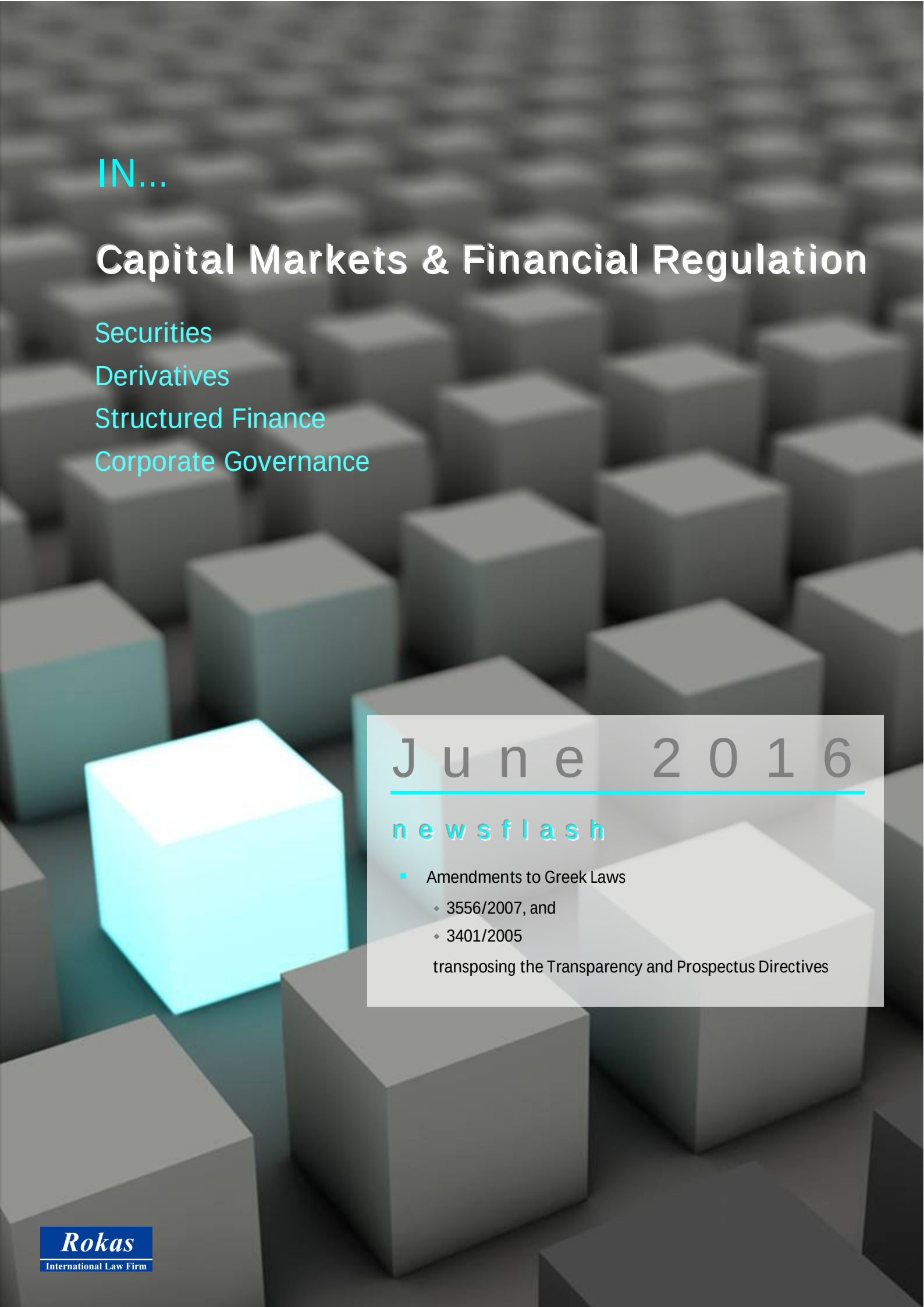

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June 2016

newsflash

- Amendments to Greek Laws
  - 3556/2007, and
  - 3401/2005

  transposing the Transparency and Prospectus Directives

Rokas
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Amendments to Greek Laws 3556/2007 and 3401/2005

by Athina Siafarika

Amendments recently brought to Greek Laws 3556/2007 and 3401/2005, transposing the Transparency and Prospectus Directives, respectively:

Law 4374/2016 (GG A' 50) has recently entered into force aiming at the alignment of the Greek legislation to the Directive 2013/50/EU amending the Transparency and Prospectus Directives. The latter (Prospectus Directive) was further amended by art.1 of Directive 2014/51/EU, which is as well, transposed into the Greek legal order by the same, aforementioned, Law.

