

Insights

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SUMMARY

This edition of the [Primary Market Bulletin](#) includes an update on the implementation of the European Single Electronic Format, COVID temporary policy measures on corporate reporting and a reminder for issuers and their advisers of their continuing obligations. It also contains two articles summarising recent reviews by the FCA on delayed disclosure of inside information notifications and compliance with the FCA's rules relating to corporate governance disclosures.

European Single Electronic Format (ESEF)

The FCA is going ahead with their proposal to push back by one year the ESEF requirements originally scheduled to apply to financial years starting on or after 1 January 2020, specifically requirements to publish and file annual financial reports in machine-readable format. These requirements will now only be mandatory for financial years starting on or after 1 January 2021. The related requirements regarding tags in the notes to the accounts will still be mandatory for financial years starting on or after 1 January 2022.

COVID temporary policy measures

The FCA has decided that the corporate reporting reliefs introduced as a result of COVID, will, at a minimum, continue to be available to listed companies with financial periods ending before April 2021. Therefore companies subject to DTR 4.1 and 4.2 will have an additional two months to publish their annual accounts ie. six months and an additional month to publish their half-yearly reports ie. four months.

Continuing obligations

If the FCA see unconfirmed media speculation which could indicate a leak of inside information under MAR, market rumours and/or an unexplained significant share price movement, they may follow this up by contacting the issuer or its advisers to discuss their disclosure obligations. They

may also ask the issuer to provide them with its analysis of whether it is currently in possession of inside information and whether it is currently delaying disclosure of inside information.

The FCA expect issuers and their advisers to respond to their queries without delay. If dealing with an issuer's adviser, they would expect the adviser to speak to the issuer to confirm the response provided to the FCA and if an issuer seeks advice/guidance, they should inform the FCA.

Issuers are also reminded of the interaction with MAR and other disclosure obligations. For example, just because something does not need to be disclosed under the Takeover Code, does not mean it does not need to be disclosed under MAR.

Two FCA reviews

Delayed disclosure of inside information

The FCA has reviewed Delayed Disclosure of Inside Information (DDII) notifications which they have received and as a result, they will be increasing oversight in a number of areas. The FCA's main findings from this [review](#):

- Periodic financial information – issuers are reminded that when preparing periodic financial information, they should start from the assumption that all information relating to financial results could constitute inside information.
- Unscheduled financial information – the FCA found that notifications relating to this type of information on average demonstrated a longer delay than those relating to periodic financial information. The FCA found this unusual because whilst periodic financial information may benefit from the legitimate interest test, no specific legitimate interest exists for unscheduled financial information. The rules/guidance (DTR 2.2.9G) state that a **short** delay may be acceptable where an issuer encounters an unexpected event but they were not expecting such a large average delay.

There is also a large disparity between the number of DDII notifications received and the number of trading statements (3132 trading statements were disseminated by UK issuers and out of those, delayed disclosure notifications were submitted in only 49 instances).

- Director/Board changes – the FCA were surprised by the number of DDII notifications in this area given it is not a specific legitimate interest in the ESMA Guidelines even though the average delay was rather small (16 days). The FCA will be turning their attention to this.
- Overall volumes of DDII notifications – only a quarter of issuers (718) have submitted a DDII notification during the period under review. Because of this low volume, the FCA is concerned that there may be a lack of awareness around these obligations.

Corporate governance disclosures by listed issuers

In this [review](#), the FCA reviewed corporate governance disclosures from a sample of issuers. They found, amongst other things that:

- disclosures appeared to be boilerplate. Companies should consider including specific details of how they have applied the Principles in the UK Corporate Governance Code using examples and cross-references; and
- the quality of Board Diversity Reporting could have been better.

The FCA believe there is room for improvement in the corporate governance disclosures across all categories of listed issuers and that they will be working with the FRC to consider areas for improvement. They will use these results to inform decisions about the deployment of future surveillance and monitoring efforts in this area.

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