RECENT REGULATORY DEVELOPMENTS

IN THE EU'S INVESTMENT SERVICES SECTOR AND CAPITAL MARKETS

SPECIAL PRESENTATION BY MAP S.PLATIS

Ever since the escalation of the COVID-19 outbreak in Europe, the status quo in the EU's investment services sector and capital markets has dramatically changed. New developments emerge on an almost daily basis, while the industry is experiencing major turmoil. Below we summarise the most important EU regulatory developments that have occurred in response to the pandemic in March.

NET SHORT POSITION BAN AND LOWERING OF NOTIFICATION THRESHOLD FOR NET SHORT POSITIONS

Extreme adverse circumstances that constitute a serious threat to market confidence and financial stability have prompted a number of national competent authorities in the EU to ban net short positions for any shares or debt instruments listed on *Trading Venues* for which they are the designated regulator. Such bans were issued by the competent authorities of Austria, Belgium, France, Greece, Italy and Spain.

The net short position prohibits both short selling and any transaction that creates or relates to a financial instrument, and the effect or one of the effects of that transaction is to confer a financial advantage on the natural or legal person in the event of a decrease in the price or value of another financial instrument (meaning, among others, options, CFDs, spread bets). The ban applies irrespective of whether the transactions occur on Exchange or OTC. The only entities exempted from the net short position ban are authorised primary dealers and market makers who have applied for the exemption afforded under Article 17 of the Short Selling Regulation. The European Securities and Markets Authority (ESMA) has also issued a decision temporarily requiring the holders of net short positions in shares traded on an EU regulated market to notify their relevant competent authorities if the net short position reaches or exceeds 0.1% of the issued share capital after the entry into force of said decision. ESMA considers that lowering the reporting threshold is a precautionary action taken so that the relevant authorities can carefully monitor market developments following the coronavirus fallout.

EXTENSION OF THE SFTR REPORTING START DATE

In an effort to mitigate COVID-19's impact, ESMA issued a public statement clarifying that it expects competent authorities not to prioritise their supervisory actions towards entities subject to Securities Finance Transactions (SFT) reporting obligations from 13 April 2020 to 13 July 2020. Moreover, ESMA has clarified in an updated public statement that SFTs concluded between 13 April 2020 and 13 July 2020 and SFTs subject to backloading under SFTR are also not to be prioritised as part of the competent authorities' supervisory actions.

RELAXATION OF RULES ON RECORDING OF TELEPHONE CONVERSATIONS

ESMA issued a public statement clarifying that, considering the exceptional circumstances created by the COVID-19 outbreak, some scenarios may emerge where the recording of relevant conversations required by MiFID II may not be practicable. If firms, under these exceptional scenarios, are unable to record voice communications, ESMA expects them to consider the alternative steps they could take to mitigate the risks related to the lack of recordings. Firms are expected to deploy all possible efforts to ensure that the above measures remain temporary and that the recording of telephone conversations is restored as soon as possible.

MEASURES SPECIFIC TO ISSUERS AND MARKET TRANSPARENCY

Guidance regarding the accounting implications of the COVID-19 outbreak on the calculation of expected credit losses in accordance with IFRS 9

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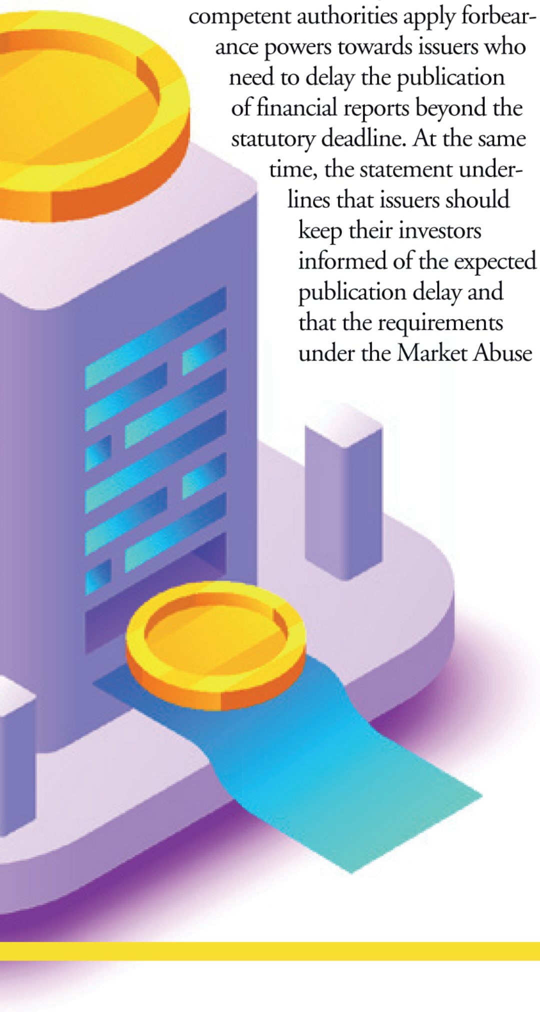
ESMA issued a public statement to promote the consistent application of IFRS in the EU and avoid divergence in practice on the application of IFRS 9 given the COVID-19 outbreak. The statement addresses the accounting implications of the measures taken or proposed by the national governments and EU bodies (for example, the moratoria on the repayment of loans) to address the adverse systemic economic impact of COVID-19. In its statement, ESMA provides guidance to issuers and auditors, specifically regarding the calculation of expected credit losses and related disclosure requirements. The European Banking Authority (EBA) has also issued a related statement on the prudential framework and accounting implications of COVID-19. The two statements are consistent as with regards to financial reporting.

