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The Market Newsletter addresses topical matters concerning interpretations and regulation as well as supervisory findings relating to listed companies' disclosure obligation, financial reporting enforcement, securities trading and insider issues. The newsletter is published by the Financial Supervisory Authority's Capital Markets Supervision.

European Securities and Markets Authority (ESMA) to publish enforcement decision on significance of forbearance in credit risk assessment

In July, ESMA will publish the 23rd compilation of enforcement decisions made by European financial reporting enforcers. The enforcement decisions to be published relate to cases of application of IFRSs in which inconsistency in application has been observed and which are material and interesting with regard to the preparation of financial statements. Enforcement decisions are not general IFRS interpretations; each enforcement decision is based on the specificities of the individual case in question. A link to published decisions can be found at the end of this article.

With regard to the decisions to be published, of particular significance for the banking sector is a decision on the treatment of forbearance as an absolute indicator of significant increase in credit risk (SICR). This issue was first addressed in the Financial Institutions' Task Force (FITF), in which the Financial Supervisory Authority (FIN-FSA) participates as an active member. The FITF is an ESMA subgroup that addresses banking and insurance sector IFRS application issues. Enforcement decisions are made, however, in European Enforcers Coordination Sessions (EECS), following customary process.

The compilation to be published in July will include a total of eight enforcement decisions. The other decisions concern, among other things, the following topics: Indications of impairment (IAS 36, IAS 34), Investment entities' disclosures on fair value (IFRS 10, IFRS 12, IFRS 13), Definition of cash and cash equivalents (IAS 7) and Presentation of cash flows from changes in ownership of a subsidiary (IFRS 10, IAS 7).

Impact of forbearance on assessment of significant increase in credit risk related to a financial instrument

The issuer is a financial institution that grants forbearance measures to its customers, in both the retail and corporate sectors. Forbearance is defined as concessions given to debtors due to their financial difficulties, including modification of loan terms, that would not have been granted if there had not been financial difficulties.

According to its accounting principles, the issuer always treats payments that are 30 days past due as an absolute indicator of significant increase in credit risk (SICR). When the credit risk of a financial asset (receivable) has increased significantly, the entity should assess the expected credit losses (ECL) for the lifetime of the forbore financial assets. Due to internal processes of the financial institution, forbearance measures were not treated as an absolute indicator of SICR, therefore the granting of forbearance measures did not directly result in the assessment of lifetime ECL.

In the view of the enforcer, expected and granted forbearance measures affecting loan terms resulting from a debtor's financial difficulties are in themselves an indicator of SICR, in which case lifetime ECL should be recognised in the valuation of the granted credit. In addition, the enforcer requires the issuer to assess whether such financial assets are credit-impaired.

EECS published enforcement decisions

For further information, please contact:

Leena Sinisalo, Senior IFRS Accounting Expert, tel. +358 9 183 5370

Companies still have room for improvement in separating audited and unaudited information

The FIN-FSA conducted an extensive review of the presentation of annual report, financial statement and adjusted information for 2016–2017 and a more limited follow-up review for 2018 annual reports. The follow-up review concluded that companies still have room for improvement in separating financial statements from other information. Readers of an annual report or other publication that contains financial statements should obtain a clear picture of how each section of the annual report has been subject to auditor's work. From the annual reports of financial sector companies, it was observed that capital adequacy information is generally presented in the financial statements. In principle, only IFRS information should be presented in IFRS financial statements.

It is a long-term objective of the IASB is to improve the presentation of financial statements, thereby further enhancing comparability and transparency. As part of this Better Communication project, the IASB intends to clarify the income statement in particular, by defining its structure in more detail. In addition, a new item, Management Performance Measures, will be introduced, which will be presented as a note to the financial statements.

2019 follow-up review of 2018 annual reports and financial statements

The extensive survey of annual reports for 2016–2017 studied how listed companies had separated the sections of annual reports from each other as a result of amended accounting and auditing legislation, and also examined the disclosure of performance measures in financial statements. The conclusions of the study were reported in the Market newsletter ([Market newsletter 3/2018](#)). Shortcomings were generally observed in the separation of audited financial statement, management report and other

information. In addition, many of the companies under review had presented performance measure tables in the financial statements section of the annual report, even though they should have belonged in the management report or other unaudited information. Contrary to the standard (IAS 1 Presentation of Financial Statements), some companies had presented company-specific subtotals in the primary financial statements with more prominence than the subtotals required by IFRSs.

