

DIRF

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PLESNER

DIRF – COVID-19 - How to give guidance

SCOPE

- Choices and consideration in light of COVID-19 in terms of Guidance
- To Suspend or not
- Possible consequences of suspension

TO SUSPEND OR NOT TO SUSPEND, THAT IS THE QUESTION

- Key questions are:
 - Suspend guidance?
 - Duration of suspension? Insert 'Sunset' dates
 - Revise guidance?
 - Confirm guidance and explain risks and uncertainties
 - Maintain guidance?
- How do IR find itself in respect of COVID-19 impact and key questions related to suspension or not
- Is it good stakeholder management to suspend guidance
- Do investors accept suspension or form that view that 'whoever is closer – management – should provide their best estimate'

BASIC FACTS

- ANNUAL GUIDANCE IS REQUIRED (IN FINANCIAL STATEMENTS)
- THERE IS A VERY WIDE DISCRETION FOR ISSUERS TO DETERMINE THE GUIDANCE METRICS
- GUIDANCE IS NOT REQUIRED BY MAR (AS SUCH) CORRECTION IS REQUIRED
- CHANGES TO GUIDANCE IS ALWAYS INSIDE INFORMATION IN THE 'NORMAL WORLD'
- BELIEVE NO ONE HAS REALLY DEALT WITH THE LEGITIMACY OF SUSPENSION OF GUIDANCE IN LIGHT OF THE REQUIREMENTS IN THE ANNUAL ACCOUNTS ACT

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REGULATORS

- FSA: The Danish Financial Supervisory Authority (Finanstilsynet) has basically said, that suspension is inside information. "Suspensions will, like adjustments, give an important signal to the potential investors and must therefore be announced as soon as possible" "It is Finanstilsynets evaluation, that notice of suspension is of a temporary nature and is particularly important to supplement with final announcements to avoid uncertainty among the potential investors."
- ESMA: 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
- Bafin:
 - If the issuer assumes, with a sufficient degree of probability, that the actual results will significantly fall short of the existing forecasts without being able to provide a new detailed forecast, it can be assumed that this constitutes inside information. In this case, it would be permissible for the issuer to withdraw the existing forecast from the market by means of an ad hoc disclosure, without this disclosure containing a new detailed forecast. If the issuer can provide a detailed forecast at a later date, this forecast must also, as a rule, be publicly disclosed in the form of an ad hoc disclosure without undue delay
- Financial Reporting – issuers should provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalized or otherwise in their interim financial reporting disclosures
- FSA: As a starting point information financial reports is not inside information; no access to delay publication if realized results deviate from guidance

KEY POINTS

- ISSUERS SHOULD COMMENT ON COVID-19 EFFECTS
- SUSPENSION EQUALS INSIDE INFORMATION
- DUTY TO ANNOUNCE IMMEDIATELY
- REGULATORS BELIEVE SUSPENSION OF GUIDANCE SHOULD BE TEMPORARY
- WHEN THE ISSUER CAN PROVIDE A DETAILED FORECAST IT MUST BE DISCLOSED
- GUIDANCE PROVIDES THE KEY DISCLOSURE LEADING TO THE CONCLUSION THAT FINANCIAL REPORTS ARE NOT INSIDE INFORMATION; NO ACCESS TO DELAY

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SUSPENSION - PROS AND CONS					
	Maintain Guidance	Confirm Guidance / Explain risks	Revise Guidance	Suspend Guidance	Suspend with 'soft' guidance
Legal Liability (Initially)	+	+	+	+	+
Legal Liability (Longer term)	+	+	+	÷	+
The effective market	+	+	+	÷	+
NO Correction duty	÷	÷	÷	+ / ?	÷
NO acceleration of financial reporting	+	+	+	÷	÷
Investor	+	+	+	÷	+

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SUSPENSION – ANALYSIS AND ALTERNATIVES

- Suspension can be the only correct response !
- Suspend in segments
- Provide sunset dates
- Explain; Issuers should provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalized or otherwise in their interim financial reporting disclosures
- It is difficult to give a general advice because the effect varies for different industries and for the individual company, but considerations should carefully balance the difficulty of guiding the market on expectations and the investors' needs for the companies and management to try anyway - with the obvious uncertainties that can be linked to revised expectations

KNOCK-ON CONSEQUENCES OF SUSPENSION

- Duty to accelerate financial reporting
- Securing an effective market; investors may have a hard time trading at all during periods of suspension
- Considerations about liability and legal risk management in light of suspension

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