

*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                                    | 1 |
| ■ Key changes in the Market Abuse Regulation                 | 2 |
| ■ Statistical information on prospectuses from 2013 and 2014 | 5 |
| ■ FIN-FSA Conference 2015                                    | 6 |

## Topical matters at ESMA

### Level 2 regulation related to the CSD Regulation

The European Securities and Markets Authority (ESMA) is currently finalising its advice to the European Commission and its draft technical standards relating to the Central Securities Depositories Regulation.

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

ESMA's Market Integrity Standing Committee is finalising the technical standards relating to the Market Abuse Regulation (MAR). The draft technical standards are expected to be submitted to the Commission in September 2015.

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

ESMA is presently finalising the technical standards relating to the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). The draft technical standards are expected to be submitted to the Commission in September 2015.

ESMA requests comments on a guideline relating to MiFID II, dealing with the assessment of knowledge and competence of investment firms' personnel. Such comments are requested to be submitted by 10 July 2015.

### Prospectus Directive

ESMA's Corporate Finance Standing Committee is presently finalising technical standards relating to the Prospectus Directive for the Commission. ESMA's obligation to prepare technical standards is prescribed in the so-called Omnibus II Directive.

### Presentation of alternative performance measures

ESMA's Corporate Reporting Standing Committee is presently preparing a draft guideline on the principles of presenting alternative performance measures (non-IFRS data).

### ESMA's strategy

ESMA has published its strategy for 2015–2020. The strategy emphasises particularly the promotion of cooperation among supervisors and supervisory convergence.

### Self-regulation on voting recommendations

ESMA requests views on how self-regulation applicable to the providers of voting recommendations (proxy advisors) works in practice. Any comments are requested by 27 July 2015.



## Key changes in the Market Abuse Regulation

The Regulation of the European Parliament and of the Council on market abuse (MAR) and the Directive on criminal sanctions for market abuse (CSMAD) entered into force on 3 July 2014. The MAR and the CSMAD replace the Market Abuse Directive (MAD). MAR and CSMAD regulation has implications for the Securities Markets Act (SMA) as well as for regulations and guidelines issued by the Financial Supervisory Authority.

There is extensive Level 2 regulation related to the Market Abuse Regulation. ESMA is preparing regulatory technical standards, inter alia, on the technical procedures relating to the disclosure and delaying of disclosure of inside information, the formats and models of disclosing transactions by executives as well as the format and manner of updating insider lists. ESMA has already provided technical advice to the Commission, inter alia, on the indicators of market manipulation, notification of managers' transactions and trading during the closed window. The above-mentioned Level 2 regulation will be provided for in Commission Regulations.

The MAR constitutes directly applicable regulation. The CSMAD will be implemented as part of national regulation. MAR and CSMAD regulation will be applicable as of 3 July 2016.

### **The scope of application of the Regulation extends to new trading venues and trading on financial instruments outside securities exchanges (Article 2)**

The MAR applies not only to financial instruments subject to trading on a regulated market but also to financial instruments traded on a multilateral trading facility (for example First North Finland) or an organised trading facility (OTF). An organised trading facility is a new marketplace defined in Directive (2014/65/EU) on markets in financial instruments (MiFID II). The MAR also applies to OTC trading outside securities exchanges.

In addition, the MAR applies to the auctioning of emission allowances on an auction platform authorised as a regulated market. For the time being, there are no auction platforms for emission allowances in Finland.

The ban on market manipulation will extend to activities related to benchmarks, including reference interest rates and equity indices.

Going forward, the prohibition of abuse of inside information and of manipulation of markets will also apply to trading in derivative contracts on commodities.

### **Only minor changes to the prohibition of abuse of inside information (Article 8)**

The MAR's definition of inside information corresponds in practice to the definition of inside information under the SMA. Inside information means information of a precise nature, which has not been made public and which, if made public, would be likely to have an effect on the price of a security.

As has been the case previously, prohibition of the abuse of inside information covers trading, recommendation, and unlawful disclosure. In addition, the prohibition against the abuse of inside information is extended to cover the amendment or cancellation of orders.

### **Public disclosure of inside information and delay of disclosure (Article 17)**

The wording of the MAR provision on the disclosure of inside information differs from the wording in the presently valid SMA. The MAR requires that any inside information which directly concerns that issuer must be made public as soon as possible. In accordance with the presently valid chapter 6, section 4 of the SMA, an issuer shall publish without undue delay any decisions and information which are likely to have a material effect on the value of the security.