Extension to financial reporting deadlines and the importance of transparency

In light of the difficulties encountered by issuers in preparing financial reports and the challenges faced by auditors in carrying out timely audits of accounts due to the COVID-19 pandemic, ESMA issued a public statement recommending that national competent authorities apply forbearance powers towards issuers who need to delay the publication of financial reports beyond the statutory deadline. At the same time, the statement underlines that issuers should keep their investors informed of the expected publication delay and that the requirements under the Market Abuse Regulation still apply. ESMA also highlighted that financial reporting is an important anchor for the economic decisions of users of financial information, as well as for exercising their rights to vote or otherwise influence management actions. The preparation of periodic information must continue to be carried out in accordance with the applicable financial reporting framework to ensure investor protection and to preserve the integrity and proper functioning of the EU's financial markets.



EU-WIDE STRESS TEST POSTPONED TO 2021 TO ALLOW BANKS TO PRIORITISE OPERATIONAL CONTINUITY

The EBA announced that it has decided to postpone the EU-wide stress test to 2021 as a way of alleviating the immediate operational burden for banks during this challenging juncture. The final timeline for the EU-wide stress test will be communicated by the EBA in due course.

URGE TO ENSURE BUSINESS CONTINUITY

In another recent public statement, ESMA urged financial market participants to apply their contingency plans, including the deployment of business continuity measures, to ensure operational continuity in line with the regulatory obligations. Similarly, several national competent authorities urged their regulated entities to do the same, alongside reviewing their business continuity and disaster recovery systems and making the necessary amendments based on each entity's size, complexity and nature of business.

EXTENSION TO VARIOUS ESMA CONSULTATION PAPERS

ESMA has announced that it has decided to extend by four weeks the response date for all ongoing consultations with a closing date on or after 16 March.

EXTENSION TO BEST EXECUTION REPORTS

In another recent public statement, ESMA acknowledges the difficulties encountered by execution venues and firms in preparing the general best execution reports required under RTS 27 and 28 of MiFID II. In this respect, ESMA recommends that national competent authorities take into account these circumstances by considering the possibility that:

- execution venues unable to publish RTS 27 reports due by 31 March 2020 may only be able to publish them as soon as reasonably practicable after that date and no later than by the following reporting deadline (i.e. 30 June 2020); and
- firms may only be able to publish the RTS 28 reports due by 30 April 2020 on or before 30 June 2020.

Furthermore, ESMA encourages national competent authorities not to prioritise supervisory action against execution venues and firms in respect of the deadlines of the general best execution reports for the periods referred to above.

EXTENSION TO SYSTEMATIC INTERNALISERS NEW TICK-SIZE REGIME

The application date of the new tick-size regime for systematic internalisers under the Markets in Financial Instruments Regulation (MiFIR) and the Investment Firms Regulation (IFR) was set at 26 March 2020. In response to developments related to the COVID-19 pandemic, ESMA issued a public statement clarifying that it expects competent authorities not to prioritise their supervisory actions in relation to the new tick-size regime until 26 June 2020, and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

OTHER INITIATIVES BY NATIONAL REGULATORS

The COVID-19 outbreak significantly impacted the activities of all market stakeholders, pushing them to reprioritise their efforts to address the crisis. To mitigate the impact of COVID-19, several national regulators have extended, where possible, several local reporting deadlines and other obligations. In an effort to limit the spread of the virus, some national regulators have announced working from home plans as well as suspended relevant activities such as examinations and training courses. Furthermore, regulators are alarmed over COVID-19's effect on the industry and are constantly gathering data across the market to understand and assess the extent of its impact with the aim of taking appropriate actions where necessary. G