

Regulations and guidelines 6/2016

Regulations and guidelines on disclosure obligation

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Legal nature of regulations and guidelines

Regulations

Financial Supervisory Authority (FIN-FSA) regulations are presented under the heading 'Regulation' in FIN-FSA's regulations and guidelines. FIN-FSA regulations are binding legal requirements that must be complied with.

FIN-FSA issues regulations only by virtue of and within the limits of legal provisions that entitle it to do so.

Guidelines

FIN-FSA interpretations of the contents of laws and other binding provisions are presented under the heading 'Guideline' in FIN-FSA's regulations and guidelines.

Also recommendations and other operating guidelines that are not binding are presented under this heading, as are FIN-FSA's recommendations on compliance with international guidelines and recommendations.

The formulation of the guideline shows when it constitutes an interpretation and when it constitutes a recommendation or other operating guideline. A more detailed description of the formulation of guidelines and the legal nature of regulations and guidelines is provided on the FIN-FSA website.

[Fin-fsa.fi > Regulation > FIN-FSA regulations > Structure of FIN-FSA regulations and guidelines](#)

Contents

1	Scope of application and definitions	4
1.1	Scope of application	4
1.2	Definitions	4
2	Legal framework and international recommendations	5
2.1	Legislation	5
2.2	EU Regulations	5
2.3	EU Directives	5
2.4	FIN-FSA's regulatory powers	6
2.5	International recommendations	6
3	Objectives	7
4	Disclosure obligation as regards transactions in own shares	8
4.1	Disclosure obligation as regards transactions in own shares	8
5	Public disclosure and availability of regulated information	9
5.1	Public disclosure of regulated information	9
5.2	Availability of regulated information	10
6	Alternative Performance Measures	11
6.1	Presentation of Alternative Performance Measures	11
7	Repealed regulations and guidelines	12

1 Scope of application and definitions

1.1 Scope of application

- (1) The provisions of chapter 4 shall apply to the stock exchange.
- (2) The provisions of chapter 5 shall apply to issuers whose home member state for disclosure of periodic information is Finland. Section 5.1 shall apply to other issuers whose securities are subject to trading on a regulated market only in Finland. However, by way of derogation from the aforesaid, section 5.1 shall not apply to an issuer whose home member state for disclosure of periodic information is Finland but whose securities are subject to trading on a regulated market in only one EEA member state other than Finland.
- (3) The guideline in chapter 6 shall apply to issuers of securities admitted to trading on a regulated market and issuers or other persons obliged to publish a prospectus as referred to in chapters 3–5 of the SMA.

1.2 Definitions

- (4) *Issuer*, in accordance with chapter 2, section 3 of the SMA, refers to a Finnish and foreign entity that has issued a security.
- (5) *Regulated market*, in accordance with chapter 1, section 2, paragraph 6 of the Act on Trading in Financial Instruments (748/2012), refers to a multilateral trading system operated by a stock exchange or a market operator corresponding thereto in another EEA Member State, which brings together bids and offers or invitations to quote on financial instruments in accordance with the rules drafted by the operator of the regulated market in such manner as results in a binding deal on a financial instrument.
- (6) *Regulated information*, in accordance with chapter 10, section 2 of the SMA, refers to information that must be disclosed according to chapters 7–9 and 11 of the SMA and Article 17, paragraph 1 of the Market Abuse Regulation.

2 Legal framework and international recommendations

2.1 Legislation

These regulations and guidelines are related to the following legal act:

- Securities Markets Act (746/2012, hereinafter also referred to as SMA)

2.2 EU Regulations

These regulations and guidelines are related to the following directly applicable EU Regulation:

- Regulation (EU) No 596/2014 (32014R0596) of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC; OJ L 173, 12.6.2014, p.1–61.

2.3 EU Directives

These regulations and guidelines are closely related to the following EU Directives concerning the periodic disclosure obligation of an issuer, and the disclosure, dissemination and availability of information falling within the scope of the disclosure obligation:

- Directive 2004/109/EC of the European Parliament and of the Council (32004L0109) of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive); OJ L 390, 31.12.2004, p. 38–57.
- Directive 2007/14/EC of the Commission (32007L0014) of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (TD Implementing Directive); OJ L 69, 9.3.2007, p. 27–36.

2.4 FIN-FSA's regulatory powers

FIN-FSA's power to issue binding regulations is based on the following legal provisions:

- Under chapter 8, section 9 of the SMA, FIN-FSA may issue further regulations on how the stock exchange shall disclose transactions made by an issuer in its own shares.
- Under chapter 10, section 9 of the SMA, FIN-FSA may issue further regulations on the public disclosure and availability of regulated information.

2.5 International recommendations

In preparing these regulations and guidelines, consideration has been given to the following international recommendations:

- Guidelines of the European Securities and Markets Authority (ESMA) on Alternative Performance Measures (APMs)

The ESMA Guidelines are available on the ESMA website www.esma.europa.eu and the FIN-FSA website.