The existing Transparency Directive (2004/109/EC) was transposed by Greek Law 3556/2007 (GG A' 91), while the Prospectus Directive (2003/71/EC) was transposed by Greek Law 3401/2005 (GG A' 257), which are, consequently, amended accordingly following the entry into force of the recent Law 4374/2016. The main amendments, however, relate to the Transparency Directive, i.e. Law 3556/2007.

The main amendments, thus, brought to Law 3556/2007 (hereinafter "the Law") are the following:

- The definition of "issuer" in article 3 of the Law has been now extended to cover natural persons as well. Further, in the case of depository receipts admitted to trading on a regulated market, the "issuer" means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market.

- The definition of the "home Member State" has been modified in certain cases, such as:

  - When it comes to issuers incorporated in a third country, when issuing debt securities, the denomination per unit of which is less than 1.000€, or shares, the home Member State is considered to be the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market. The choice of home Member State in this case shall remain valid unless the issuer has chosen a new home Member State and has proceeded to the relevant disclosures as provided by the Law.
  - To be noted here that when the issuer of the above mentioned type of securities is incorporated in the Community, the provision remains the same, i.e. the Member State of the registered office is still considered to be the home Member State for the purposes of the said Law.
  - When it comes to issuers falling outside the scope of the aforementioned provisions, a choice may be made by the issuer among the Member State of its registered office (where applicable) and those Member States where its securities are admitted to trading on a regulated market.
  - Other modifications refer to cases where securities are no longer admitted to trading on the regulated market of the issuer's home Member State, but rather in one or more other Member States.

  Further to the new provisions, issuers have to disclose their home Member State within a period of 3 months. In the absence of such disclosure by the issuer, the relevant provisions of the law apply instead. Issuers, apart from relevant disclosures in relation to their home Member State, should also proceed to necessary notifications to relevant competent authorities, as specifically described in the Law.

- The obligation to prepare financial reports is now limited, in principle, to an annual and half-yearly basis only, prolonging as well the deadline to publish such information by one month respectively. Thus, issuers are no longer obliged to publish quarterly financial information or interim management statements, in an effort to reduce administrative burden and compliance costs born especially by SMEs. The Hellenic Capital Markets Commission may make the issuer subject to more stringent requirements, in terms of the content of information and data included in the financial reports. Reports will remain publicly available by the issuer for at least 10 years. It should be already mentioned, that with effect from 1/1/2020, annual financial reports will be prepared in a single electronic

reporting format (provided that a previous cost-benefit analysis has taken place). A harmonized electronic format for reporting would be beneficial, according to the preamble of Directive 2013/50/EU, for issuers, investors and competent authorities, since it would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports.

- A new, broader, definition of financial instruments is introduced, to cover all instruments of similar economic effect to holdings of shares and entitlements to acquire shares. Thus, now the disclosure obligations of major holdings refer to all financial instruments that could be used to acquire economic interests in listed companies and have the same effect as holdings of equity. This provision came to fill a "gap" observed in the previous regime, where holdings of certain types of financial instruments were used to acquire economic interests in a listed company without acquiring shares, and nevertheless were excluded from the disclosure obligations. For the purposes of notification requirements in this regard, the following are considered to be financial instruments:

  a) Transferable securities
  b) Options
  c) Futures
  d) Swaps
  e) Forward rate agreements
  f) Contracts for differences, and
  g) Any other contracts or agreements with similar economic effects which may be settled physically or in cash.

- New rules on the aggregation of holdings of shares with holdings of financial instruments (new provisions set in article 11 and new article 11A inserted in the Law). Holdings of financial instruments will be aggregated with holdings of shares for the purpose of calculation of the thresholds that trigger the notification requirement.

  - The number of voting rights relating to financial instruments (in the broader definition adopted, as mentioned above) shall be calculated by reference to the full notional amount of shares underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement.

  - In the latter case (cash settlement), the number of voting rights shall be calculated on a "delta-adjusted" basis by multiplying the notional amount of underlying shares by the delta of the instrument. For this purpose, the holder shall aggregate and notify all financial instruments relating to the same underlying issuer.

  - Only long positions shall be taken into account for the calculation of voting rights. Long positions shall not be netted with short positions relating to the same underlying issuer.

  - The holder of shares and financial instruments has to specify separately the amount of holdings of shares and the amount of holdings of financial instruments in its notification.

