COVID-19 and primary markets – considerations for issuers of securities

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In brief...

As the coronavirus COVID-19 outbreak develops into a full-scale pandemic, financial markets participants may find it challenging to meet their regulatory and other obligations in a timely fashion. In an effort to mitigate the impact of coronavirus on the orderly functioning of capital markets, financial services regulators in the UK and the EU have issued relevant guidance for issuers of securities.

The key takeaways for issuers are that they should:

- consider how coronavirus may affect their disclosure obligations;
- make all efforts to meet their regulatory and other obligations in a timely manner, despite any operational obstacles they may be facing – even though certain delays with regards to financial reporting will be permitted; and
- seek advice and/or speak to their regulator where they deem they are unable to comply with their obligations.

ESMA recommendations

On 11 March, the European Securities and Markets Authority (ESMA) published its statement outlining how market participants should act in light of the coronavirus outbreak. Among other things, ESMA recommends that issuers should do the following:

- Market disclosure – issuers should disclose as soon as possible any significant information concerning COVID-19 that may affect their fundamentals, prospects or financial situation, in accordance with their transparency obligations under the Market Abuse Regulation (MAR).
- Financial reporting – issuers should disclose in their 2019 year-end financial reports or – if these have already been finalised – in their interim financial reporting disclosures, actual and potential impacts of COVID-19 on their business, financial situation and economic performance. However, ESMA recognises that issuers may face difficulties in submitting their financial reports on time. To this end, in its subsequent statement of 27 March 2020, ESMA recommended that national competent authorities should not take supervisory action against issuers who are unable to meet the upcoming reporting deadlines under the Transparency Directive, for a period of two months for annual financial reports and of one month for half-yearly financial reports. However, ESMA expects issuers to inform their national competent authority and the markets of the delay, the reasons for such delay and the estimated publication date – to the extent it is feasible.

In addition, to assist financial reporting, ESMA has issued guidance on the accounting implications of the COVID-19 outbreak on the calculation of expected credit losses in accordance with the International Financial Reporting Standard 9 (IFRS 9).

FCA guidance

On 17 March, the UK Financial Conduct Authority (FCA) published the 27th edition of its Primary Market Bulletin, which includes a commentary for issuers of securities and coronavirus.

The main points are the following:

- Ongoing disclosure under MAR – The FCA expects issuers to make every effort to remain compliant with their regulatory obligations under MAR and the FCA rules. Given the circumstances, however, it may be challenging for disclosure committees to convene and operate as usual. The FCA is conscious that, at least at the beginning, there may be slight delays as new processes are being implemented, but in general expects issuers to meet their obligation in a timely fashion. According to the FCA, issuers' operational response to COVID-19 may itself meet the disclosure requirements under MAR.
- Transaction notifications – Persons discharging managerial responsibilities (PDMR) and closely associated persons are also expected to comply with their notification requirements under MAR within the required timeframes.
- Shareholder meetings – Issuers must ensure that shareholders can exercise their rights, for instance in the Annual General Meeting, using virtual methods.
- Corporate transactions – The FCA will continue to review documentation for corporate transactions in accordance with its established principles.
  If a transaction is urgent, issuers are advised to engage, in the first instance, with their relevant sponsor firm or adviser.

With regards to corporate reporting, the FCA will grant a temporary relief by giving listed companies an additional two months to publish their audited financial statements. This means that issuers may publish their financial statements within six months of their year-end, instead of four months, as required under the Transparency Directive. At the same time, the FCA strongly recommends that listed companies revise all elements of their timetables for publication of financial information to ensure accurate and carefully prepared disclosures. However, this temporary relief does not affect issuers' disclosure obligations (and timing for these) under MAR.

The Financial Reporting Council (FRC) and Prudential Regulation Authority (PRA) have also issued useful guidance for companies preparing financial statements in the current circumstances.

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[1] Regulation (EU) 596/2014

[2] Directive 2013/50/EU

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