

## COVID-19 Regulatory Actions and Developments

### The European Securities and Markets Authority (ESMA)

**Date:** May 20, 2020

**New! *ESMA Calls for Transparency on the Effects of COVID-19 in Half-Yearly Financial Reports***

ESMA published a statement addressing the impact of the COVID-19 pandemic on the half-yearly financial reports of listed issuers. ESMA recommended, amongst other things, that such issuers should make use of the time permitted under their respective national laws to ensure their reports contain relevant, up-to-date and reliable information.

[External Link](#)

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**Date:** May 18, 2020

***ESMA Publishes Statement on the Non-Renewal and Early Termination of European Short Selling Bans***

ESMA notes that the national competent authorities in Austria, Belgium, France, Greece and Spain chose not to renew their emergency restrictions on short selling, and that the Italian regulator decided to pre-emptively terminate its equivalent emergency restrictions (which were otherwise due to expire on June 18). All such short selling measures therefore expire at midnight on May 18.

[External Link](#)

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**Date:** May 14, 2020

***ESMA Statement Supporting ESRB's actions to Address COVID-19 Related Systemic Vulnerabilities***

ESMA published a statement supporting the European Systemic Risk Board's ("ESRB") recommendations that EU financial regulators should undertake focused supervisory engagement with investment funds that have significant exposure to less liquid assets, such as corporate debt and real estate.

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**Date:** May 14, 2020

***ESMA Highlights a Potential Decoupling of Financial Market Performance and Underlying Economic Activity in its Risk Dashboard***

ESMA published its first complete risk dashboard for 2020, which maintains the very high risk levels noted in its previous assessments following the outbreak of COVID-19. ESMA notes that there is potential for a decoupling of financial market performance and underlying economic activity, which could possibly lead to further risk and market corrections in the EU.

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**Date:** May 13, 2020

***ESMA Report on Rating Collateralised Loan Obligations***

ESMA published a thematic report on the challenges for credit rating collateralised loan obligations (“CLO”) in the EU. The report identifies ESMA’s main supervisory concerns for this asset class, which includes the internal organisation of credit rating agencies, their interactions with CLO issuers, operational risks, rating methodologies, and the need for thorough analysis of CLOs. The report also highlights the impact that COVID-19 may have on CLO methodologies.

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**Date:** May 4, 2020

***ESMA Publishes Joint RTS on Amendments to the Bilateral Margin Requirements under EMIR***

The European Supervisory Authorities (“ESAs”), of which ESMA is a member, published joint draft regulatory technical standards (“RTS”) relating to a one-year deferral of the two implementation phases of the bilateral margin requirements for non-centrally cleared OTC derivatives under the European Markets Infrastructure Regulation. Counterparties with an aggregate average notional amount of non-centrally cleared derivatives above €50 billion will become subject to the requirement to exchange initial margin from September 1, 2021, while covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above €8 billion will become subject to the requirement from September 1, 2022.

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**Date:** April 17, 2020

***ESMA Publishes New Q&A on Alternative Performance Measures (“APMs”) in the Light of COVID-19***

ESMA has issued a Q&A to provide guidance to issuers on the application of its guidelines on APMs. The Q&A encourages issuers to be cautious when adjusting or using new APMs and invites issuers to provide certain narrative information on such APMs.

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**Date:** April 15, 2020

***ESMA Issues Positive Opinions on Short Selling Ban Extensions***

ESMA has published positive opinions on the extension of short selling bans by the Austrian FMA, Belgian FSMA, French AMF, Greek HCMC and Spanish CNMV. Each of the bans have been extended to May 18, 2020.

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**Date:** April 9, 2020

***ESMA Statement on the Postponement of Publication Dates for Annual Non-Equity Transparency Calculations and Quarterly SI Data***

Despite ESMA’s earlier statement on March 27, 2020, ESMA has now postponed the publication of the annual non-equity transparency calculations, originally due on April 30, until July 15, 2020 and their application from June 1, 2020 to September 15, 2020. ESMA has also postponed the publication of the quarterly systematic internalizer regime data calculation, originally due on May 1, 2020, until August 1, 2020, which will now apply from September 15, 2020.

[External Link](#)

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**Date:** April 9, 2020

***ESMA Publishes Statement on Supervisory Expectations for the Publication of Investment Fund Periodic Reports***

The statement is directed at fund managers and concerns their obligations to publish yearly and half yearly reports. ESMA expects EU financial regulators to adopt a risk-based approach and not to prioritize supervisory actions relating to the late publication of such reports.

[External Link](#)

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**Date:** April 9, 2020

***ESMA Extends MiFID II/MiFIR Transparency Review Report Consultation***

ESMA has further delayed the response date for the consultation on the MiFID/MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives from May 17, 2020 to June 14, 2020.