The follow-up survey of 2018 annual reports and financial statements covered nearly all listed companies with regard to the presentation of income statements. From the perspective of the separation the annual report's other information and audited section as well as presentation of performance measures, a total of 20 listed companies were selected, of which 10 represented a sample of the earlier study. In addition, 10 financial sector groups or conglomerates were reviewed with regard to presentation of income statements and separation of audited information.

Results of the 2019 follow-up survey

Financial statements must be clearly distinguished from other information

Companies still have room for improvement in separating audited and unaudited information. With regard to the reviewed annual reports, readers will have difficulty obtaining a clear picture of which sections are audited and which are not.

Many companies still do not clearly distinguish between the management report and the financial statements. One company of the sample presented alternative performance measures as part of the financial statements, even though it was unclear whether these performance measures had been audited. On the other hand, other companies had now clearly separated the audited financial statements into their own section, for example with banners. A few companies had mentioned in the table of contents that the financial statements had been audited, and some had entitled the financial statements section 'audited financial statements'.

Of the sample's ten financial sector companies reviewed, six had presented capital adequacy information as part of the IFRS financial statements. This is not IFRS information. In this respect, there was no perceptible improvement compared with the previous study. There are two types of problems associated with the presentation of capital adequacy information as part of the financial statements. As the regulatory basis for capital adequacy information is not IFRS standards, this information should not, in principle, be presented within the IFRS financial statements. IFRS 1.17(c), however, requires that additional information be provided when information complying with specific IFRS is insufficient to enable users to understand the impact of particular transactions, events and conditions on the entity's financial position and financial performance. Capital adequacy information, moreover, might not be fully audited, so it should not be part of the financial statements.

The FIN-FSA wishes once again to draw companies' attention to the separation of the financial statements from other information. Audited information is information assured by an external party, so its reliability level differs from the other information of the annual report as far as the reader is concerned. The financial statements must be clearly distinguished from the rest of the annual report, for example by visual means such as colours and headlines.

Compliance of income statement performance measures with IFRS promotes comparability

In accordance with IAS 1.85, the income statement shall present items, headings and subtotals not expressly specified or designated by the standard when such presentation is relevant to understanding

the entity's financial performance. Income statements shall not present subtotals with more prominence than information required by IFRSs.

The study revealed that presentation of income statement performance measures and the information given about them complied, as a rule, with the requirements of the standards. In addition to the information required by IFRS, a number of companies presented in the income sheet subtotals, for example EBIT/operating profit, derived directly from IFRS figures. These are easily understandable and can be calculated from the income statement's IFRS figures. In some cases, companies decided to present in the income statement so-called adjusted performance measures, such as comparable operating profit, for example. The companies that earlier presented adjusted performance measures prominently in a primary financial statement in 2017 had reduced the prominence of adjusted performance measures in relation to unadjusted performance measures.

If companies decide to add subtotals or headings to the income statement, the composition of the subtotals must be made clear. The composition of the adjusted subtotal must therefore be derived from the IFRS figures presented by the company, as required by IAS 1.85A(b). In addition, the requirements of IAS.85A(d) for the prominence of company-specific and IFRS information should be borne in mind, and an assessment also made as to whether the level of comparability of the financial statements remains good.

IASB intends to clarify income statement presentation and to introduce management performance measures in the financial statements

The different structures of income statements and the increased use of company-specific subtotals undermine the comparability of financial statements between companies and industries. In many cases, voluntarily added subtotals or attributes have not been adequately clarified to ensure that the information provided would be understandable and would promote the information value of the financial statements.

