MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

06 January 2022

ESMA Publishes the Amended Guidelines on Delayed Disclosure Under the Market Abuse Regulation ('MAR' or 'the Regulation')

This Circular is being addressed to all market participants, particularly but not limited to, issuers of financial instruments admitted to trading on a regulated market or an MTF, or for which a request for admission to trading on a regulated market or MTF has been made.

The Authority would like to inform market participants that on 05 January 2022, the European Securities and Markets Authority ('ESMA') published its Final Report on the amendment of the MAR guidelines on delayed disclosure in relation to prudential supervision (the 'Guidelines').

Under Article 17(4) of MAR, issuers are afforded the discretion to delay the disclosure of inside information, provided that: (i) immediate disclosure is likely to prejudice an issuer's legitimate interest; (ii) the delay in disclosure is not likely to mislead the public; and (iii) the confidentiality of that information is ensured.

The amended Guidelines are aimed at providing additional clarity and guidance, enhancing legal certainty and fostering supervisory convergence amongst issuers in carrying out their assessment as to whether they satisfy the above-mentioned conditions. Furthermore, the Guidelines also introduce clarifications on the assessment which institutions are to carry out to determine whether they possess inside information relating to Supervisory Review and Evaluation Process ('SREP') decisions.

In view of the above, the amended Guidelines clarify the following:

- In case of redemptions, reductions and repurchases of own funds subject to supervisory authorisation, the institutions have a legitimate interest to delay the disclosure of inside information until the prudential competent authority has authorised the transactions;
- There is a legitimate interest for the institution to delay the disclosure of the draft SREP decision informally communicated to an institution, until that decision becomes final following the completion of the decision-making process of the prudential competent authority;
- In respect of the content of the SREP decisions, the Pillar 2 Capital Requirements ('P2R') are expected to be considered as inside information and as highly likely to be price sensitive whereas the Pillar 2 Capital Guidance ('P2G') may only be inside information.

Examples of situations where price sensitivity is expected are when:

- the difference between the P2G and the institution's level of capital is not minor and is likely to involve a major reaction by the institution, such as a capital increase; and
- the institution's P2G is not in line with market expectations, so a price impact can be expected.

Now that the Final Report has been published, the translation procedure and the regular comply or explain procedure will be carried out ahead of the full application of the Guidelines. The Guidelines will then be applicable two months after the publication of such translations.

Contacts

Should you have any queries in relation to any of the above, kindly contact the Authority on pfma@mfsa.mt.