



COVID-19 MARKET ABUSE REGULATIONS

FINANCIAL SERVICES

COVID-19: Do Issuers of Debt Securities Have Anything to Disclose?

by **Garry Wynne**

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Garry Wynne looks at the Market Abuse Regulations and an Issuer's obligation to make public disclosures.

Issuers of debt securities admitted to trading on regulated or unregulated markets across the European Union are subject to the Market Abuse Regulations (EU 596/2014). This includes, for example, regulated stock exchanges such as Euronext Dublin's Main Securities Market (MSM) and unregulated multi-lateral trading facilities (MTFs) such as Euronext Dublin's Global Exchange Market (GEM).

Earlier in March 2020, the European Securities and Markets Authority (ESMA) recommended:

"Market disclosure – issuers should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation."

Issuer's Obligations to Publicly Disclose Inside Information

The Market Abuse Regulations aim to achieve full and proper market transparency through the prohibition of insider dealing, unlawful disclosures of inside information and market manipulation. An Issuer is required to inform the public as soon as possible of Inside Information where that information directly concerns the Issuer. Inside Information is defined as:

"**[I]nformation** 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 prices** of those financial instruments or on the price of related derivative financial instruments." (emphasis added).

To determine whether information "would be likely to have a significant effect on the prices" of debt securities, the Issuer should consider whether a reasonable investor would be likely to use this information as part of the basis of their investment decisions. In applying this 'reasonable investor test', the Central Bank of Ireland advise the Issuer should take account of the following:

1. "that the significance of the information in question will depend on a number of factors such as the Issuer's size, recent developments and market sentiment about the Issuer, and the sector in which it operates;
2. that a reasonable investor will make investment decisions relating to the relevant financial instruments or related derivative financial instruments to maximise his economic self-interest; and
3. the anticipated impact of the information in light of the totality of the Issuer's activities, the reliability of the source of information and any other market variables likely to affect the related financial instrument or derivative financial instrument in the given circumstances."

The Central Bank of Ireland also advises that the information that is likely to be considered relevant to a reasonable investor includes, but is not limited to:

1. “the assets and liabilities of the Issuer;
2. the performance or the expectation of the performance of the Issuer’s business;
3. the financial condition of the Issuer;
4. events that may significantly affect the Issuer’s ability to meet its commitments;
5. the course of the Issuer’s business;
6. major new developments in the business of the issuer; or
7. information previously disclosed to the market.”

To make a public disclosure, an Issuer may make an announcement through the Regulatory Information Service (RIS) of the market on which they are admitted for trading.

Disclosure of Inside Information may be delayed where (i) immediate disclosure is likely to prejudice the legitimate interests of the Issuer, (ii) delay is not likely to mislead the public and (iii) the Issuer is able to ensure confidentiality of the information. Where a disclosure is being delayed, the Issuer is required to inform the Central Bank of Ireland immediately of the delay and confirm that all of these requirements are met.

The Central Bank of Ireland’s guidance on the Market Abuse Regulations can be found [here](#).

If you are unsure of your public disclosure obligations, our experienced [Financial Services structured solutions group](#) is on hand to provide advice and assistance.

About the Author



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