

*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:

■ Electronic newsletter for communication of current MiFID II and MiFIR issues	1
■ Guidelines on persons receiving market soundings enter into force on 10 January 2017	1
■ Guidelines on delay in the disclosure of inside information enter into force on 20 December 2016	2
■ Importance of the determination of inside information highlighted due to MAR	2
■ ESMA portal for regulated information results in changes to release categories	3
■ Events for listed companies in 2016	5

### Electronic newsletter for communication of current MiFID II and MiFIR issues

The newsletter consists of issues falling within the scope of the MiFID II and MiFIR regulation, which we wish to communicate to the regulation's target group in as timely a manner as possible. We discuss the progress of the regulatory process and highlight the most relevant news for the sector, including topics such as trading in financial instruments, investment services, investor protection and reporting. The MiFID II and MiFIR regulation will begin to be applied from the beginning of 2018.

You can subscribe to the newsletter (in Finnish) through the FIN-FSA online service at <http://www.finanssivalvonta.fi/en/Publications/Pages/Subscription.aspx>.

The MiFID II and MiFIR regulation also has a dedicated webpage (in Finnish) at <http://www.finanssivalvonta.fi/fi/Saantely/Saantelyhankkeet/MiFID/Pages/Default.aspx>.

### Guidelines for persons receiving market soundings enter into force on 10 January 2017

The FIN-FSA will implement nationally the Guidelines on "Persons receiving market soundings" (ESMA/2016/1477 EN | 10.11.2016), issued by the European Securities and Markets Authority (ESMA), by issuing its own guideline covering compliance with the ESMA Guidelines, within the set of FIN-FSA regulations and guidelines.

The FIN-FSA guideline was issued on 1 December 2016 and it will enter into force on 10 January 2017.

The FIN-FSA recommends that persons falling within the scope of the guidelines comply with the ESMA Guidelines.

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## Guidelines on delay in the disclosure of inside information enter into force on 20 December 2016

The FIN-FSA will implement nationally the Guidelines on “Delay in the disclosure of inside information” (ESMA/2016/1478 EN | 20.10.2016), issued by ESMA, by including them in its own Guideline 6/2016 covering compliance with the ESMA Guidelines.

The revision to FIN-FSA Guideline 6/2016 was issued on 1 December 2016 and it enters into force on 20 December 2016.

The FIN-FSA recommends that issuers falling within the scope of the guidelines comply with the ESMA Guidelines.

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## Importance of determination of inside information highlighted due to MAR

In accordance with Article 17 of the Market Abuse Regulation (MAR), an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. After the entry into force of MAR, the disclosure obligation is linked to the definition of inside information, and therefore the disclosure threshold has shifted earlier than previously. It is possible, however, to delay the disclosure of inside information if the prerequisites under Article 17(4) of MAR are met.

In assessing a delay in the disclosure of inside information, one must ensure that all of the prerequisites for the delay are met, i.e. the immediate disclosure would be likely to prejudice the legitimate interests of the issuer, the delay of disclosure is not likely to mislead the public, and the issuer is able to ensure the confidentiality of the information. If a decision is made to delay the disclosure of inside information, it practically always requires the establishment of an insider project. The justifications for the delay must be documented and retained. After the disclosure of inside information, the issuer must notify the FIN-FSA of the delay.

Since the disclosure obligation is now, deviating from the earlier regulation, directly linked to the definition of inside information, the determination of inside information has been highlighted through the entry into force of MAR. As a result, issuers would be well advised to assess what kind of information within the company constitutes inside information, and assess their disclosure processes from that perspective. The company may have previously, for example, used stock exchange releases also to disclose such orders or contracts relating to ordinary business activity that may not necessarily have been inside information. As a rule, stock exchange releases should be used to communicate regulated information, such as inside information disclosed under Article 17 of MAR. Other kinds of information should be released through other communication channels, such as press releases or investor news. The above-mentioned assessment may result in a need to update the company's disclosure policy. The assessment should also take into account the changes in release categories that enter into force on 1 January 2017.

## Inside information

In accordance with Article 7 of MAR, inside information refers to information of a precise nature, which has not been made public, that relates, directly or indirectly, to one or more issuers or to one or more financial instruments, and that, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

- Significant effect of information on the prices of financial instruments (relevance of information) means information likely to be used by a reasonable investor as part of the basis of an investment decision.
- Precise nature of information means that the information refers to circumstances or events which exist, have already occurred, or may reasonably be expected to come into existence or to occur.
- Information is specific enough if it enables a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instrument. It makes no difference whether the direction of the potential price impact of the information can be determined in advance.

