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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Regulation amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprise - Mandate for negotiations with the European Parliament

This version of the text, based on the previous revised version, includes new compromise proposals from the Presidency.

These new proposals are marked with red bold and underlined text, or with red bold and strike-through.

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make ~~public~~ capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) By developing Union capital markets and decreasing their fragmentation along national borders, the Capital Markets Union **(CMU)**[2] project aims to enable companies to access funding sources other than bank lending and to adapt their financing structure when maturing and growing in size. More diversified financing in the form of debt and equity will decrease risks for individual companies and the overall economy as well as help Union companies, including small and mid-sized enterprises (SMEs), realise their growth potential.

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1 OJ C , , p. .

2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on Building a Capital Markets Union (COM(2015) 468 final).

(2) The C**MU** ~~**apital Markets Union**~~ requires an efficient and effective regulatory framework that supports access to public equity funding for companies, including SMEs. Directive 2014/65/EU of the European Parliament and of the Council[3] created a new type of trading venue, the SME growth market, to facilitate access to capital specifically for SMEs. ~~**Recital 132 of**~~ Directive 2014/65/EU also expressed the need to monitor how future regulation should further foster and promote the use of SME growth markets, and provide further incentives for SMEs to access capital markets through SME growth markets.

(3) Regulation (EU) 2019/2115 of the European Parliament and of the Council[4] introduced proportionate alleviations to enhance the use of SME growth markets and to reduce the regulatory requirements for issuers seeking admission of securities on SME growth markets, while preserving an appropriate level of investor protection and market integrity. Nevertheless, more needs to be done to make access to Union public markets more attractive and render the regulatory treatment of companies more flexible and proportionate to their size. The High-Level Forum on the **CMU** ~~**apital Markets Union**~~[5] recommended the Commission to remove regulatory obstacles that hold companies back from accessing public markets. The Technical Expert Stakeholder Group on SMEs[6] set out detailed recommendations on how to foster companies and, in particular, SMEs to access Union public markets.

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3 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

4 Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1).

5 Final report of the High Level Forum on the Capital Markets Union - A new vision for Europe's capital markets (10 June 2020).

6 Final report of the Technical Expert Stakeholder Group (TESG) on SMEs - Empowering EU capital markets - Making listing cool again (May 2021).

(4) Building on a Commission's initiative within its post-C**OVID**~~ovid-~~19 recovery strategy, i.e. the Capital Markets Recovery Package, targeted amendments have been introduced into Regulation**s** (EU) 2017/1129 ~~**of the European Parliament and of the Council**~~[7], Regulation (EU) 2017/2402[8] of the European Parliament and of the Council[9], Directive 2014/65/EU and Directive 2004/109/EC of the European Parliament and of the Council[10] to make it easier for companies affected by the economic crisis caused by the pandemic to raise equity capital on public markets, facilitate investments in the real economy, allow for the rapid re-capitalisation of businesses, and increase banks' capacity to finance the recovery.

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7 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

8 **Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).**

9 ~~**Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).**~~

10 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

(5) On the basis of the recommendations of the Technical Expert Stakeholder Group on SMEs and building on Regulation 2019/2115 and on the measures adopted under Regulation (EU) 2021/337 of the European Parliament and of the Council[11], and as part of the Capital Markets Recovery Package, the Commission committed to put forward a legislative initiative to make access to ~~Union~~ public markets **in the Union** more attractive by reducing compliance costs, and by removing significant obstacles that hold back companies, including SMEs, from ~~tapping~~ **accessing** public markets in the Union. To achieve its objectives, the scope of that legislative initiative should be broad and address obstacles that concern companies' access to public markets, namely the pre-initial public offering (IPO), IPO and post-IPO phases. In particular, the simplification and removal of obstacles should focus on the IPO and post-IPO phases by addressing burdensome disclosure requirements to seek admission to trading on public markets laid down in Regulation (EU) 2017/1129, and by addressing burdensome ongoing disclosure requirements laid down in Regulation (EU) No 596/2014 of the European Parliament and of the Council[12].

(6) Regulation (EU) 2017/1129 lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market that is situated in**,** or operating within**,** a Member State. To reinforce the attractiveness of Union public markets, it is necessary to address obstacles stemming from the length, complexity and high costs of the prospectus documentation, both where companies, including SMEs, seek access to public markets for the first time ~~(IPO)~~, and where companies access public markets for secondary issuances of equity or non-equity securities. For the same reason, the length of the scrutiny and approval process of those prospectuses by competent authorities, and the lack of convergence of those processes across the Union**,** should also be addressed.

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11 Regulation (EU) 2021/337 of the European Parliament and of the Council of 16 February 2021 amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, to support the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 1).

