



CAPITAL MARKETS

# Coronavirus: The duty to inform the market

## Privileged information and financial reporting

The rapid spread of COVID-19 (Coronavirus) throughout the world and the impact of administrative measures to contain it represent a growing challenge for the management of companies.

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On 11 March 2020, the World Health Organization declared the existence of a pandemic. The main focus now is to guarantee the safety of workers and employees. However, the potential repercussions on the activities of companies – in the short and medium term – are vast, complex and, in certain cases, they conflict with each other.

PLMJ has created a multidisciplinary team dedicated to analysing the problems facing businesses. This team will share its thoughts, some technical, some practical, which it believes will contribute to finding solutions to mitigate the risks and relieve the pressure that businesses are under.

Although the impact of the pandemic is difficult to assess and predict, issuers should consider whether COVID-19 will have an impact on their performance and to what extent they must disclose this information to the market.

On 11 March, ESMA published a recommendation for financial markets participants ([available here](#)). In this recommendation, it stresses the importance of:

- o business continuity planning;
- o market disclosure of significant privileged information relating to the impact of COVID-19 on their fundamentals, prospects or financial situation;
- o incorporating the risks of COVID-19 into their financial reporting;

- o the managers of investment funds continuing to apply the risk management requirements.

Regarding the obligations of transparency in the financial market, issuers are bound to inform the public of any privileged information that directly concerns them as soon as possible. Deciding who is bound by the duty to inform and what information should be disclosed depends on a case-by-case analysis. Issuers must begin as soon as possible.

In general terms, the duty to inform binds:

1. The issuers of shares, bonds or securities that confer the right to buy or sell these securities, or which give right to a cash settlement determined by reference to these securities, among others;
2. Anyone that has requested or approved the admission of their financial instruments to:
  - i) a regulated market such as Euronext Lisbon;
  - ii) multilateral trading facilities (MTF) including Euronext Growth, Alternext, Euronext Access or Mercado Alternativo de Renta Fija (MARF).
  - iii) organised trading facilities (OTF).
3. Participants in the emission allowances market.
4. In the case of groups of companies, the question of who is bound by the duty to disclose depends on a specific analysis of the structure of the group and of the subsidiary to be included in the consolidation perimeter of the parent company.

Market participants should disclose all privileged information that relates to them directly. Knowing what to disclose depends on a specific analysis of the information that the issuer has. However, in general, information is considered to be privileged if it:

- is precise in nature, to the extent it makes it possible to draw a conclusion as to its potential effect on share prices.
- is not public. The information is only considered public when it can be known to an indefinite number of people and properly evaluated. Even if the information on the impact of Coronavirus on the activity of the company has already been disclosed in a press conference, on the site of the issuer, or in another similar way, in principle, an announcement should still be issued to the public.
- relates directly to the issuer.
- is capable of significantly influencing the prices of financial instruments or of the derivatives relating to them.

This information should be disclosed as soon as possible. Therefore, companies must identify, without delay, whether they need to issue a communication to the market and the specific circumstances to be disclosed.

There may be a duty to disclose, for example:

- the direct effects of COVID-19 on the operations of companies;
- the indirect effects relating, for example, to falls in demand for goods and services in affected areas, and failures or delays in supply chains;
- companies should consider whether it is necessary to disclose potential future effects of the Coronavirus on their operations.

Depending on a case-by-case analysis, it may be possible – on an exceptional basis and on the responsibility of the issuer – to delay the disclosure of privileged information. This possibility could arise (i) if the immediate release is capable of damaging the legitimate interests of the issuer or of the group, and (ii) provided that the delay does not mislead the public, and that the confidentiality of the information is ensured.

**"We recommend that issuers proactively assess the impact of the pandemic on their obligations to communicate information to the market. Moreover, this assessment must be either continuous or at regular intervals."**

The impact of the Coronavirus on business activity must also be incorporated in the periodic financial reporting obligations. As far as possible, issuers should ensure that the annual management report documents the current and potential impact of COVID-19. The report should be based on a quantitative and qualitative assessment of its business activity, financial situation, and economic performance. If this report has already been released, the assessment should be included in the interim report. This report should contain a description of the principal risks and uncertainties that the issuer is facing in the following six months.

Therefore, we recommend that issuers proactively assess the impact of the pandemic on their obligations to communicate information to the market. Moreover, this assessment must be either continuous or at regular intervals. ■