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**Date:** April 9, 2020

***ESMA Statement on Coordinated Action Regarding Benchmarks External Audit Requirements***

ESMA expects EU financial regulators not to prioritize their supervisory action against benchmark administrators and supervised contributors relating to the timeliness of external audit requirements where such audits are carried out by September 30, 2020.

[External Link](#)

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**Date:** March 31, 2020

***ESMA Clarifies Best Execution Reports under MiFID***

ESMA published a statement to clarify the obligation for execution venues and investment firms to publish best execution reports under MiFID II and to encourage national competent authorities of the various EU Member States not to prioritize supervisory action against execution venues and firms for failure to meet the originally-applicable deadlines. Execution venues which were unable to publish their required best execution reports due by March 31, 2020, must now publish them as soon as reasonably practicable and no later than June 30, 2020. Investment firms required to publish best execution reports by April 30, 2020, must now do so on or before June 30, 2020.

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**Date:** March 27, 2020

***ESMA Confirms Application Date of Equity Transparency Calculations***

ESMA determined not to delay application of the transparency calculations for equity instruments under MiFID II and MiFIR beyond April 1, 2020.

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**Date:** March 27, 2020

***ESMA Publishes Guidance on Financial Reporting Deadlines***

ESMA published a statement acknowledging that issuers may struggle to prepare financial reports in light of the COVID-19 pandemic. As a result, national competent authorities in the

various EU Member States should apply their forbearance powers towards issuers who need to delay publication of financial reports beyond the ordinarily-applicable statutory deadline. Issuers, however, are expected to keep their investors informed of any expected publication delay.

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**Date:** March 26, 2020

***ESMA Statement on Reporting Obligations under SFTR during the COVID-19 Pandemic***

ESMA revised its public statement regarding the reporting requirements and registration of EU Trade repositories ("TRs") under the EU Securities Financing Transactions Regulation ("SFTR"), which were due to apply from April 13, 2020. According to ESMA, from April 13, 2020, until July 13, 2020, national competent authorities of the various EU Member States should not prioritize their supervisory action towards entities which are subject to the reporting obligations under the SFTR. ESMA also stated that, while it does not deem it necessary to register any TRs ahead of April 13, 2020, all such TRs should be registered by July 13, 2020.

Revised statement [available here](#)

Katten's *Corporate and Financial Weekly Digest* article on this topic is available [here](#) and [here](#)

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**Date:** March 25, 2020

***ESMA Publishes Guidance on Accounting Implications of the COVID-19 Pandemic***

ESMA published a statement on the accounting implications of support and relief measures taken by EU governments to address the economic consequences of COVID-19. The statement provides guidance to issuers and auditors on the application of IFRS 9 in light of such support and relief measures.

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**Date:** March 20, 2020

***ESMA Statement on MiFID II Telephone Recording Requirements during the COVID-19 Pandemic***

ESMA issued a statement clarifying how credit institutions and investment firms can comply with their telephone recording obligations under MiFID II. Where firms are unable to record such conversations, they are expected to consider alternative steps to mitigate any risk and to use all possible efforts to ensure that any such alternative measures remain temporary and that normal telephone recording controls are restored as soon as possible.

[External Link](#)

Katten's *Corporate and Financial Weekly Digest* article on this topic is [available here](#)

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**Date:** March 20, 2020

***ESMA Statement on MiFIR Tick-Size Regime and the COVID-19 Pandemic***

ESMA published a statement on the impact of COVID-19 on the implementation of the tick-size regime for systematic internalizers ("SIs") in EU financial markets. ESMA expects national competent authorities of the various EU Member States not to prioritize their supervisory actions relating to the new tick-size regime from March 26, 2020, until June 26, 2020.

[External Link](#)

Katten's *Corporate and Financial Weekly Digest* article on this topic is [available here](#)

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**Date:** March 20, 2020

***ESMA extends consultations response dates***

ESMA extended the response date for all ongoing consultations with a closing date on, or after, March 16, 2020, for a period of four weeks.

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**Date:** March 16, 2020

***Short Selling Updates***

ESMA lowered the net short position reporting threshold for shares under the EU Short Selling Regulation from 0.2% to 0.1%, with further reports required where each incremental 0.1% threshold is passed thereafter, both upwards and downwards.

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**Date:** March 11, 2020

***ESMA Recommendation to Financial Market Participants in Light of the COVID-19 Pandemic***

ESMA issued a statement recommending actions that EU financial market participants should take as a result of the COVID-19 pandemic, including the use of business contingency plans, disclosure by issuers of any relevant significant information under the Market Abuse Regulation, transparency by issuers of the actual and potential impacts of the COVID-19 pandemic, and the application of ordinary-course risk management requirements by asset

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