3 Objectives

- (1) The objective of these regulations and guidelines is to:
- nationally implement provisions contained in Commission Directive 2004/109/EC, by virtue of the powers conferred by the law
 - issue the provisions referred to in chapter 8, section 9 of the SMA on the obligation of the stock exchange to disclose transactions made by an issuer in its own shares
 - bring to market participants' notice the guidelines issued by the European Securities and Markets Authority (ESMA) that they should take into account.

4 Disclosure obligation as regards transactions in own shares

4.1 Disclosure obligation as regards transactions in own shares

- (1) The issuer shall, in accordance with chapter 8, section 2, subsection 1 of the SMA, notify the operator of the regulated market on which its shares have been admitted to trading of transactions in its own shares. Such notification shall be made before the start of the following trading day.
- (2) By virtue of chapter 8, section 9 of the SMA, FIN-FSA hereby issues further regulations on the procedure to be applied by the stock exchange in regard to the disclosure of the issuer's transactions in own shares.

REGULATION (paragraphs 3–4)

- (3) The stock exchange shall disclose the issuer's notification of transactions in own shares on its website without undue delay once the issuer has notified the stock exchange of such transactions in accordance with the rules of the stock exchange¹. The stock exchange shall also submit such notifications to the Officially Appointed Mechanism (OAM) on a company-specific basis.
- (4) If the issuer itself discloses its transactions in own shares, the stock exchange is not obliged to submit such notifications of transactions to the OAM.

¹ The rules of the stock exchange on listed companies' own shares

5

Public disclosure and availability of regulated information

5.1 Public disclosure of regulated information

- (1) In accordance with chapter 10, section 3 of the SMA, the issuer shall disclose the regulated information in such manner as ensures fast and non-discriminatory access to the information. The issuer shall disseminate the information to the major media and make it available on its website.

In addition, the issuer shall file the regulated information with the OAM designated by the Ministry of Finance, with the FIN-FSA and with the relevant regulated market operator.

- (2) In accordance with chapter 1, section 3, subsection 2 of the SMA, information that is revealed to be untruthful or misleading following its release and which may be of material significance to the investor shall, without delay, be appropriately corrected or supplemented.
- (3) By virtue of chapter 10, section 9 of the SMA, FIN-FSA issues further regulations on the disclosure of regulated information.

REGULATION (paragraphs 4–8)

- (4) The regulated information shall be submitted to the media in full and unedited, which means that such submission is to be in a uniform file format, whatever its technical characteristics. The replacement of a part of the release by a hyperlink or attachment does not meet the requirement of disclosure in full and unedited.
- (5) In contrast to the provisions of paragraph 4 above, in the disclosure of periodic reports (half-year report (SMA 7:10 §), annual financial statements and management's report (SMA 7:5 § and Accounting Act 3:1 §) and corporate governance statement (SMA 7:7 §) it suffices to issue a release to the media containing the key information from these reports, together with a notice that the report has been disclosed. The release shall also indicate where the report is made available to investors. The release that is filed with the operator of the relevant regulated market operator and the OAM shall be accompanied by a full periodic disclosure report.
- (6) Regulated information shall be disseminated in such manner as to ensure efficient, fast and non-discriminatory access. The information channel for such disclosures shall be such as can be reasonably expected to disseminate the information effectively in Finland and the EEA area.

- (7) The release issued for disclosure of regulated information shall clearly indicate the basic information, such as the name of the issuer, the release date and time, the subject of the release and a notification that it concerns regulated information.
- (8) Any errors or omissions in previously disclosed regulated information that may be of material significance to the investor shall be corrected.

5.2 Availability of regulated information

- (9) In accordance with chapter 10, section 3, subsection 1 of the SMA, the issuer shall make regulated information available on its website.
- (10) In accordance with chapter 10, section 5 of the SMA, the issuer shall keep regulated information as referred to in chapters 7–9 and 11 of the SMA and information on the issuer's home member state selection as referred to in chapter 7, section 3, subsection 3 and section 3a, subsection 3 of the SMA available on its website for at least five years.

By exception, the issuer shall keep the information referred to in chapter 7, sections 5, 7, 8 and 10 of the SMA available on its website for at least ten years.
- (11) By virtue of chapter 10, section 9 of the SMA, FIN-FSA issues further regulations on the availability of regulated information.

REGULATION (paragraph 12)

- (12) The factual content of regulated information made available on the issuer's website shall not be changed afterwards.

6 Alternative Performance Measures

6.1 Presentation of Alternative Performance Measures

- (1) The European Securities and Markets Authority (ESMA) has issued guidelines on alternative performance measures.
- (2) The guidelines shall apply to APMs disclosed by issuers or persons responsible for the prospectus when publishing regulated information, prospectuses and supplements thereto.

GUIDELINE (paragraphs 3-4)

- (3) FIN-FSA recommends that issuers and persons responsible for a prospectus comply with the ESMA guidelines referred to in paragraph 1.
- (4) The ESMA guidelines are available on the ESMA website www.esma.europa.eu and the FIN-FSA website.

7 Repealed regulations and guidelines

- (1) Upon entry into force, these regulations and guidelines shall repeal the following FIN-FSA regulations and guidelines:
- FIN-FSA regulations and guidelines 7/2013 Disclosure obligation on issuers.