

Financial market participants in the context of COVID-19

New requirements for impacts assessment and extended terms concerning the obligations of public companies and investment firms as a response to COVID-19

The **Financial market participants** should consider that on Friday, 13th March, following the declaration of state of emergency, the Financial Supervision Commission (FSC) published an announcement and addressed certain recommendations to the securities issuers aiming to maintain the stability of the financial market and the financial instruments trade. The said recommendations are in line with the ones laid down by the European Securities and Markets Authority (ESMA) regarding the impact of the spreading COVID-19 on the financial market participants.

I. The recommendations are as follows:

1. Disclosure of information

Issuers should disclose as soon as possible any relevant information concerning the impacts of COVID-19 on their business and financial situation in accordance with their obligations under Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission (the “Market Abuse Regulation”).

The above-mentioned Regulation governs the public disclosure of information by the issuer in a way so as to be granted quick access and full, accurate and timely evaluation of the said information by the public, this is regularly done on the website of the issuer.

2. Qualitative and quantitative assessment of the impacts of COVID-19 on the financial situation of the issuer

The issuers shall include both qualitative and quantitative assessment of the actual and potential impacts of COVID-19 on their business and their financial and economic situation in their financial reporting information, namely – in the audited annual reports for 2019 in case the latter have not yet been prepared at the date of the FSC’s announcement, or in their interim financial reports.

As it is indicated in the announcement of the FSC, the financial market participants shall undertake **analysis and assessment of the operational risks of all their internal rules and procedures** related to the stability and continuity of their business activity.

II. Notification by holders of net short positions in shares

A *short position* shall be considered to be any position resulting from the so-called *short sale of shares*, namely the following hypothesis: in cases when a certain natural person or legal entity (*the short seller*) borrows shares in an investment firm account with the aim to sell them. The final goal of the short seller is to buy back the shares later on a lower price and to further return them to the lender, where the short seller shall benefit from the difference in the prices.

It should be considered that the above-described investment technique is often undertaken by investors in cases of pessimistic views for the market, namely when a decline in the share prices is expected, as it is currently the situation. In light of this and due to the need for the competent authorities to monitor closely and to be acquainted with the state of the financial market, **the European Securities and Markets Authority adopted the following decision as a precaution:**

as of 16th March, for a period of 3 months, a new threshold is introduced for the purposes of notification by natural persons and legal entities having net short positions relating to issued share capital admitted to trading on a regulated market in the EU. The

holders of short positions shall be obliged to notify the competent national authority for each position amounting to or exceeding 0,1 % of the issued share capital of the issuer (compared to the threshold applicable until now – 0,2 % of the share capital). The said holders shall have to notify the FSC for their positions at the end of the trading session on Monday, 16th March 2020.

III. Extended term for reporting of securities finance transactions

Following a report published by ESMA, the Bulgarian FSC announced that the starting date for the reporting of securities finance transactions (pursuant to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012) shall be three months later in time in a response to the adverse effect of current developments as a result of the COVID-19 pandemic.

Therefore, **credit institutions, investment firms, central counterparties and central securities depositories, as well as third country entities, should report as of 13th July 2020** (rather than 13th April) **securities financing transactions.**

IV. Extended terms for notification of annual financial reports and for holding general meetings of public companies and issuers

On 24th March, in issue No. 28 of the Bulgarian State Gazette, the Emergency Measures and Actions during the State of Emergency Act (*the Act*) was published. Pursuant to § 45 of the Transitional and Final Provisions of the Act certain statutory terms under the Public Offering of Securities Act were extended, as follows:

1. under art. 100n, para. 1 and para. 2 – **the term for public disclosure and notification of the annual financial report of public companies**, as well as for the consolidated financial report – extended until **31st July 2020**;
2. under art. 100o, para. 1 and para. 2 – **the term for public disclosure and notification of the 6-month financial report of public companies**, as well as for the 6-month consolidated financial report – extended until **30th September 2020**;
3. under art. 100o1, para. 1 and para. 2 – **the term for public disclosure and sending of a notification for the financial state of the company** and notification on consolidated basis for the financial state of the company – extended until **30th September 2020**;
4. under art. 115, para. 1 – **the regular general meeting of the public company shall be held until 30th September 2020** (rather than until the end of the first half of the year as it is usually);
5. under art. 77n, para. 12 – **the term for investment firms to present before the FSC and before the Investors Compensation Fund (ICF) a client assets report as of the last day of the previous month** – extended until the end of the month following the reporting period (rather than until the 10th day of the month as it is usually).

Further, certain statutory terms concerning the obligations of issuers towards the trustee of the bondholders, as well as towards the regulated market where the bonds are offered and towards the FSC, are extended until 30th September 2020 (under art. 100b, para. 8 and under art. 100e, para. 1, item 2). Also, the term for the Central Securities Depository AD to present a 6-month report before the FSC is extended until 30th September.

Statutory terms for investment firms and for market operators under the Financial Markets Act, namely for presenting their annual financial reports before the FSC, are extended, as well, until 31st July 2020.

We shall, of course, keep monitoring the influence of COVID-19 on the financial market.

With respect to other current topics, in relation to the legislation, stipulating the relationships at the state of emergency, you may find information on our website – www.penkov-markov.eu. Of course, you may address us for any additional information and assistance at lawyers@penkov-markov.eu.

The above provides general information related to the adoption of the Emergency Measures and Actions during the State of Emergency Act and it is not exhaustive, whereas it serves only as a guide for interpreting the news as of March 26, 2020.