In principle, the MAR moves the disclosure threshold for inside information to an earlier time, but in practice, due to the procedure for the delay of disclosure of inside information, the time of publication of the information may not change substantially. However, the delay of disclosure of information will be applicable considerably more frequently than presently, particularly concerning decisions made by the issuer.

The MAR will continue to allow to delay the disclosure of information, if immediate disclosure is likely to prejudice the legitimate interests of the issuer, delay of disclosure is not likely to mislead the public and the confidentiality of that information can be guaranteed. In accordance with the MAR, an issuer must have the internal processes in place to make a decision to delay disclosure and to assess the continuous validity of the delay criteria as well as its preparedness to disclose the information in case it leaks out.

Any information whose disclosure has been delayed must be disclosed to the public as soon as possible if the confidentiality of that information is no longer ensured.

The MAR requires that the supervisory authority is informed of the decision to delay disclosure immediately after the information concerned is disclosed to the public. However, it can be decided at the national level, whether in this context also the grounds must be presented as to how the prerequisites for delay of disclosure have been met. The notification process and the information content of the notification will be defined in ESMA's regulatory technical standards.

Chart 1 illustrates the impact of the MAR on the disclosure of inside information for example in the context of a corporate transaction or agreement negotiations.

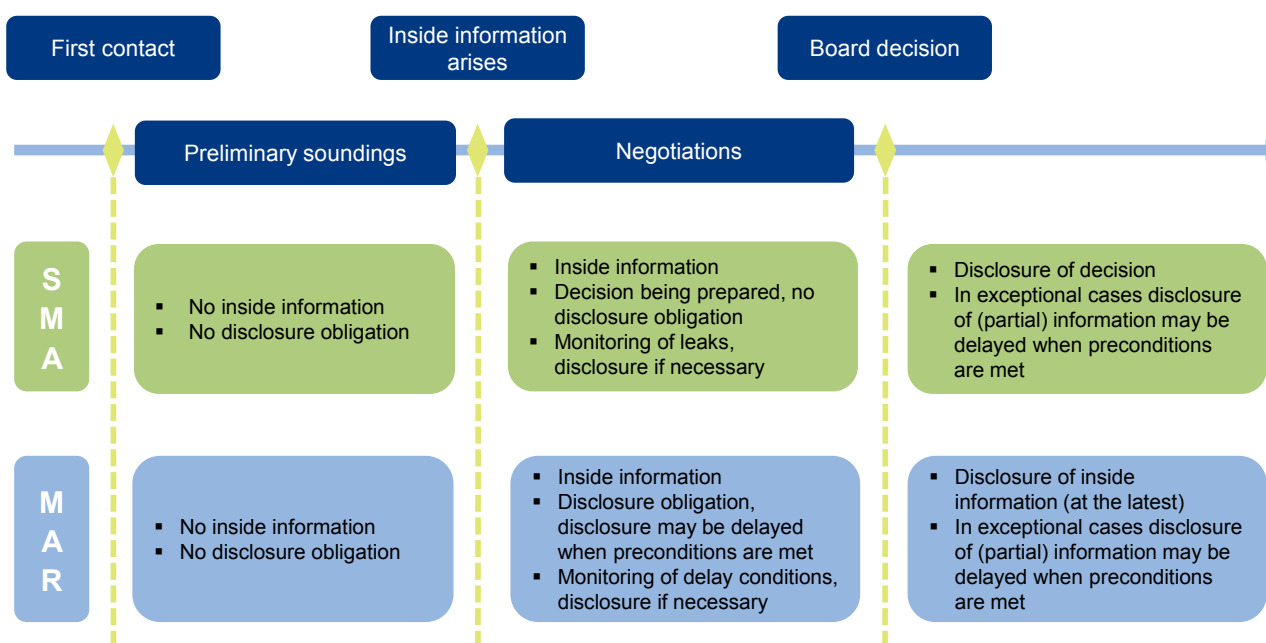
## Changes to the notification and publication of managers' transaction (Article 19)

The MAR brings about changes in the notification and publication of transactions made by the issuer's managers in financial instruments and in related deadlines. The deadline for notification of transactions is shortened from seven (7) days to three (3) business days.

Going forward, managers and their closely associated persons will notify to the issuer and FIN-FSA any transactions they have made in the relevant issuer's shares, debt instruments (eg bonds), derivatives and other financial instruments no later than three (3) business days after the date of the transaction. The notification obligation also extends to the issuer's financial instruments included in investment-linked insurance policies.