It is a long-term objective of the IASB is to improve the presentation of financial statements, thereby further enhancing comparability and transparency. As part of this Better Communication project, the IASB intends to clarify the income statement in particular, by defining its structure in more detail. In addition, a new item Management Performance Measures will be introduced, which will be presented as a note to the financial statements, but reconciled with the subtotals of the IFRS financial statements. By adding subtotals to the income statement and improving guidance on the level of presentation of information, the aim is also to direct companies to provide more detailed information than before.

According to a project update published by the IASB in the spring, three new subtotals, which would then be defined in IFRSs, are planned to be added to the income statement. The first of these is operating profit defined as profit before financing, tax and income/expenses from investments. Operating profit thus defined is considered to describe the profit from the company's actual business operations. The second subtotal presented is operating profit that takes into account the share of the profit of integrated associates and joint ventures. The share of the profit of non-integrated associates and joint ventures is presented after this subtotal. The third subtotal is profit before financing and tax. This subtotal facilitates comparison between companies, irrespective of differing capital structures. As the income statement becomes more standardised, it will not be easy in the future to add to it extra, company-specific subtotals, even if adding them is not prohibited.

As a new item, the IASB will introduce management performance measures, to be presented as a note. No restrictions will be placed on the calculation of these performance measures, but their reconciliation with IFRS statement subtotals must be clarified numerically.

A concrete draft standard is expected towards the end of 2019. In any case, changes to the income statement that improve comparability as well as the presentation of management performance measures as part of the financial statements can be expected.

For further information, please contact:

Sirkku Palmuaro, Senior IFRS Accounting Expert, tel. +358 9 183 5592

European Commission has published Delegated Regulation on a European Single Electronic Format (ESEF) for listed companies' financial reporting

The [European Commission Delegated Regulation](#) on the ESEF reporting¹ of listed companies' annual financial reports has been adopted in the EU and published in the Official Journal on 29 May 2019. The Delegated Regulation is based on the draft RTS published by ESMA in 2017². The Regulation is directly binding on listed companies. The Commission also published a [press release](#) on the subject.

European listed companies³ must report annual financial reports in a European Single Electronic Format (ESEF) starting with financial statements for 2020. Reporting will take place for the first time in spring 2021. Annual financial reports will be prepared in XHTML format, and IFRS consolidated financial statement information contained in the XHTML document will be marked up with XBRL tags.

Q&A on electronic reporting

To coincide with the publication of the Regulation, the Commission also published a [Q&A](#) on ESEF, which has useful information for companies, service providers and users of financial statement information. In the Q&A, the Commission outlines its position on, among other things, ESEF auditing. A few questions and answers are given below.

Q&A question number 7: What kind of assurance will be provided for financial statements prepared in compliance with ESEF? Will auditors check ESEF-compliant reports? The Commission's response was that as the ESEF Regulation is a binding legal instrument, the Commission's view is that the provisions included therein shall be considered as "statutory requirements" within the meaning of Article 28(2)(c)(ii) of the Audit Directive. An extract from the Audit Directive is given below.

¹ ESEF = European Single Electronic Format, European Single Electronic Reporting Format for financial statements and management reports.

² RTS = Regulatory Technical Standard.

³ Listed companies refers to issuers of shares and bonds operating in a regulated market.

'Article 28

Audit reporting

1. The statutory auditor(s) or the audit firm(s) shall present the results of the statutory audit in an audit report. The report shall be prepared in accordance with the requirements of auditing standards adopted by the Union or Member State concerned, as referred to in Article 26.

2. The audit report shall be in writing and shall:

- (a) identify the entity whose annual or consolidated financial statements are the subject of the statutory audit; specify the annual or consolidated financial statements and the date and period they cover; and identify the financial reporting framework that has been applied in their preparation;
- (b) include a description of the scope of the statutory audit which shall, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;
- (c) include an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall state clearly the opinion of the statutory auditor(s) or the audit firm(s) as to:
 - (i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework; and,
 - (ii) where appropriate, whether the annual financial statements comply with statutory requirements.

