

*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:

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| ■ ESMA clarified definition of managers' closely associated entities                               | 1 |
| ■ Three prospectus exemptions under the new Prospectus Regulation to be applied as of 20 July 2017 | 2 |

## ESMA clarified definition of managers' closely associated entities

The European Securities and Markets Authority (ESMA) has published a Q&A interpretation on the Market Abuse Regulation (MAR) clarifying the definition of the closely associated persons of persons discharging managerial responsibilities. The interpretation defines, in respect of a closely associated entity, the discharging of managerial responsibilities referred to in Article 3(1)(26)(d) of MAR. The FIN-FSA has contributed to the preparation of the interpretation in ESMA.

### Discharging of managerial responsibilities of a closely associated person

According to ESMA's interpretation, a person discharging managerial responsibilities within an issuer or a natural person closely associated with him or her is deemed to be discharging the managerial responsibilities of a closely associated entity if he or she takes part in or influences the decisions of another legal entity to carry out transactions in financial instruments of the issuer.

### Effects of the interpretation

The Q&A interpretation given by ESMA will have an impact as to which legal persons a person discharging managerial responsibilities within an issuer must notify as belonging to his or her closely associated persons and as to which legal persons are generally obliged to report the transactions they carry out in financial instruments of the issuer. In so far as new closely associated entities arise for managers as a result of the Q&A interpretation, a person discharging managerial responsibilities must inform them of obligations

under MAR. Correspondingly, it is recommended that those entities currently defined as closely associated entities that fall outside of the new definition of closely associated entity be notified of the cessation of obligations under MAR.

ESMA's Q&A interpretation described above does not change in other respects the definition of closely associated entity in Article 3(1)(26)(d) of MAR. A legal entity will therefore continue to be a closely associated entity of a person discharging managerial responsibilities if

- it is directly or indirectly controlled by a person discharging managerial responsibilities or a natural person closely associated with him or her, or
- it has been set up for the benefit of a person discharging managerial responsibilities or a natural person closely associated with him or her, or
- its economic interests are substantially equivalent to the economic interests of a person discharging managerial responsibilities or a natural person closely associated with him or her.

### Application of the new interpretation

In summer 2016, the FIN-FSA issued an interim interpretation on the discharging of managerial responsibilities of a closely associated entity. As a consequence of ESMA's Q&A interpretation, the FIN-FSA's interim interpretation will be repealed. The FIN-FSA considers that the interim interpretation may, however, continue to be applied until practical

arrangements required by Article 19(5) of MAR, such as the notification by issuers to persons discharging managerial responsibilities as well as the notification by persons discharging managerial responsibilities to closely associated entities, have been undertaken. The FIN-FSA expects that these practical arrangements will be undertaken by 31 October 2017.

ESMA's Q&A can be read at the address <https://www.esma.europa.eu/questions-and-answers>.

As a consequence of ESMA's Q&A, the FIN-FSA has updated its own [MAR Q&A](#) (in Finnish).

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## Three prospectus exemptions under the new Prospectus Regulation to be applied as of 20 July 2017

The new Prospectus Regulation (2017/1129) was published in the Official Journal of the EU on 30 June 2017. The Regulation will enter into force gradually and it will be applied in full as of 21 July 2019. Three prospectus exemptions will be applied as of 20 July 2017

- The limit of the exemption relating to the admission of further shares of the same class already admitted to trading will rise from less than 10% to less than 20%. In addition, the exemption will be applied in the future also to other securities than shares.
- To the exemption that applies to the admission of shares resulting from conversion or exchange of other securities will be introduced a condition according to which the admitted shares represent less than 20% of the shares of the same class already admitted to trading over a 12-month period. Previously, there was no quantitative condition of this kind. The new condition of less than 20% will not, however, be applied when, for example, a prospectus has been prepared for the offering or admission of securities giving access to the shares.
- The third exception relates to situations where securities result from conversion or exchange of other securities, own funds or eligible liabilities due to the exercise of certain powers by a resolution authority.

The prospectus exemptions now entering into force are contained in points a-c of the first subparagraph of Article 1(5) and in the second subparagraph of Article 1(5) of the Prospectus Regulation. The current provision corresponding to point a is in chapter 4 section 4 paragraph 1 of the Securities Market Act and the provision corresponding to point b is in chapter 4 section 4 paragraph 5 of the Securities Market Act. As the Prospectus Regulation is directly applicable EU Regulation, it supersedes provisions of the Securities Market Act based on the Prospectus Directive.

#### Prospectus Regulation will enter into force gradually

The Prospectus Regulation will be applied in full as of 21 July 2019. In addition to the above-mentioned exceptions,

# Market newsletter 2/2017

July 2017

3 (3)

new thresholds at which a prospectus is mandatory will enter force ahead of time, and will be applied as of 21 July 2018. In the future, in national legislation it will be possible to set the threshold at which a prospectus is mandatory between EUR 1,000,000–8,000,000 (calculated over a 12-month period).

The Ministry of Finance is currently preparing legislation amendments required by the Prospectus Regulation and the national prospectus threshold is due to be decided on in that context.

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