

## PUBLIC STATEMENT

### Actions to mitigate the impact of COVID-19 on the deadlines for the publication of periodic reports by fund managers

The European Securities and Markets Authority (ESMA) is issuing this Public Statement to promote coordinated action by National Competent Authorities (NCAs) in the context of the COVID-19 pandemic. It concerns the obligations of:

- UCITS management companies,
- self-managed UCITS investment companies,
- authorised AIFMs,
- non-EU AIFMs marketing AIFs pursuant to Article 42 of the AIFMD,
- EuVECA managers, and
- EuSEF managers

(hereinafter jointly referred to as “Fund Managers”) to publish annual and half yearly reports in respect of funds they manage, in relation to reporting periods ending from 31 December 2019 to 30 April 2020<sup>1</sup> inclusive.

ESMA is aware that the actions taken by Member States to prevent COVID-19 contagion present significant difficulties and challenges for Fund Managers and auditors in preparing their funds’ annual reports and half yearly reports, carrying out a timely audit of the accounts, and publishing them within the deadlines set out in the AIFMD<sup>2</sup> and the UCITS Directive<sup>3</sup>, and in the EuVECA<sup>4</sup> and EuSEF<sup>5</sup> Regulations.

In accordance with Article 31(2) of the ESMA Regulation<sup>6</sup>, ESMA is issuing this Public Statement to promote coordinated action by NCAs in response to these adverse events and to provide clarity to Fund Managers.

### Background

Fund Managers are required to publish annual reports and, in the case of UCITS, half-yearly

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<sup>1</sup> For UCITS half-yearly reports the statement covers the reporting periods ending from 31 January 2020 to 31 March 2020 inclusive.

<sup>2</sup> [Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations \(EC\) No 1060/2009 and \(EU\) No 1095/2010.](#)

<sup>3</sup> [Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\).](#)

<sup>4</sup> [Regulation \(EU\) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds.](#)

<sup>5</sup> [Regulation \(EU\) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds.](#)

<sup>6</sup> [Regulation \(EU\) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority \(European Securities and Markets Authority\), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.](#)

reports with respect to each fund managed according to the following provisions.

### **UCITS**

Self-managed UCITS investment companies, and UCITS management companies in respect of each UCITS they manage, are required to publish an annual report at the latest four months after the end of each financial period to which they relate<sup>7</sup>. For 31 December 2019 financial year-ends, the latest publication date is 30 April 2020. The accounting information given in the annual report must be audited<sup>8</sup>.

In addition, self-managed UCITS investment companies and UCITS management companies are required to publish half-yearly reports in respect of each UCITS they manage, covering the first six months of the financial year, at the latest two months after the end of the financial period to which they relate<sup>9</sup>. In contrast to the annual reports, the information contained in the half-yearly report does not have to be audited.

### **Authorised AIFMs and non-EU AIFMs**

Authorised AIFMs are required to publish an annual report with respect to each EU AIF they manage and for each AIF they market in the Union, no later than six months following the end of the AIF's financial year<sup>10</sup>. The same deadline applies for non-EU AIFMs in respect of AIFs marketed by them in the Union pursuant to Article 42 of the AIFMD. For 31 December 2019 financial year-ends, the latest publication date is 30 June 2020. The accounting information included in the annual report must be audited<sup>11</sup>. AIFs authorised under the national law of a Member State may be subject to stricter requirements regarding the date of publication of periodic reports<sup>12</sup>.

### **EuVECA and EuSEF managers**

EuVECA managers and EuSEF managers are also required to publish an annual report in respect of each EuVECA or EuSEF they manage, no later than six months following the end of the financial year<sup>13</sup>. For 31 December 2019 financial year-ends, the latest publication date is 30 June 2020. These annual reports shall contain the audited financial accounts for the EuVECA or the EuSEF<sup>14</sup>.

### **COVID-19 outbreak**

ESMA acknowledges that the COVID-19 outbreak brings significant challenges for Fund

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<sup>7</sup> In accordance with Article 68(1)(b) and (2)(a) of the UCITS Directive.

<sup>8</sup> In accordance with Article 73 of the UCITS Directive.

<sup>9</sup> In accordance with Article 68(1)(c) and (2)(b) of the UCITS Directive.

<sup>10</sup> In accordance with Articles 22(1) and 42(1)(a) of the AIFMD. Where the AIF is required to make public an annual financial report in accordance with the Transparency Directive (Directive 2004/109/EC), the [Public Statement setting out actions to mitigate the impact of COVID-19 in the area of the Transparency Directive](#) should be taken into account.

<sup>11</sup> In accordance with sub-paragraph 2 of Article 22(3) of the AIFMD.

<sup>12</sup> In accordance with sub-paragraph 2 of Article 43(1) of the AIFMD, Member States may impose stricter requirements on the AIFMs marketing to retail investors in their territory units or shares of AIFs they manage or on the AIFs than the requirements applicable to the AIFs marketed to professional investors in their territory.

<sup>13</sup> In accordance with Article 12(1) of the EuVECA Regulation and Article 13(1) of the EuSEF Regulation.