If the statutory auditor(s) or the audit firm(s) are unable to express an audit opinion, the report shall contain a disclaimer of opinion;

Q&A question number 8 also touches on auditing. In its response, the Commission states that it has asked the Committee of European Auditing Oversight Bodies (CEAOB) to explore how the audit of ESEF could be carried out in practice, with a view to possibly providing guidance to the market. The CEOAB is a framework for cooperation between national audit oversight bodies at EU level. In Finland, the Auditor Oversight Unit of the Finnish Patent and Registration Office (PRH) is a member of the CEOAB. Discussions on whether ESEF information will be subject to audit or other checks and what auditors might possibly state about their work will therefore continue in Europe.

In response to question number 9, the Commission takes the position that the human-readable and the machine-readable XHTML files constitute one common file, not two different versions of the ESEF file.

In response to question number 12, the Commission encourages European business registers to accept ESEF format reporting when companies submit their financial statements to the national business register (i.e. XHTML files with iXBRL tagging embedded).

ESEF information to be reported to Helsinki Stock Exchange

In Finland, the Helsinki Stock Exchange (Nasdaq Helsinki) acts as the maintainer of the central storage facility (Officially Appointed Mechanism, OAM) required by the Transparency Directive, to which listed companies submit regulated information.

Currently, listed companies submit their annual financial reports as a stock exchange release attachment file (pdf) to the national central storage facility for regulated information, either as a separate document or as part of an annual report. When ESEF reporting begins for 2020 financial statements, listed companies will submit to the national central storage facility an XHTML document containing IFRS consolidated financial statement information in structured format, i.e. with XBRL tags embedded. Other information, such as the report of the board of directors and the parent company's separate financial statements, for example, will be included in the XHTML format document without the mandatory XBRL tags.

Listed companies must select an approach and partners for ESEF implementation – additional guidelines will come from ESMA in the form of an updated reporting manual

Listed companies should assess whether they have the in-house resources for ESEF introduction and implementation or whether they will make use of external expert assistance. Companies should also assess whether they will make XBRL tags on top of the consolidated financial statements or within the company's reporting process. It is advisable to start searching for and selecting the software needed for XBRL tagging in good time. Acquiring software and XBRL tagging services is the companies' responsibility. The FIN-FSA or the Helsinki Stock Exchange will not provide ready-made reporting templates.

In addition to the Commission's Delegated Regulation, companies have available the Reporting Manual prepared by ESMA, in which the content of the Commission's Regulation is clarified on a more concrete level and instructions given for ESEF reporting. An update to the manual is expected in July-August 2019. Companies, software suppliers and other service providers should familiarise themselves with the manual and its instructions.

ESEF information has been published on [FIN-FSA's website](#) and on the [ESEF pages of ESMA's website](#).

Results published of ESEF survey of listed companies

In spring 2019, Aalto University-Helsinki School of Business, XBRL Finland and the FIN-FSA conducted a survey of listed companies on the current state of preparation for ESEF reporting and planned approaches to introducing ESEF. A link to the results of the survey can be opened [here](#). Almost all of the companies that responded to the survey were aware of the new requirements. Most of the companies, however, had not yet advanced to the project stage in ESEF introduction. The survey will be repeated in autumn 2019.

European listed companies must report annual financial reports in a European Single Electronic Format (ESEF) starting with financial statements for 2020. Reporting will take place for the first time in spring 2021. Annual financial reports will be prepared in XHTML format, and IFRS consolidated financial statement information contained in the XHTML document will be marked up with XBRL tags. XBRL tagging will be done using iXBRL technology (InlineXBRL).

ESEF will be implemented in stages, such that in financial statements for 2020–2021 only the primary financial statements will be marked up with XBRL tags, i.e. consolidated comprehensive income statement, balance sheet, cash flow statement and statement of changes in equity. In financial statements for 2020–2021, the notes to the consolidated financial statements, the management report and the parent company's separate financial statement will be included in the XHTML document without XBRL tags. Starting with the financial statements for 2022, in addition to the primary financial statements, the notes to the financial statements must be marked up with XBRL tags. Notes will be marked up in accordance with ESEF minimum requirements as block tags, i.e. each note as a whole will be one XBRL tag, and individual line and column data within the note will not need to be tagged separately. The ESEF taxonomy includes, however, the opportunity for more detailed XBRL tagging.

