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EU *Listing Act* Enters into Force - Significant Changes to the Market Abuse Regulation and the Prospectus Regulation

Introduction

On 14 November 2024, the EU legislative acts collectively known as the EU Listing Act were published in the Official Journal of the EU. The legislative package will enter into force on **4 December 2024** and will introduce changes to the EU Prospectus Regulation, the EU Market Abuse Regulation and the EU Markets in Financial Instruments Regulation and Directive (MiFIR and MiFID). The legislative package also repeals the EU Listing Directive and introduces a new directive harmonising rules on structures of shares with a higher voting power. Many of the changes will not apply until 5 March 2026 and 5 June 2026 respectively, but some will apply as early as 4 December 2024.

The Listing Act actually consists of three different parts of EU legislation: Regulation (EU) 2024/2809 amending the Prospectus Regulation, the Market Abuse Regulation and MiFIR, Directive (EU) 2024/2811 amending MiFID and Directive (EU) 2024/2810 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility (i.e. an MTF, such as Nasdaq First North Growth Market).

Below we focus on the most significant changes to the Market Abuse Regulation and the Prospectus Regulation that will start to apply already on **4 December 2024** and that are relevant for issuers listed on SME growth markets, such as Nasdaq First North Growth Market. Finally, we touch upon important changes that will be applicable in 2026 and present some summarising reflections.

Significant changes to the Market Abuse Regulation and the Prospectus Regulation applicable from 4 December 2024

Market Abuse Regulation

<u>New threshold for reporting transparency transactions (Article 19(8) to (9))</u>

The amendment raises the threshold for the obligation to report insider dealing according to Article 19 of the Market Abuse Regulation, from EUR 5 000 to EUR 20 000 per calendar year. The purpose of the amendment is to avoid unnecessary requirements for persons discharging managerial responsibilities to report transactions that are of such a low value that they are irrelevant to investors. The amendment will apply from 4 December 2024, so for the remainder of 2024, the threshold for reporting managers' transactions will be EUR 20,000. This means that a person who, on or after 4 December 2024, carries out a transaction that brings them up to the previous threshold of EUR 5,000 will no longer be subject to the reporting obligation. The Swedish Financial Supervisory Authority

(SFSA) will evaluate the new threshold in 2025 and decide whether to raise it to EUR 50 000 or lower it to EUR 10 000 per calendar year, in accordance with an authorisation in Regulation (EU) 2024/2809.

Further exemptions for managers' transactions in own accounts during closed periods (Article 19(12a))
Transactions or activities that do not relate to active investment decisions by a person discharging managerial responsibilities are exempted from the trading ban during the closed period. Such transactions may result from irrevocable arrangements entered outside a closed period or be the result of discretionary asset management carried out by an independent third party. Furthermore, the transactions may result from the receipt of inheritances, gifts or donations. Amendments to Article 19(12a) exempt these types of transactions, which depend exclusively on external factors or do not involve active investment decisions by a person discharging managerial responsibilities, from the prohibition on trading during a closed period.

Prospectus Regulation
New exemptions for secondary issuances (Article 1(4))
According to the new rules, an issuer does not need to publish a prospectus for certain smaller secondary issuances directed to the public, as long as the number of shares issued during a 12-month period does not exceed 30 percent of the number of shares already admitted to trading on the same market. *If the securities have been admitted to trading on a market continuously for at least the 18 months preceding the offer of the new securities the 30 percent limit does not apply. The rules apply both to regulated markets and to SME growth markets.* However, in these cases, the registration of an information document is required in accordance with a new Annex IX to the Prospectus Regulation. The information document constitutes a simplified version of a prospectus. Registration is to be done through the SFSA:s prospectus website.

Clarifications regarding the description of risk factors (Article 16)
An amendment to Article 16 of the Prospectus Regulation clarifies that the prospectus may not contain risk factors that are generic, that serve only as disclaimers or that do not provide a sufficiently clear picture of the specific risk factors that investors need to know. The previous wording only stated that the risk factors should be specific to the issuer. The aim is to make the prospectus more understandable and to help investors make informed decisions. To reduce the workload of the issuer, the Union legislator has removed the requirement for the issuer to rank the most material risk factors. The amended Article 16 only requires the issuer to list the most material risk factors in a manner consistent with the issuer's judgement, thus imposing a less strict obligation on the issuer.