Essentially, article 11A of the Law extends to a natural person or a legal entity the notification requirements laid down in articles 9, 10 and 11 of the Law when a number of voting rights held directly or indirectly by such person or entity under articles 9 and 10 aggregated with the number of voting rights relating to financial instruments held directly or indirectly under article 11, exceeds or falls below the thresholds set out in article 9 para 1 of the Law. ESMA has issued a guidance table in this regard (*see* ESMA "Questions and Answers, Transparency Directive (2004/109/EC)", 22 October 2015, ESMA/2015/1595), illustrating the changing position in an issuer and providing examples of the notifications to be performed assuming the minimum threshold for notification is 5% (for convenience, the table is presented in line with the Law, as recently amended):

Day	Position of direct/ indirect holdings of voting rights (Art. 9/10)	Position in financial instruments (Art. 11)	Total position (Art. 11A)	Notification required? Yes/No	Threshold triggered according which basket (Art. 9/10, 11, 11A Law 3556/2007)?
1	7%	-	7%	Yes	Art. 9/10
2	7%	2%	9%	No	-
3	8%	4%	12%	Yes	Art. 11A(1)
4	11% (exercise of 3% f.i.)	1%	12%	Yes	Art 9/10
5	8%	6%	14%	Yes	Art. 9/10 Art. 11
6	8%	4%	12%	Yes	Art. 11
7	9% (exercise of 1% f.i.)	3%	12%	No	-
8	9%	7%	16%	Yes	Art 11 Art. 11A(1)
9	12%	7%	19%	Yes	Art. 9/10

Sanctions

Last but not least, the Hellenic Capital Markets Commission (HCMC) has been entrusted with broader administrative powers including administrative pecuniary sanctions in relation to breaches of the said Law. Decisions on sanctions and measures imposed in relation to breaches of said Law, are published without undue delay, with the exception of specific circumstances, such as on grounds of proportionality and preservation of the stability of the financial system.

More specifically, article 26 of the Law, on sanctions, has been replaced by virtue of article 2 para 25 of the Law 4374/2016, empowering the HCMC to impose:

- Administrative Sanctions:
  - A public statement indicating the natural person or legal entity responsible for the breach, as well as the nature of the breach.
  - An order requiring the natural person or the legal entity responsible to cease the conduct constituting the breach and to desist from any repetition or that conduct
- Fines up to:
  - In case of a natural person:
    - Up to EUR 2 000 000, or
    - Up to twice the amount of profits gained or losses avoided because of the breach, where those can be determined, whichever amount is higher
  - In case of a legal entity:
    - Up to EUR 10 000 000, or
    - Up to 5% of the total annual turnover, according to the last published annual accounts approved by the management body. Where the legal entity is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts, on the basis of Directive 2013/34/EU, the applicable total annual turnover equals to the total annual turnover or the related type of income, according to the last published consolidated annual accounts approved by the management body of the ultimate parent undertaking, or
    - Up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined, whichever amount is the higher.

It should be noted that, similar to the previous version of the article on sanctions, in case of a breach by a legal entity, the HCMC may impose sanctions not only on the legal entity, but also on the members of the administrative, management and supervisory bodies of the entity, on the directors, as well as on the internal and external auditors.

Conclusion

Despite the fact that the new provisions, following the European directions, may limit the information furnished to investors, especially given the alleviation of the reporting obligations, they constitute in fact a plausible reaction to the calls expressed by companies to reduce the reporting costs related to investor information. Besides, SMEs were often deterred from listing/ offering securities to the public simply because of the paperwork involved and the high costs incurred. In the preamble of the amending Directive 2013/50/EU it is highlighted that *"the administrative burden associated with obligations linked to admission to trading on a regulated market should be reduced for small and medium-sized issuers, in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers, whose securities are admitted to trading on regulated markets, without being necessary for investor protection. Those obligations also encourage short-term performance and disclosure long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy, it is essential to reduce short-term pressure on issuers and give investors an incentive to adopt a longer term vision"*. Thus, now that the administrative obligations have become easier and less costly to fulfil, SMEs should reassess their financing venues. In the same context, the disclosure and reporting regimes are continuously being reviewed at a European and national level in order to facilitate access to finance for SMEs on the basis of a wider plan for a Capital Markets Union (CMU). Thus, other legislative proposals have also been put forward, such as the Proposal for the Prospectus Regulation which especially touches upon SMEs financing by proposing tailor –made prospectus-wise solutions.

The new provisions are without prejudice to any additional information required by sectoral legislation, while, according to the Directive 2013/50/EU, a regulated market can require issuers which have their securities admitted to trading thereon to publish additional periodic financial information in all or some segments of that market. Thus, please note that while this briefing seeks to offer a comprehensive and informative overview of the main changes brought by Law 4374/2016, the details of the provisions still remain of technical character. Expert advice should be sought for the compliance of firms with the new provisions.

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