



UPDATED ESMA MARKET ABUSE REGULATION GUIDELINES ON THE DELAY OF DISCLOSURE OF INSIDE INFORMATION AND INTERACTIONS WITH PRUDENTIAL SUPERVISION

24 June 2022

On 23 June 2022, the Danish Financial Supervisory Authority issued comments on the updated ESMA Market Abuse Regulation (MAR) Guidelines on the delay of disclosure of inside information and interactions with prudential supervision. The updated Guidelines became applicable as of 13 June 2022, and the amendments relate to credit institutions' and investment firms' (institutions) interactions with financial supervisory authorities in relation to institutions' capital requirement level.

Delay of disclosure of inside information

Pursuant to MAR, issuers are permitted to delay disclosure if:

1. Immediate disclosure is likely to prejudice the legitimate interests of an issuer;
2. Delay of disclosure is not likely to mislead the public; and
3. The issuer is able to ensure the confidentiality of the information.

In the updated ESMA Guidelines, the following situations have been added to the list of legitimate interests of issuers, which are institutions that are likely to be prejudiced by immediate disclosure of inside information:

1. an institution has made a decision to carry out a redemption, reduction, repurchase, repayment or call of own funds instruments, but such decision has not yet been authorised by the competent authority; and
2. an institution has received a draft Supervisory Review and Evaluation Process decision which will become final at a later stage upon completion of the decision-making process of the competent authority.

Pillar 2 Capital Requirements and Pillar 2 Capital Guidance as inside information

The updated ESMA Guidelines clarify that an institution's pillar 2 capital requirement (P2R) is highly likely to be price sensitive. Institutions should consequently assess the price sensitivity of P2R, considering the magnitude of the difference between the institution's P2R and the current level of capital. The institution should not rule out that P2R is price sensitive information even when the institution's current level of capital is higher than its P2R. ESMA is of the opinion that only in very limited cases and based on a thorough assessment by the institution P2R is expected to be considered as inside information and should be disclosed as soon as possible unless the conditions for delayed disclosure are satisfied.

Moreover, the updated ESMA Guidelines clarify that pillar 2 capital guidance (P2G) might be price sensitive and consequently constitute inside information. Institutions should assess the price sensitivity of P2G taking into account (i) the magnitude of difference between the institution's P2G and its current level of capital and (ii) whether a corporate reaction is expected to be required to meet the P2G and the relevant timing to launch and complete such.

Examples of when a P2G is expected to be price sensitive are, e.g., when the institution's P2G is not in line with market expectations, so that a price impact can be expected, or if the difference between the P2G and the institution's capital level is not minor and is likely to require a major reaction by the institution, such as a capital increase.

When assessing whether P2R and P2G constitute inside information, institutions should, in addition to the above, verify whether the P2R or P2G are (in line with current regulation) non-public information, directly related to the institution, and are of a precise nature.

Link to the updated ESMA Guidelines can be found [here](#).

Link to the Danish Financial Supervisory Authority's newsletter can be found [here](#) (in Danish).

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:



Rasmus Juel Schioøtt
Partner

Rasmus.juel@moalemweitemeyer.com



Joachim Buznicki Nørlem
Associate

Joachim.noerlem@moalemweitemeyer.com

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