Extended withdrawal period when publishing a supplementary prospectus (Article 23)
When an issuer publishes a supplementary prospectus, for example because there is a material error in the prospectus, investors who have already applied for subscription in the issue have the right, under Article 23 of the Prospectus Regulation, to withdraw their application. The deadline for doing so used to be two days but has now been extended to three days.

Extended possibility to draw up prospectuses in English in cross-border offers (Article 27(2))

In situations where securities are offered to the public in more than one Member State, there is now a possibility to draft the prospectus in "a language customary in the sphere of international finance". This means that the issuer can choose to write the prospectus in English in these situations, relieving the issuer of the burden of translating the prospectus into the languages of different Member States. However, there is still an obligation to provide a translation of the summary of the prospectus. Member States may not require the translation of any other part of the prospectus.

Some other relevant changes to the Market Abuse Regulation and the Prospectus Regulation that will apply in 2026

Above we have focused on the changes that will start to apply in connection with the Regulation (EU) 2024/2809 entering into force on 4 December 2024. However, we would like to briefly mention some other important changes that will start to apply in 2026.

Regarding the Market Abuse Regulation, two very significant changes are introduced to the rules on disclosure of inside information. The first change concerns the disclosure of inside information that is an intermediate step in a protracted process. Such information will not need to be disclosed until the final stage of the process. No decision is required to delay the disclosure of the inside information related to the intermediate step. The purpose behind the amendment is to prevent the disclosure of preliminary information that could mislead investors rather than contribute to efficient price formation. Therefore, in the case of a transaction, such as a merger, the disclosure requirement shall not cover the announcement of mere intentions, ongoing negotiations or progress in negotiations. Only information relating to the specific event that the ongoing process aims to realise (a so-called "final event") needs to be disclosed. For instance, according to the preamble to Regulation (EU) 2024/2809, in the case of a merger, disclosure should be made as soon as possible after the management has taken the decision to sign off on the merger agreement, once the core elements of the merger have been agreed upon. In general, for contractual agreements the final event should be deemed to have occurred when the core conditions of that agreement have been agreed upon. In the case of non-protracted processes related to a one-off event or set of circumstances, notably when the occurrence of that event or set of circumstances does not depend on the issuer, the disclosure should take place as soon as the issuer becomes aware of that event or set of circumstances.

As regards the delay of the disclosure of inside information, the current criterion that *the delay must not mislead the public* is replaced by the requirement that the information that the issuer intends to delay *must not contrast with* the most recent information published by the issuer on the subject in question. In other words, it is not a question of how the information may be perceived by the public, but of a concrete comparison between the information that is the subject to a delayed disclosure and information previously disclosed by the issuer on the same matter. How this is to be interpreted is not entirely clear. The Commission has been authorised to adopt a delegated regulation to establish and,

if necessary, revise a list of situations where the inside information that the issuer intends to delay is in contrast with the most recent public announcement on the same matter.

Regarding the Prospectus Regulation, a harmonised exemption for the prospectus obligation is introduced throughout the EU, set at EUR 12 million (the limit is currently EUR 2.5 million in Sweden). However, Member States will be given the option to set the threshold at EUR 5 million. In addition, requirements are introduced for prospectuses to be drawn up in a standardised manner throughout the EU, i.e. the information in the prospectus must follow a certain order, as well as a possibility to draw up the prospectus in English even in domestic offers. Finally, simplified secondary issuance prospectuses (simplified prospectuses) will be discontinued, EU recovery prospectuses will be replaced by an EU follow-on prospectus and EU growth prospectuses will be replaced by EU growth issuance prospectuses, both of which will be limited in scope.

Concluding remarks

The overall aim of the changes to the Market Abuse Regulation and the Prospectus Regulation is to make European capital markets more attractive, both for investors and for issuers. In our view, the changes are in many respects positive, as they reduce the burden on issuers and facilitate investors' decision-making. At the same time, there is a risk that extensive simplification of the regulatory system could lead to a deterioration in investor protection. Legislation must balance the interest of providing an attractive market for issuers with the interest of protecting investors through good disclosure and maintaining public confidence in the capital market. We are following these developments with interest and look forward to seeing what impact the new rules will have. Please do not hesitate to reach out to us if you have any questions.

Henric Stråth
Attorney at law, partner
Moll Wendén Law Firm

Gunnar Bramstång
Associate
Moll Wendén Law Firm

About Moll Wendén Law Firm and the authors

Moll Wendén is a law firm with over 40 employees working in 15 business law areas, each led by experienced and well-renowned lawyers. Henric Stråth, responsible partner, and Gunnar Bramstång, associate, work in Moll Wendén's capital markets group.