For further information, please contact:

Riitta Pelkonen, IFRS Accounting Expert, tel. +358 9 183 5420

EMIR Refit

Changes to the European Market Infrastructure Regulation (EMIR) relating to the EU's Regulatory Fitness and Performance (REFIT) programme were published in the Official Journal of the EU on 28 May 2019⁴. This article outlines the key changes. The FIN-FSA website's EMIR pages⁵ will be updated in line with the new regulatory framework as soon as possible.

Clearing obligation

The most significant changes to EMIR Refit concern the categorisation of counterparties for the purpose of applying the clearing obligation⁶.

In the future, both financial counterparties and non-financial counterparties will in the first instance be categorised according to whether or not they calculate their positions in OTC derivative contracts in the manner required by the new provisions. Counterparties who decide *not to calculate* their positions need to notify ESMA and the FIN-FSA of this immediately. These counterparties are subject to the clearing obligation for all classes of derivatives for which the clearing obligation is applicable (currently certain separately specified classes of interest-rate and credit derivatives).

Counterparties who decide to calculate their positions in accordance with the new provisions shall in the future calculate their aggregate month-end average position for the previous 12 months in each class of derivatives. A financial counterparty shall include in the calculation all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the same group. A non-financial counterparty may continue to exclude from the calculation derivative contracts, a) which reduce commercial or treasury financing risks or b) which have been entered into by financial counterparties within the same group. According to ESMA's interpretation, the calculations should have been made for the first time as soon as the new provisions entered into force, namely on 17 June 2019⁷.

If a *financial* counterparty calculates its positions and, according to its calculation, exceeds a clearing threshold, it shall become subject to the clearing obligation in all classes of derivatives for which the clearing obligation is applicable. A *non-financial* counterparty shall be subject to the clearing obligation in the future only with regard to the classes of derivatives that exceed a clearing threshold. The clearing thresholds for different classes of derivatives shall remain unchanged until further notice, and the same threshold values shall apply to both financial and non-financial counterparties⁸. ESMA and the FIN-FSA must be notified immediately if a clearing threshold is exceeded. This does not apply, however, to counterparties that were already subject to the clearing obligation prior to the entry into force of the changes. Counterparties that were subject to the clearing obligation prior to the entry into force of the changes, but which, according to the calculation in line with the new provisions, do not exceed the clearing threshold, are exempted from the clearing obligation if they demonstrate to the FIN-FSA that their positions do not exceed the threshold values.

ESMA has prepared a form with which counterparties can notify ESMA that they do not calculate their positions or that they, according to the new provisions, exceed or fall below a certain clearing threshold⁹. Until further notice, the same form can also be used to make notifications to the FIN-FSA¹⁰. As a result

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:141:FULL>

⁵ <https://www.finanssivalvonta.fi/en/regulation/regulatory-framework/emir/>

⁶ *Supervisory release 22.5.2019 – 19/2019, EMIR Refit - Kaikkien OTC-johdannaisten käyttäjien tulee laskea johdannaispositioiden määrä, kun muutokset tulevat voimaan.* (in Finnish)

⁷ <https://www.esma.europa.eu/press-news/esma-news/esma-provides-guidance-new-emir-refit-regime-clearing-obligation>

⁸ See Basic information, Clearing thresholds, <https://www.finanssivalvonta.fi/en/regulation/regulatory-framework/emir/>

⁹ <https://www.esma.europa.eu/clearing-thresholds>

¹⁰ Notifications should be sent to the email address [kirjaamo\(at\)finanssivalvonta.fi](mailto:kirjaamo(at)finanssivalvonta.fi), subject field EMIR.

of the changes, counterparties may also need additional information from each other as to whether or not they remain or will become subject to the clearing obligation in accordance with the new provisions.

Reporting to trade repositories

Two other changes, of more general significance, concern the obligation to report information of derivative contracts to a trade repository¹¹.

In the future, the reporting obligation will not apply to derivative contracts within the same group where at least one of the counterparties is a non-financial counterparty, provided that

- both counterparties are included in the same consolidation on a full basis
- both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and
- the parent undertaking is not a financial counterparty.

