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## Client Alert | Capital Markets

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Italy

### COVID-19: ESMA extension of deadlines for the publication of periodic financial information

March 2020

In order to preserve investor protection and contribute to the integrity of the European Union markets, on 27 March 2020 the European Security and Markets Authority (“**ESMA**”) expressed its opinion on the impact that the COVID-19 epidemiological emergency may have on the requirements imposed by Directive 2004/109/EC (“**Transparency Directive**”) on issuers listed on regulated markets (“**Issuers**”).

#### 1. Deadlines for the publication of periodic financial information

In detail, ESMA recommends national authorities to grant a **grace period** to Issuers who need to delay the publication of financial reports beyond the deadline provided for by the national regulations transposing the Transparency Directive due to the measures taken at national level to contain the spread of the COVID-19 virus.

Indeed, in this regard, it should be noted that, pursuant to Article 154-ter, paragraph 1, of Legislative Decree 58/1998 (“**TUF**”), Issuers are required to publish an **annual financial report** no later than **four months** after the end of each financial year.

In addition, pursuant to Article 154-ter, paragraph 2, of TUF, Issuers are required to publish a **half-yearly financial report** no later than **three months** after the end of the six-month reference period.

Therefore, ESMA has invited the national authorities to grant a tolerance period having a duration equal to:

- for **annual financial reports**, referring to the financial year expiring on 31 December 2019 or even later but before 1 April 2020, **two months after the deadline**;
- for **half-yearly financial reports**, referring to a reporting period ending on 31 December 2019 or later but before 31 March 2020, **one month after the expiry date**.

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ESMA has highlighted that periodic financial information is an important reference for investors' economic decisions, as well as for guiding the exercise of voting rights or other actions aimed at influencing management decisions. ESMA has also pointed out that periodic information should continue to be drafted in accordance with the applicable reference framework for financial reporting in order to ensure investor protection and to preserve the integrity and proper functioning of the financial markets in the European Union.

## 2. Information to the Market in case of delay

Although ESMA has stressed that issuers are expected to do their best to prepare their financial reports and publish them within the statutory time limit, it has also been highlighted that Issuers shall have to promptly notify the market, in accordance with Regulation (EU) 596/2014 on market abuse, of any delay in the approval of financial reports, whether annual or half-yearly, stating the reasons and, as far as possible, the estimated date of publication.

## 3. Information to the Market in case of delay

ESMA has specified that the recommendation in question is to be considered as relevant in all jurisdictions where no legislative changes to the deadlines for approving periodic financial information have occurred or will be adopted.

On this point, it should be noted that although Article **106** of Decree Law No. 18 of 17 March 2020 ("**Decree**") provides, inter alia, that, as an exception to the provisions for joint-stock companies or to the different provisions of the By-laws, the shareholders' meeting to approve the financial statements must be called within 180 days of the end of the financial year, **this amendment does not apply to companies listed on regulated markets with regard to the release of the financial situations for the period.**

On this point, the Decree **has not amended Article 154-ter** of the TUF, pursuant to which, within four months of the end of the financial year, listed issuers with Italy as their home Member State are required to disclose their annual financial report to the public.

So, ESMA recommendation fills this gap pending any regulatory intervention providing for an express exception to Article 154-ter of the TUF.

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