12 Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (market abuseregulation) 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 (OJ L 173, 12.6.2014, p. 1).

(7) For small offers of securities to the public, the costs of producing a prospectus could be disproportionate in relation to the total consideration of the offer. Regulation (EU) 2017/1129 does not apply to offers of securities to the public with a total consideration in the Union of less than EUR 1 000 000. In addition, in view of the varying sizes of financial markets across the Union, Member States may exempt offers of securities to the public from the obligation to publish a prospectus where such offer stays below a certain threshold, which Member States may set between EUR 1 000 000 and EUR 8 000 000. Certain Member States have used that possibility, which has led to different exemption thresholds, creating complexity and lack of clarity for both issuers and investors. In order to reduce complexity ~~**in the application of various thresholds**~~ under Regulation (EU) 2017/1129 and to foster legal clarity, the lower threshold of EUR 1 000 000 for the non-applicability of that Regulation should be removed.

(8) To ~~**foster clarity and convergence across the Union and to reduce unnecessary burden for companies, a single harmonised thershold of EUR 12 000 000 should be set out**~~ **streamline the threshold level while also considering the different sizes of national capital markets within the Union, a dual threshold system should be introduced** and should replace the existing ~~**optional**~~ **regime allowing Member States to set various thresholds within an interval**. **A threshold of EUR 12 000 000 should be the principal threshold, while Member States should be allowed to opt for a threshold of EUR 5 000 000 instead.** Below ~~**that**~~ **the** threshold **of either EUR 12 000 000 or EUR 5 000 000**, offers of securities to the public should be exempted from the obligation to publish a prospectus, provided that those offers do not require passporting. In the case of such an exemption, however, Member States should be able to require other disclosure requirements at national level to the extent that such requirements do not constitute **a prospectus or** a disproportionate or unnecessary burden. **If such offers are accompanied with an admission to trading on a regulated market or if the securities offered are subsequently admitted to trading on a regulated market, a prospectus should be required in accordance with Article 3(3) of the Prospectus Regulation. For legal clarity, it is necessary to** ~~**introduce a transitional period**~~ **defer the application date** ~~**for Member States that wish to apply the option in Article 3(2) second subparagraph of the Prospectus Regulation,**~~ **to enable** ~~**them**~~ **Member States to continue to apply the threshold for the exemption from the obligation to publish a prospectus set out under**

national law, in accordance with Regulation (EU) 2017/1129 during ~~the~~ a transitional period until the new threshold is in place.

(9) Cross-border offers of securities to the public that are exempted from the obligation to publish a prospectus should be subject to the national disclosure requirements set out by the concerned Member States, where applicable. However, issuers, offerors or persons asking for the admission to trading on a regulated market of securities which are not subject to the obligation to publish a prospectus should benefit from the single passport where they choose to draw up a prospectus on a voluntary basis. **Member ~~s~~States should be allowed to decide whether national disclosure requirements should be subject to scrutiny and approval by their competent authority.**

(10) Regulation (EU) 2017/1129 contains several provisions that refer to the total consideration of certain offers of securities to the public to be calculated over a period of 12 months. To provide clarity to issuers, investors and competent authorities and to avoid divergent approaches across the Union, it is necessary to specify how ~~a~~ the total consideration of those offers of securities to the public should be calculated over a period of 12 months.

(11) Article 1(5), point (a), of Regulation (EU) 2017/1129 contains an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of securities fungible with securities already admitted to trading on the same regulated market, provided that the newly admitted securities represent over a period of 12 months less than 20 % of the number of securities already admitted to trading ~~to~~ **on** the same regulated market and provided **that** such admission is not combined with an offer of securities to the public. To reduce complexity and to limit unnecessary costs and burdens, that exemption should **also** apply to ~~both~~ the offer to the public **under Article 1(4) of the Prospectus Regulation.** ~~and the admission to trading on a regulated market of the concerned securities and t~~ **For the same reasons, ~~T~~t**he percentage threshold that determines the eligibility for ~~that~~ **the** exemption should be increased **in both the offer to the public and the admission to trading on a regulated market**. ~~For the same reason, that modified~~ **In addition, the** exemption **for offers of securities to the public** should ~~also~~ encompass an offer to the public of securities **to be admitted to trading on a regulated market or an SME growth market and that are** fungible with securities already admitted to trading on **the same regulated market or SME growth market~~an SME growth market~~**. **Where subscription rights are connected to securities covered by the exemption for the offer to**

the public or the admission to trading on a regulated market the exemption should, consequently, also be applicable to subscription rights representing existing shareholders' preferential right to subscribe for the securities covered by the exemption. To ensure investor protection, in particular for retail investors, a short-form document with key information for investors should be made available to the public ~~and filed with the competent authority of the home Member State~~ when an offer of fungible securities is made under the exemption. The document should be filed with the competent authority of the home Member State, but not be subject to its approval.

