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The FSMA is very closely following developments in the coronavirus crisis and is in constant dialogue with the various stakeholders in order to evaluate the impact of the crisis on the financial markets. The FSMA understands that the coronavirus crisis poses major challenges to listed companies, including as regards compliance with their information obligations. In what follows, the FSMA sets out its position on the questions it has received in this regard in recent days.

Publication of inside information

The first type of communication that is important is the publication of inside information. By way of reminder, inside information is information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers and which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments in question or on the price of related derivative instruments. Issuers must make public as soon as possible any inside information that relates to them directly.

The current situation may impact issuers, and therefore the FSMA takes the view that particular attention needs to be paid to compliance with the provisions regarding inside information. It therefore asks issuers to communicate as soon as possible about any event, decision or information they have become aware of and that is likely to constitute inside information that relates to them directly. These include, for example: temporary interruption of production, the delay of important projects, and stoppage of clinical studies and suspension of dividends. Clearly it will often not be possible to quantify immediately the impact of such information on the financial situation of issuers. Although the FSMA understands this perfectly, it considers that the absence of precise information on the financial impact does not exonerate an issuer from publishing information of which it is aware. It takes the view that, in that case, the issuer should indicate in its press release that, given the situation, it is unable at this stage to quantify the financial impact of the inside information, but that it undertakes to communicate about that impact as soon as the latter can be calculated.

The FSMA also asks issuers that publish an annual communiqué to include in it a paragraph about the current and expected impact of COVID-19 on their activities and their financial situation. The above-mentioned limitations to the ability to quantify this impact also apply. The FSMA takes the view that issuers who will not be impacted should state this explicitly.

Publication of the annual financial report

Certain companies have made it known that they may not be able to publish their annual financial report for 2019 by 30 April 2020 at the latest, notably because of the delay incurred in the audit performed by their company auditor.

It is possible that legislation may be adopted in this regard.

In the meantime, the FSMA has decided that for companies whose financial year runs from 1 January to 31 December, it will not issue a warning this year on grounds of a late publication of the annual financial report.

It stresses, however, that a potential postponement of the publication of the annual financial report does not exonerate issuers from their obligation immediately to disclose any inside information that regards them. Issuers must, as always, take account of the fact that the process whereby the board of directors draws up annual accounts may at some point give rise to inside information.

The FSMA also asks companies that decide to postpone the publication of their 2019 annual financial report to inform the public of this, even if they cannot yet give the exact date when the publication will take place.

Organization of general meetings

Just as most companies started preparing for their ordinary annual general meeting, it turns out that it will not be possible to hold a physical general meeting, given the mandatory measures issued by the authorities. Moreover, it is impossible to estimate when such a meeting may be held.

It is possible that legislation in this regard may be adopted, allowing companies to postpone their general meetings or to hold them remotely.

If listed companies should opt to hold a general meeting remotely, they would have to be particularly attentive to communicating clear information about the way in which shareholders and the holders of other securities will be able to exercise their rights.

Since the situation is constantly evolving, the FSMA will issue a new communication when it deems it necessary.

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