

COVID-19 Regulatory Actions and Developments The European Securities and Markets Authority (ESMA)

Date: September 17, 2020

NEW! *ESMA Renews Reporting Requirement of Net Short Position Holders*

The European Securities and Markets Authority (ESMA), renewed its decision to temporarily require holders of net short positions in shares traded on a European Union (EU) regulated market to report to relevant EU financial regulators positions reaching or exceeding a reduced threshold of 0.1% (instead of the usual threshold of 0.2%). The measure takes effect from September 18, 2020, and expires December 18, 2020. Net short positions crossing the 0.1% threshold on December 18 are to be disclosed to the relevant EU financial regulators no later than 15:30 CET on December 19, 2020.

[External Link](#)

[Decision Link](#)

Date: August 28, 2020

ESMA Finalises COVID-19 Report on Further Postponing CSDR Settlement Discipline

ESMA has published a final report on draft regulatory technical standards (RTS) definitively postponing the date of entry into force of the Commission Delegated Regulation (EU) 2018/1229 (RTS on settlement discipline), to 1 February 2022. The postponement was requested by the European Commission and is due to the impact of the pandemic on the implementation of regulatory projects and information technology deliveries by Central Securities Depositories and a wide range of market participants.

[External Link](#)

Date: August 27, 2020

ESMA to update Guidelines on Stress Test Scenarios under MMFR

ESMA confirmed that the guidelines (Guidelines) on stress test scenarios under the Money Market Funds Regulation (MMFR) will be updated to include a modification of the risk parameters to reflect market developments related to the COVID-19 crisis. Pending the update, 2019 Guidelines continue to apply. ESMA expects to publish the 2020 update of the guidelines in Q4 2020.

[External Link](#)

Date: July 28, 2020

ESMA Statement on its Intention to Postpone the CSDR Settlement Discipline Regime

At the request of the European Commission, ESMA confirms in this statement that it is working on a proposal to delay the entry into force of the Central Securities Depositories Regulation ("CSDR") settlement discipline regime until February 1, 2022 due to the impact of the COVID-19 pandemic.

[External Link](#)

Date: July 13, 2020

ESMA Publishes Results on Third Stress Test Exercise Regarding CCPs

ESMA confirmed in the latest stress test exercise the overall resilience of EU CCPs to common shocks and multiple defaults for credit, liquidity and concentration stress risks. ESMA also noted that EU CCPs remained resilient during the COVID-19 pandemic, despite the increased market volatility and operational risk.

[External Link](#)

Date: July 9, 2020

ESMA Statement on the MMF Regulation

ESMA published a statement on the provision of external support under Article 35 of the Money Market Funds (“MMF”) Regulation. The statement is designed to provide clarity to managers of MMFs after the adverse events caused by the COVID-19 pandemic.

[External Link](#)

Date: June 15, 2020

ESMA Publishes Revised 2020 Annual Work Programme

As a result of the ongoing COVID-19 related disruptions, ESMA published a revised version of its 2020 Annual Work Programme, which explains that ESMA is reprioritising its current work and future mandates to help the financial services sector effectively respond to the pandemic.

[External Link](#)

Date: June 11, 2020

ESMA Short Selling Update in Light of the Ongoing COVID-19 Pandemic

ESMA has renewed its decision requiring net short position holders of shares traded on an EU regulated market to temporarily report positions of 0.1% and above to their EU financial regulator. This measure shall apply from June 17, 2020 for a period of three months..

[External Link](#)

Date: June 11, 2020

ESMA Statement on MiFIR Open Access and COVID-19

ESMA has published a statement to clarify the application of the MiFIR open access provisions for trading venues and central counterparties in light of the COVID-19 pandemic.

[External Link](#)

Date: June 9, 2020

ESMA Extends Deadline for Responses to Consultation on EMIR REFIT

In light of the COVID-19 pandemic, ESMA has extended the response date for the consultation on the technical standards on reporting, data quality, data access and registration of trade repositories under EMIR REFIT from June 19, 2020 to July 3, 2020.

[External Link](#)

Date: May 20, 2020

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](#)

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](#)

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.

[External Link](#)

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.

[External Link](#)

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.

[External Link](#)

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.

[External Link](#)

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.

[External Link](#)

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.

[External Link](#)

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](#)

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](#)

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.

[External Link](#)

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](#)

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.

[External Link](#)

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.

[External Link](#)

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.

[External Link](#)

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](#)

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.

[External Link](#)

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](#)

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](#)

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.

[External Link](#)

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.

[External Link](#)

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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