The counterparties shall also, however, notify the FIN-FSA of their intention to apply this exemption from the reporting obligation. This exemption option also entered into force on 17 June 2019. Before making such a notification, the counterparty should contact the FIN-FSA¹².

Another significant change is that a financial counterparty shall in the future be responsible for the reporting of information to a trade repository, including the correctness of the information, *on behalf of both counterparties* in respect of OTC derivative contracts that it makes with non-financial counterparties that, in accordance with the new provisions, *are not subject* to the clearing obligation (see above). The non-financial counterparty is, however, required to provide to the financial counterparty the information necessary to make a report, with regard to information that the financial counterparty cannot be reasonably be expected to possess. This change will only begin to be applied, after a one year transitional period, on 18 June 2020, and it will probably also require changes to existing reporting arrangements between several counterparties. A non-financial counterparty may, however, decide to report information to the trade repository itself or to delegate this to a counterparty or third party, in which case it will also be responsible itself for the correctness of the reported information.

Other

In addition, EMIR Refit includes some other noteworthy changes:

The scope of alternative investment funds included, as defined, within financial counterparties will expand. In the future, the definition will cover all alternative investment funds defined in Article 4(1)(a) which are either a) established in the Union or b) managed by an alternative fund manager authorised or registered in accordance with the said Directive, unless the funds have been set up exclusively for the purpose of an employee share purchase plan or securitisation.

The Commission has the power to temporarily suspend the clearing obligation in specific exceptional situations in the case of specific classes of derivatives or specific counterparties. This could be the case, for example, in a situation where a central counterparty ceases to offer a clearing service for specific classes of derivatives or for a specific type of counterparty, and other central counterparties cannot step in fast enough to take over those clearing services.

¹¹ See Basic information, Reporting obligation, <https://www.finanssivalvonta.fi/en/regulation/regulatory-framework/emir/>

¹² See Contact information, <https://www.finanssivalvonta.fi/en/regulation/regulatory-framework/emir/>

The transitional period during which pension scheme arrangements, according to Article 2(10)(a-b) of EMIR, were exempted from the clearing obligation, and which expired on 17 August 2018, will be extended retrospectively until 18 June 2021.

For further information, please contact:

Jyrki Manninen, Senior Policy Advisor, tel. +358 9 182 5205

Prospectus news

Statutes on the offering and listing of securities will change on 21 July 2019, when the Prospectus Regulation (EU) 2017/1129 enters fully into force. At the same time, chapters 4 and 5 of the Securities Market Act will be repealed. Changes relating to the prospectus threshold have been implemented in legislation earlier. The changes now entering into force mainly relate to what kind of prospectuses should be prepared in different situations.

New provisions in the EU Prospectus Regulation on the disclosure of risks emphasise the fact that only material risks should be described in the prospectus and that risk descriptions should specifically cover the issuer and the security being offered. Wide-ranging general risk descriptions should not be presented in the prospectus. ESMA has published [guidelines on prospectus risk descriptions](#). The guidelines are oriented towards the authorities, but it is also beneficial for those preparing prospectuses to become acquainted with the guidelines and take them into account. The guidelines will also be translated into all EU official languages.

For further information, please contact:

Maria Rekola, Market Supervisor, tel. +358 9 183 5265.

Topical matters at ESMA

Selections for recent ESMA publications and news:

- The [Q&A](#) on the Market Abuse Regulation has been supplemented with questions on fund and emission allowance topics.
- The [Consultative Working Group](#) of ESMA's Investor Protection and Intermediaries Standing Committee (IPISC) is seeking representatives of retail investors and users of financial services as members.
- The [Risk Dashboard](#), which analyses European securities market risks, was published in May 2019.
- With the entry into force of the new Prospectus Regulation, it will not be mandatory in the future to prepare a prospectus in connection with mergers, divisions and takeovers of listed companies, if a standardised information pack has been published. [ESMA's advice to the Commission](#) on the content of this information pack and related provisions has been published and sent to the Commission. The Commission will publish the final provisions shortly.

For further information, please contact:

Maria Rekola, Market Supervisor, tel. +358 9 183 5265.

For further information on the Market newsletter, please contact

Capital Markets Supervision, tel. +358 9 183 5577