

# COVID-19: Implications for Disclosure and Corporate Governance in the EU and UK

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## INTRODUCTION

**Debevoise  
& Plimpton**

Since its emergence in December 2019, the coronavirus, more commonly known as COVID-19, has had immeasurable consequences on the global economy. With most industries and sectors affected, COVID-19 poses many unanticipated and unprecedented challenges to companies around the world.

Below we summarise recent guidance given by the European Securities and Markets Authority, which is the European securities regulatory authority (“ESMA”), and the UK Financial Conduct Authority (the “FCA”) setting out their expectations as to the continued compliance by issuers with their disclosure obligations under EU and UK law. In addition, we discuss the views of the International Corporate Governance Network, an investor-led organisation of governance professionals (the “ICGN”), on the corporate governance challenges that companies face in responding to COVID-19.

ESMA, in coordination with competent authorities in member states of the European Union (“NCAs”), is monitoring developments in the financial markets and has assured issuers and other financial market participants that it is prepared to use its powers to safeguard the functioning of the markets, market stability and investor protections.

## ESMA RECOMMENDS ACTION TO COUNTER COVID-19 THREAT

On 11 March 2020, ESMA, working together with the NCAs, published a [public statement](#) recommending certain actions to financial market participants in the EU, including companies with shares or other securities listed in the EU.<sup>1</sup> *Firstly*, to ensure operational continuity, all issuers and other financial market participants, including

<sup>1</sup> Despite the UK’s withdrawal from the EU on 31 January 2020, under the withdrawal agreement entered into between the UK and the EU in connection with the UK’s exit from the EU, EU regulations still apply to issuers listed on UK markets (such as the London Stock Exchange) during the transition period currently in place ending on 31 December 2020.

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infrastructures, are advised to ensure that they are prepared to apply their business contingency plans, including the deployment of business continuity measures.

*Secondly*, despite the disruption to financial markets, issuers are reminded that they are required to disclose to the market as soon as possible any relevant significant information relating to the impact of COVID-19 on their business, including on the issuer's financial situation or future prospects, to ensure compliance with their existing disclosure obligations under the EU Market Abuse Regulation ("MAR").<sup>2</sup> This will require careful analysis from companies and their management and boards, and they will also need to ensure that they comply with the MAR requirements of prompt disclosure. In addition, issuers should disclose in their 2019 financial reports, if these reports have not yet been finalised, the actual and potential impacts of COVID-19 on their business activities, financial situation and economic performance. Issuers which have already finalised and published their 2019 financial reports will need to provide disclosure of such actual and potential impacts in their upcoming interim financial reports. ESMA recommends that any assessment should be based on both a qualitative and quantitative assessment.

*Thirdly*, with respect to the fund management sector, ESMA has reminded asset managers that they should continue to apply the requirements on risk management and be reactive to any changes, if necessary.

### FCA PRIMARY MARKET UPDATE ON COVID-19

On 17 March 2020, the FCA published a special edition of their [Primary Market Bulletin](#) in light of COVID-19.

Similar to ESMA, the FCA expects issuers and other market participants to continue to meet their disclosure obligations under MAR and the FCA's Disclosure and Transparency Rules in a timely fashion, though in recognition of the potential for such disclosure obligations becoming increasingly difficult to meet, the FCA has acknowledged that there may be slight delays to reporting disclosures in the short term as new operational processes are put into place.

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<sup>2</sup> Regulation (EU) No 596/2014 on market abuse. Under MAR, issuers with securities listed on an EU regulated market, multi-lateral trading facility or organised trading facility are required to disclose any inside information to the market as soon as possible (although disclosure can be delayed in certain, limited, circumstances). For the purposes of MAR, "inside information" is information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

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In addition, the FCA has reminded “persons discharging managerial responsibilities” (“PDMRs”) and “persons closely associated” with such PDMRs to continue to notify the relevant issuer and relevant competent authority of trading in shares and debt securities of the issuer within three business days of such transaction.

The FCA accepts that there may be delays in producing accounts and financial reports; it expects issuers to put in place contingency plans to minimise any impacts. Issuers are reminded that, if they do not think they are able to meet their continuing obligations, they should take appropriate legal advice and contact the FCA.

Issuers must make public their annual financial reports at the latest four months after the end of each financial year. Half-yearly financial reports are required no later than three months after the end of the period. From the FCA’s perspective, for issuers, the deadlines under the FCA’s Disclosure and Transparency Rules remain unchanged. The FCA will keep this under review and will liaise closely with the Financial Reporting Council and the Department for Business, Enterprise and Industrial Strategy.

Given the initial impact of COVID-19 on market volatility, the FCA has said that it will continue to consider requests from issuers to suspend trading to prevent a disorderly market and to protect investors. The FCA added, however, that it has not altered its existing rules and practice and will challenge the need for a suspension if it believes an announcement to the market is more appropriate.

### ICGN STATEMENT ON CORPORATE GOVERNANCE

On 12 March 2020, the ICGN issued a [statement](#) on how investors and companies can engage with the issues that they are facing as a result of COVID-19. Although the ICGN does not discuss specific investment strategies, it warns investors against taking any actions or otherwise applying undue pressure on management that prioritises mitigating short-term losses at the expense of the company’s longer-term stability.

In addition, the ICGN has highlighted the importance of board effectiveness and strategy in dealing with the issues created by COVID-19. While many companies have risk management systems in place, companies should consider establishing a crisis committee to work closely with management to define decision-making or operational protocols and to take a proactive role in addressing any unforeseen emergencies that could arise. Although the establishment of such board committees could improve a company board’s effectiveness, the fast changing nature of COVID-19 means that the whole board must ultimately accept full responsibility for any actions taken by the company. When responding to the pandemic, company boards, including in the private

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sector, should respect and consider public sector guidance from governments and health organisations, including the World Health Organisation.

There are a number of ways that companies and boards can respond to these challenges. Companies and their boards are encouraged to look closely at their risk management policies, contingency plans, threat detection and response, carry out financial stress testing and ensure that there is open dialogue between boards and investors. Companies and their management and board should also be mindful of their obligations under MAR and the FCA's Disclosure and Transparency Rules and ensure that they make the required disclosures in a timely manner.

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Please do not hesitate to contact us with any questions.

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