

*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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## Preliminary information or profit warning?

In January-February 2018, a number of companies have published information on profit development for the financial year 2017 before the publication of the financial statements release. The Financial Supervisory Authority (FIN-FSA) considers that in most cases these releases have constituted a profit warning – either positive or negative. As a rule, these releases have, however, been entitled "preliminary information".

Securities markets legislation does not contain a provision on disclosure of preliminary information. A listed company may disclose preliminary information on its profit development if, for example, it wishes to reinforce the market's view of its profit development. There is no obligation to publish such information, however. If such information constitutes a profit warning, this should be clearly stated in the release. The FIN-FSA considers that the content of a release should be clear from the title of a stock exchange release containing a profit warning. It is therefore not recommended to entitle a release containing a profit warning as preliminary information. The title should also make clear whether a deterioration or improvement of the published outlook is involved. The FIN-FSA also recommends that the release repeats the outlook previously disclosed to the market, which most companies have indeed done in the releases they published in the early part of the year.

The term "preliminary information" was used in the guidelines of the FIN-FSA's predecessor organisation in the early 2000s. At that time, the guidelines stated that a change

in an issuer's profit or in the development of its financial position should be disclosed as a profit warning if the information was published during the reporting period, and as preliminary information if the information was published after the end of the reporting period. Later, the FIN-FSA issued guidelines stating that a change in forecast profit, development of financial position or future outlook should be published as a profit warning.

The FIN-FSA also reminds companies that a profit warning is inside information, and it should be published using the "Inside information" release category.

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## ESMA Q&A interpretation of the obligation to prevent and detect market abuse – also extends in certain situations to non-financial firms

In a Q&A interpretation issued on 1 September 2017, the European Securities and Markets Authority (ESMA) has clarified the scope of Article 16(2) of the Market Abuse Regulation (MAR) relating to the prevention and detection of market abuse. Article 16(2) of MAR requires that any person professionally arranging or executing transactions must establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions.

In spring 2016, before MAR began to be applied, ESMA has already interpreted that obligations to prevent and detect market abuse are not only limited to firms providing investment services under the Markets in Financial Instruments Directive (MIFID 2); the obligations also apply to fund management companies, alternative investment fund managers and other firms professionally engaged in trading on own account (proprietary traders).

The basis of ESMA's interpretation has been that the definition of "person professionally arranging or executing transactions" laid down in Article 3(1)(28) of MAR is not only limited to investment firms and therefore the scope of the obligation should be broadly applied and activity based.

In its Q&A interpretation issued on 1 September 2017, ESMA has clarified that the MAR obligation also extends to non-financial firms professionally engaged in trading on own account, for example for hedging purposes. According to ESMA, non-financial firms can be considered firms professionally arranging or executing transactions if they have staff or a structure dedicated to systematically deal on own account. For example, executing trades through a company's own trading desk or executing own orders directly on a trading venue are factors determining the systematic nature of trading.

Article 2 of Commission Delegated Regulation (EU) 2016/957 specifies the general requirements set for arrangements, systems and procedures relating to the prevention and detection of market abuse. The said arrangements, systems and procedures must be appropriate and

proportionate in relation to the scale, size and nature of the operator's business activity.

### Reporting obligation

Under Article 16 of the Market Abuse Regulation, orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, must be reported to the competent authority without delay.

Obligated entities who professionally arrange or execute transactions are subject to the reporting rules of the Member State in which they are registered.

Suspected market abuse must be reported to the FIN-FSA using the form below and by sending it via secure email to the address [STOR\(at\)finanssivalvonta.fi](mailto:STOR(at)finanssivalvonta.fi).

The reporting form can be downloaded at the address: [http://www.finansinspektionen.fi/en/Regulation/International\\_Projects/mar/market\\_abuse/Pages/Default.aspx](http://www.finansinspektionen.fi/en/Regulation/International_Projects/mar/market_abuse/Pages/Default.aspx).

ESMA Q&As are published at the address: <https://www.esma.europa.eu/questions-and-answers#title-paragrah-3>.

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## Financial Supervisory Authority has published a video on IFRS enforcement

The purpose of the video is to communicate briefly and concisely what IFRS enforcement means and what is expected of listed companies in respect of IFRS enforcement. The video is broadly aimed at all those who need to know about IFRS enforcement on a general level, such as members of boards of directors/audit committees, chief financial officers, auditors and financial reporting advisers.

A Finnish-language video can be viewed in the [FIN-FSA's YouTube channel](#). In addition, we have published video scripts in [Swedish](#) and [English](#) on the respective Swedish and English websites, [Noterade bolag.fi](#) and [Listed companies.fi](#).

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