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## ESMA portal for regulated information causes changes in release categories

ESMA will establish an online portal on its website for regulated information (European Electronic Access Point), through which regulated information can be searched from the officially appointed mechanisms (OAMs) of all EEA member states. Searches can be based on the home member state or the type of regulated information. The unique identifier of the issuer and the uniform categorisation of regulated information will enable appropriately targeted searches.

The delegated Commission Regulation on the matter ((EU) 2016/1437) was issued on 19 May 2016 and it entered into force on 20 September 2016. The electronic access point must be available as of 1 January 2018, but the requirements concerning the identification of the issuer and the categorisation of regulated information apply already as of 1 January 2017.

As regards the requirements imposed on the national OAMs, issuers are affected by the uniform categorisation of regulated information, which results in certain changes in the release categories used in the national OAM. In the same context, certain other changes, aimed at clarifying the use of the categories, are also made to the release categories.

The Helsinki Stock Exchange will take care of entering the LEI identifier (legal entity identifier) used to identify the issuers into the system.

## Categorisation of regulated information in the electronic access point

Regulated information is classified in the electronic access point into the following categories:

- periodic regulated information
- on-going regulated information
- additional regulated information to be disclosed under the laws of a member state.

The information is classified on the basis of the message category.

## Impacts of release categories

Going forward, the national OAM will use the following release categories, which have been aligned with the categories to be used in the electronic access point.

### *Periodic regulated information*

- Half-year financial report
- Annual financial report
- Report on payments to governments

### *On-going regulated information*

- Changes in the rights attached to the classes of shares or securities
- Changes in company's own shares
- Total number of voting rights and capital
- Inside information
- Major shareholders announcements (flagging)
- Choice of the home member state

### *Additional regulated information*

- Tender offer
- Changes board/management/auditors
- Other information disclosed according to the rules of the exchange
- Prospectus/Announcement of prospectus
- Interim report (Q1 and Q3)
- Net asset value
- Financial statement release
- Financial calendar
- Decisions of general meeting
- Notice to general meeting

### *Other information submitted to the OAM*

- Managers' transactions

Even when, for example, a release concerning a public tender offer or financial statements release contains inside information, the dedicated release category under additional regulated information is used.

The changes to the release categories will be implemented in early January 2017. The current categories are used until the update has been made. The current categories and the releases included within them will remain unaltered in the OAM, i.e. they will not be recategorised.

## Disclosure of inside information

The Commission Implementing Regulation<sup>1</sup> associated with the Market Abuse Regulation (MAR) requires that, in disclosing inside information, it is clearly identified that the information communicated is inside information. The FIN-FSA considers that the requirement of the Commission Implementing Regulation is fulfilled when the basic details of a release disclosed on the basis of Article 17 of MAR contains the title "Stock exchange release". On the basic details of financial reports, the titles "Interim report", "Half-year report", "Financial statement release" or "Annual financial report" can be used.

Companies traded on the First North marketplace may continue to use the current release categories and the title "company announcement" in their releases.

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<sup>1</sup> Commission Implementing Regulation (EU) 2016/1055, Art. 2(1)(b)(i).

## Events for listed companies in 2016

In late November and early December, the FIN-FSA organised two events related to financial reporting by listed companies. Nearly 200 people in total participated in these events. The purpose of the events was to inform listed companies and other stakeholders on IFRS supervision conducted in 2016 and 2017, and on topical regulatory issues. The themes discussed in the events for listed companies in 2016 included the implementation of new IFRS standards (IFRS 9 and IFRS 15), uncertain tax positions and reformed audit regulation from the perspective of the FIN-FSA's supervisory duties. The topics of next year's IFRS supervision were also discussed in brief.

In addition, the events discussed, among other things, the ESMA Guidelines on alternative performance measures and supervisory findings on the application of MAR.

The objective of the events for listed companies is to gather together various stakeholders for financial reporting.

The presentation material of the events is available in Finnish at the FIN-FSA website at: [http://www.finanssivalvonta.fi/fi/Listayhtiolle/IFRS/Julkaisut/Esitykset/Documents/Fivan\\_listayhtiotalaisuus\\_2016.pdf](http://www.finanssivalvonta.fi/fi/Listayhtiolle/IFRS/Julkaisut/Esitykset/Documents/Fivan_listayhtiotalaisuus_2016.pdf).

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