<sup>14</sup> In accordance with the fourth sentence of Article 12(1) of the EuVECA Regulation and the fourth sentence of Article 13(1) of the EuSEF Regulation. Where the EuVECA/EuSEF is required to make public an annual financial report in accordance with the Transparency Directive (Directive 2004/109/EC), the [Public Statement setting out actions to mitigate the impact of COVID-19 in the area of the Transparency Directive](#) should be taken into account.

Managers and auditors as an increasing number of Member States impose unprecedented national measures to prevent contagion. ESMA appreciates that due to these measures, Fund Managers are faced with constraints which may substantially impair their ability to publish the annual reports in respect of funds they manage or market within the deadlines referred to above. Concerning the auditing implications of the COVID-19 outbreak, ESMA notes that the Committee of European Audit Oversight Bodies (CEAOB) has issued a statement<sup>15</sup> on this matter on 25 March 2020.

### **Publication deadlines for periodic information**

ESMA highlights that periodic information relating to investment funds is an important point of reference for investors' economic decisions. To ensure investor protection and to preserve the integrity and proper functioning of EU financial markets, annual and half-yearly reports should be prepared in accordance with the applicable provisions of the UCITS Directive, the AIFMD, the EuVECA Regulation and the EuSEF Regulation, as well as in the MMF Regulation<sup>16</sup> and the ELTIF Regulation<sup>17</sup> which apply to funds authorised as MMFs or ELTIFs respectively.

ESMA highlights that Fund Managers are expected to exercise their best efforts to prepare the annual reports and half-yearly reports and publish them within the relevant legislative deadlines referred to above.

While recognising the importance of periodic reports for timely and transparent disclosure, ESMA is of the view that the burdens on Fund Managers associated with the COVID-19 outbreak should be taken into account by NCAs in a coordinated way. This is in the interest of investor protection and contributes to the integrity of financial markets in the Union.

Considering that Fund Managers may be prevented from fulfilling the requirements due to COVID-19, ESMA expects NCAs to act in accordance with national rules set out in their Member States and when possible during this specific period not to prioritise supervisory actions against these market participants in respect of the upcoming deadlines set out in the UCITS Directive, the AIFMD<sup>18</sup>, the EuSEF Regulation and the EuVECA Regulation regarding:

- a. annual reports referring to a year-end occurring on or after 31 December 2019 but before 1 April 2020 for a period of two months following the relevant deadline;
- b. annual reports referring to a year-end occurring on or after 1 April 2020 but before 1 May for a period of one month following the relevant deadline<sup>19</sup>; and

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<sup>15</sup> [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/200325-ceaob-statement-covid-19\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200325-ceaob-statement-covid-19_en.pdf)

<sup>16</sup> [Regulation \(EU\) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds](#), in particular Articles 16(4)(c)(ii) 36.

<sup>17</sup> [Regulation \(EU\) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds](#), in particular Articles 19(3) and 23(5).

<sup>18</sup> As applied by national law in relation to funds marketed to retail investors.

<sup>19</sup> This different time period is due to the fact that under item a. the expectation not to prioritise supervisory action for the publication of an annual report relating to a year-end set on 31 March 2020 applies until 30 September 2020. However, without the provisions in item b., the expectation not to prioritise supervisory action would not apply until the same date (i.e. 30 September 2020) to the publication of an annual report relating to a year-end set on 30 April 2020 which has to be published at the latest on 30 August 2020

- c. half-yearly reports of UCITS referring to a reporting period ending on or after 31 January 2020 but before 1 April 2020 for a period of one month following the deadline set out in the UCITS Directive.

Furthermore, ESMA encourages NCAs to generally apply a risk-based approach in the exercise of supervisory powers in their day-to-day enforcement of the sectoral acts in a proportionate manner concerning the publication deadlines of the annual reports and half-yearly reports referred to above.

Nevertheless, where Fund Managers reasonably anticipate that publication of the annual reports and half-yearly reports will be delayed beyond the normal regulatory deadlines, they are expected to inform their NCA promptly of this and to inform investors as soon as practicable of the delay, the reasons for such a delay and to the extent possible the estimated publication date.

ESMA reminds Fund Managers that certain funds<sup>20</sup> continue to be subject to the disclosure obligations laid down in Article 17 of the Market Abuse Regulation<sup>21</sup>. In particular, these funds must continue to disclose any inside information as soon as possible.

ESMA will continue to closely monitor the situation and will take or recommend any measures necessary to mitigate the impact of COVID-19 on timely and appropriate periodic disclosure by Fund Managers in respect of the funds they manage or market. ESMA will, as necessary, re-assess any potential need to amend the timelines that NCAs are expected to apply under this Public Statement.

This statement is without prejudice to possible requirements stemming from national legislation, for example, national company law.

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<sup>20</sup> [ESMA Questions and Answers on the Market Abuse Regulation](#) (ESMA70-145-111 - Version 14), in particular Q5.6 and Q5.7.

<sup>21</sup> [Regulation \(EU\) No 596/2014 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.](#)