The issuer in turn must ensure that any such information that it receives is published no later than three (3) business days after the date of the transaction. The publication is expected to take place similarly to the disclosure of inside information, meaning that the issuer makes the information public via a stock exchange release and that it is submitted in the officially appointed mechanism. In addition, the issuer must keep the published information available on its website for 5 years.

**Chart 1 Impact of the MAR on the disclosure of inside information**



Persons closely associated with a person discharging managerial responsibilities are defined in article 3, paragraph 26) of the MAR. They include

- a. a spouse, or a partner considered to be equivalent to a spouse in accordance with national law
- b. a dependent child, in accordance with national law
- c. a relative who has shared the same household for at least one year on the date of the transaction in question
- d. a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person referred to above in point a, b or c, which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

## **Closed window (Article 19)**

The MAR sets a closed window of 30 days before the announcement of an interim financial report or a year-end report for persons discharging managerial responsibilities within an issuer, during which time trading in the issuer's security is forbidden. However, there may be case-by-case exceptions, which will be provided for in a separate Level 2 regulation.

## **Allocation of responsibilities for updating insider lists has been specified (Article 18)**

The MAR no longer distinguishes between permanent and project-specific insiders, but an issuer may maintain a separate list of permanent insiders in addition to project registers. The MAR also changes the allocation of responsibility for maintaining the insider lists between the issuer and parties acting on its behalf. In accordance with the Regulation, the issuer is responsible for maintaining insider lists on persons acting on their behalf or on their account. In order to fulfil this obligation, the issuer always retain a right of access to the insider list of any person acting on their behalf or on their account.

## **The so-called safe-haven exemption for buy-back programmes and stabilisation remains unchanged (Article 5)**

The so-called safe haven regulation on the acquisition of own shares remains largely unchanged. A regulatory techni-

cal standard will specify the preconditions that need to be met by measures concerning the acquisition of own shares.

## **More specific procedures relating to market sounding (Article 11)**

The MAR allows for the expression of inside information in the context of market sounding prior to a transaction, but it determines more specific procedures for these soundings. The disclosure of inside information in the context of market sounding is possible if the expression of information occurs as part of the normal exercise of a person's employment, profession or duties and if the disclosing market participant, before making the disclosure obtains the consent of the person receiving the information to receive inside information and informs the person receiving the information that he is prohibited from using that information or giving advice based on it, or expressing it. In addition, the disclosing market participant must make and maintain a record of all information disclosed and the times of such disclosures.

## **CSMAD**

CSMAD provides for criminal sanctions for the most severe and intentional breaches of the MAR such as the abuse of inside information and market manipulation. The difference in comparison with the provisions of the penal code in force at present is that the illegal disclosure of inside information and attempted market manipulation is criminalised.

## **FIN-FSA's information event**

FIN-FSA will arrange an information event on the MAR and its impacts towards the end of 2015. FIN-FSA will in due course announce the specific time of the event.

## **Further information**

For further information, please see [Market Abuse Regulation](#) and [directive](#) as well as [ESMA website](#).

## Statistical information on prospectuses from 2013 and 2014

FIN-FSA has gathered statistical information for the European Commission on securities prospectuses approved by FIN-FSA in 2013 and 2014. The compilation of statistics is related to a review of the Prospectus Directive (2003/71/EC) ongoing at the Commission. The purpose of the potential amendments to the Prospectus Directive is to facilitate the raising of capital by companies within the European Union and to lower the costs of preparing prospectuses while also maintaining efficient investor protection.

This article contains some parts of the information reported by FIN-FSA to the Commission.

In 2014, FIN-FSA approved a total of 57 prospectuses for the offering and/or listing of securities. In 2013, a total of 68 prospectuses were approved. Of the prospectuses approved in 2014, 56 were prepared because of an exceeding of the EU's prospectus threshold (securities offering in excess of EUR 5 million) and one because of an exceeding of the national prospectus threshold (offering in excess of EUR 1.5 million).

In 2014, there were 7 offerings of under EUR 10 million, 22 offerings of at least EUR 10 million but under EUR 50 million, 3 offerings of at least EUR 50 million but under EUR 100 million and 2 offerings of at least EUR 100 million. In 2013, there were 12 offerings of under EUR 10 million, 20 offerings of at least EUR 10 million but under EUR 50 million, 3 offerings of at least EUR 50 million but under EUR 100 million, and 2 offerings of at least EUR 100 million.

