

### Issuer of securities other than shares whose registered office is in a third country

According to chapter 7, section 3a of the SMA, an issuer of a security other than a share whose registered office is in a

third country must choose, as its home Member State for disclosure of periodic information, any of the EEA Member States in which the securities issued are admitted to trading on a regulated market. The choice of home Member State is valid for at least three years at a time, under the criteria specified in the Act.

The issuer is required to publicly disclose the information on the EEA Member State it has chosen as home Member State for the disclosure of periodic information and to submit a notification of its choice of home Member State to the competent authority of the EEA Member State in which it has its registered office and to the competent authorities of all those EEA Member States in which the issuer's security is admitted to trading on a regulated market.

### Deadlines for public disclosure and notification

Chapter 7, section 3b of the SMA requires that the choice of home Member State for the disclosure of periodic information must be publicly disclosed and notified within three months from the commencement of trading. Otherwise, all those EEA Member States in which the security is admitted to trading are considered as being home Member States until the issuer has made a home Member State choice, published the information thereon and notified its home Member State competent authorities thereof in the manner required by law.

If, at the time of entry into force of the Act, securities other than shares are admitted to trading on a regulated market and the home Member State choice has not been previously disclosed, the three-month period will be calculated, under the transition provision of the Act, from the entry into force of the Act. However, an issuer whose registered office is in Finland and whose issued securities are admitted to trading on a regulated market only in Finland need not disclose its home Member State choice nor notify FIN-FSA thereof.

### For further information, please contact

Anu Lassila-Lonka, Market Supervisor,  
tel. +358 10 831 5566.

## Events for listed companies in 2015

December, FIN-FSA arranged two events on the subject of listed companies' financial reporting for a total audience of over 160 participants. The events for listed companies in 2015 comprised two separate components, of which the first dealt with IFRS financial reporting, while the second focused on upcoming changes to the disclosure obligation, the notification and reporting of managerial transactions, insider lists and the notification of major shareholdings. The themes addressed at the events included reviews of supervisory findings in connection with IFRS enforcement in 2015, the regulation and supervision of notes to financial statements and preparations for the introduction of IFRS 9 and IFRS 15. ESMA Guidelines on Alternative Performance Measures were presented and changes to listed companies' disclosure obligation were discussed. In addition, information was provided on the notification and reporting of managers' transactions and on insider lists. Amendments to the obligation to notify changes in major shareholdings were also on the agenda.

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

## Follow the Financial Supervisory Authority on Twitter

The Financial Supervisory Authority tweets, among other things, on ESMA statements and consultations on its account [Twitter.com/FIN\\_FSA](https://twitter.com/FIN_FSA).

Join our followers!



### For further information, please contact

Supervision of Markets and Conduct of Business,  
tel. +358 10 831 5585.