

DEBT CAPITAL MARKETS

COVID-19 Practical Considerations: Flexibility for Issuers of Debt Securities when preparing Financial Reports under the Irish Transparency Regulations

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ESMA issued a [statement on 27 March 2020](#) addressing the practical difficulties that some issuers are encountering, in light of the COVID-19 pandemic, when preparing financial reports under the Transparency Directive (TD). Where issuers have faced, or are facing, imminent reporting deadlines under the TD, ESMA has recommended forbearance by national competent authorities (NCAs), and that NCAs apply a risk-based approach to the enforcement of those reporting obligations.

The Central Bank of Ireland (CBI) [confirmed on 16 April 2020](#) that it will apply the ESMA recommendations.

In this briefing, we summarise the impact of these measures on the annual and half-yearly financial reporting obligations imposed by the Irish Transparency Regulations¹ (which transposed the TD into Irish law) on issuers of debt securities with denominations per unit of less than €100,000 (i.e. retail, rather than wholesale, debt securities):

- whose home Member State is Ireland for the purposes of the Irish Transparency Regulations; and
- who have listed those debt securities on a regulated market (such as the Euronext Dublin regulated market).

Financial Reporting Obligations of Issuers of Debt Securities under the Irish Transparency Regulations

For the issuers mentioned above, there are annual and half-yearly financial reporting obligations under the Irish Transparency Regulations as follows:

- annual financial reports (including audited financial statements) must be published **within four months** of the issuer's financial year-end; and
- half-yearly financial reports must be published **within three months** of the issuer's half-year-end.

The COVID-19 pandemic, together with the consequent restrictions on travel and meetings and the increase in remote working, have made it more difficult for issuers to prepare and publish these reports in time. It has also made it more difficult for auditors to audit the issuers' financial statements by the deadline.

ESMA's Recommendations

ESMA advised the NCAs that it expects them to apply forbearance (by not prioritising supervisory action) in respect of the TD financial reporting deadlines as follows:

- in respect of annual financial reports for financial years ending between 31 December 2019 and 31 March 2020,

for two months after the four-month deadline has passed; and

- in respect of half-yearly financial reports for half-years ending between 31 December 2019 and 31 March 2020, for **one month after the three-month deadline has passed**.

ESMA also encouraged NCAs to apply a risk-based approach in the area of enforcing TD-related legislation on financial reporting.

However, ESMA stated that where an issuer reasonably anticipates that the publication of the relevant financial report will be delayed beyond the applicable TD deadline, it should:

- inform its NCA of the reason(s) for that delay and (if possible) the estimated publication date; and
- inform the market.

ESMA also reminded issuers of their disclosure obligations under the Market Abuse Regulation (MAR) in respect of inside information. Under the MAR, an issuer must inform the public as soon as possible of inside information which directly concerns that issuer (subject to a limited ability to delay that disclosure if certain conditions are met). ESMA had already [reminded financial markets participants on 11 March](#) that issuers should disclose (as soon as possible)

¹ Transparency (Directive 2004/109/EC) Regulations 2007 (as amended).

any relevant significant information concerning the impact of the COVID-19 pandemic on their fundamentals, prospects or financial situation in accordance with their obligations under the MAR.

CBI Statement

The CBI has confirmed that, where an issuer fails to meet a deadline set out in the Irish Transparency Regulations for the publication of an annual or half-yearly financial report solely due to disruption arising from the COVID-19 pandemic, it will allow flexibility. The issuer must, however, comply with the conditions and deadlines set out in the ESMA statement (summarised above).

What steps should in-scope issuers take?

- Endeavour to meet reporting deadlines
Issuers should endeavour to meet the

existing deadlines for the publication of their annual and half-yearly financial reports. However, if delays are unavoidable as a result of COVID-19, the CBI will afford them flexibility in line with the extended deadlines set out by ESMA.

- **Inform the CBI and the market if publication will be delayed**

Where an issuer intends to delay the publication of an annual or half-yearly financial report, it should inform the CBI and the market of the delay, the reasons for such delay and, to the extent possible, the estimated publication date.

The CBI should be notified by email to regulateddisclosures@centralbank.ie.

That information may be disseminated to the market through the Company Announcements Office of Euronext Dublin. An announcement should also be published on the issuer's website and kept there for 5 years.

- **Document reasons for delay**

The issuer should document the reasons for any delay and ensure that such records are retained internally.

- **Monitor updates**

Issuers should continue to monitor any guidance being issued by ESMA and the CBI, as this is likely to be updated as the COVID-19 situation develops.

Point to Note: CRO Filings

The Registrar of Companies (the **Registrar**) has advised that all annual returns due to be filed by any company with the Companies Registration Office up to 30 June 2020 will be deemed to have been filed on time if all elements of the annual return are completed and filed by that date.

The Registrar noted that the situation is being kept under review and that the 30 June date may be extended further.

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