Chart 1 Offer sizes in 2013 and 2014

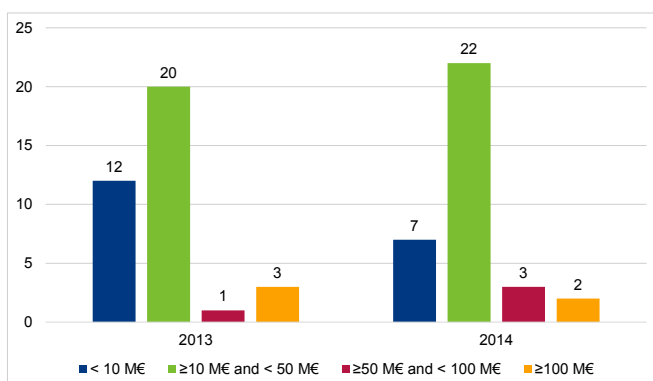


Chart 1 shows the sizes of individual offers in 2013 and 2014.

The statistics on the amounts of offerings by size exclude base prospectuses, corporate transactions (mergers and demergers) and one share exchange offering.

In 2014, FIN-FSA approved two prospectuses and in 2013 three prospectuses for an initial public offering or first listing of shares on a regulated marketplace. In addition to the stock exchange list, NASDAQ OMX Helsinki Ltd maintains an alternative First North Finland multilateral trading facility, which is subject to lighter obligations and listing requirements than the stock exchange list. In 2014, FIN-FSA approved a total of five prospectuses for initial public offering on First North Finland. In addition, the shares of one company and bonds of two companies were listed on First North Finland in 2014 with company prospectuses approved by the said marketplace.

Various efforts have been made to facilitate the preparation of prospectuses. One of the measures is that a prospectus can consist of three parts. The part concerning the issuer (registration document), if it has been approved once, may be used in several offerings along with a securities note and summary. In such case, each offering only requires the preparation of a securities note and summary updating the information that has changed. In 2014, there were 14 tripartite prospectuses approved, and in 2013 there were 13.

Small and medium-sized enterprises (SMEs<sup>1</sup>) have the opportunity to prepare a prospectus under simplified prospectus requirements. In 2014, there were 7 prospectuses with proportionate schedules approved, and in 2013 there were 18. The purpose of the proportionate schedule for SMEs is to alleviate the listing requirements for companies.

In addition, in the context of rights issues, companies have the opportunity to prepare a prospectus subject to proportionate schedules for rights issues. In 2014, there were 3 prospectuses for rights issues with proportionate schedu-

1 In accordance with the Prospectus Directive, a company is considered an SME if two of the following requirements are met according to its most recent financial statement.

1) average staff headcount is under 250,  
2) balance sheet total is no more than EUR 43 million or  
3) annual turnover is no more than EUR 50 million.

les approved, and in 2013 there were 7. Simplified listing requirements can also be applied to bonds and derivatives whose minimum denomination is at least EUR 100,000. In such case, the company may prepare a prospectus with a simplified annex to the registration document and simplified securities note. In 2014, there was 1 such bond prospectus approved, and in 2013 there were 5.

## FIN-FSA Conference 2015

*The 4th FIN-FSA Conference on EU Regulation and Supervision – Financing Growth through Capital Markets, was held on 9 June 2015.*

The conference addressed the possibilities for the capital markets union to support the financing of growth. The following presentations were given

- Anneli Tuominen, Director General, Financial Supervisory Authority: *Welcome and opening remarks*
- Erkki Liikanen, Governor, Bank of Finland: *Monetary policy and its transmission to the economy*
- Ari Hyytinen, Professor of Economics, University of Jyväskylä: *Financing of investment and firm growth*
- Olivier Guersent, Deputy Director General, European Commission: *CMU – first stocktaking and way forward*
- Steven Maijor, Chair, European Securities and Markets Authority (ESMA): *Accelerating the integration of European capital markets: an agenda for the CMU.*

In addition, the conference programme included a *Panel discussion on the impact of CMU*, with Eva Liljeblom, Rector, Hanken School of Economics, Steven Maijor, Lauri Rosendahl, President of NASDAQ Helsinki Ltd, Tuomas Saarenheimo, Permanent State Under-Secretary, Ministry of Finance and Olivier Guersent.

Webcasts of the conference are available on the [FIN-FSA's website](#). The Twitter hashtags were [#FIN-FSAconference](#) and [#capitalmarkets](#).

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