(12) Article 1(5), point (b), of Regulation (EU) 2017/1129 ~~**also**~~ contains an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of shares resulting from the conversion or **the** exchange of other securities or from the exercise of the rights conferred by other securities, provided that the newly admitted shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market. That 20 % should be aligned with the threshold for the exemption for securities fungible with securities already admitted to trading on the same regulated market, the scope of the two exemptions being equivalent.

(13) Companies whose securities are admitted to trading on a regulated market or on an SME growth market are to comply with the periodic and ongoing disclosure requirements that are laid down in Regulation (EU) No 596/2014, Directive 2004/109/EC ~~**or**~~ **and**, for issuers on SME growth markets, in Commission Delegated Regulation (EU) 2017/565[13]. Where those companies issue securities fungible with securities already admitted to trading on **these types of**~~**those**~~ trading venues, they should be exempted from the obligation to publish a prospectus, as much of the required content of a prospectus will already be publicly available and investors will be able to trade on the basis of that information. However, such exemption should be subject to safeguards that do ensure that the company issuing the securities has complied with the periodic and ongoing disclosure requirements under Union law and is not **subject to a restructuring or the opening of insolvency proceedings**~~**in financial distress or restructuring, as defined under Union law, or going through a significant transformation, including a change in control resulting from a takeover, a merger, or a division**~~. Furthermore, to ensure the protection of investors, in particular retail

[13] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

investors, a short-form document with key information for investors should still be made available to the public**. The document should be** ~~**and**~~ filed with the competent authority of the home Member State**, but not be subject to its approval**. **Where subscription rights are connected to securities covered by the exemption for the offer to the public or the admission to trading on a regulated market the exemption should, consequently, also be applicable to subscription rights representing existing shareholders' preferential right to subscribe for the securities covered by the exemption.** Where the scope of the new exemption makes other existing exemptions redundant, such other exemptions should be removed. ~~**To enable successful companies to scale up and benefit from greater exposure to a broader pool of investors, that new exemption and its eligibility criteria should also be applicable to companies that are willing to make a transition from an SME growth market to a regulated market. However, to enable investors to take informed investment decisions, it is necessary to set out safeguards to ensure that those investors have access to sufficient information about those companies.**~~

(14) Article 1(4), point (j) of Regulation (EU) 2017/1129 exempts credit institutions from the obligation to publish a prospectus in the case of an offer or admission to trading on a regulated market of certain non-equity securities issued in a continuous or repeated manner up to an aggregated ~~**amount**~~ **consideration** of EUR 75 000 000 over a period of 12 months. Regulation (EU) 2021/337, as part of the Capital Markets Recovery Package, increased that threshold to EUR 150 000 000 for a limited period to foster fundraising for credit institutions and give those institutions breathing space to support their clients in the real economy. To continue to support fundraising through capital markets of issuers, including credit institutions, the increased threshold introduced by Regulation (EU) 2021/337 should be made permanent.

(15) **In order** ~~**T**~~**t**o reduce the complexity of the prospectus documentation, and to make the prospectus a more harmonised document t**hus**~~**o**~~ improv**inge** its readability for investors across the Union, irrespective of the jurisdiction where securities are offered to the public or admitted to trading on a regulated market, it is necessary to introduce a standardised format for the prospectus for both equity and non-equity securities and to require that the information included in the prospectus is disclosed in a standardised sequence.

(16) In certain cases, the prospectus or its related documents may reach massive sizes, becoming unfit for investors to take an informed investment decision. To improve the readability of the prospectus and make it easier for investors to analyse it and navigate through it, it is necessary to set out a maximum page limit. However, such page limit should only be introduced for offers to the public or admissions to trading on a regulated market of shares **and other transferable securities equivalent to shares in companies**. A page limit would not be appropriate for equity securities other than shares or non-equity securities, which include a broad range of different instruments, including complex ones. Furthermore, the summary, information incorporated by reference**, including a universal registration document approved by or filed to with a competent authority, information included in a universal registration document that is used as a constituent part of a prospectus,** or information to be provided when the issuer has a complex financial history or has made a significant financial commitment**, or in the case of a significant gross change,** should be excluded from the page limit.

(17) The standardised format and the standardised sequence of the information to be disclosed in the prospectus should be a requirement, irrespective of whether a prospectus, or a base prospectus, is drawn up as a single document or is composed of separate documents, **except where information is included in a universal registration document**. It is therefore necessary that Annexes I, II and III to Regulation (EU) 2017/1129 set out the standardised sequence of the sections for the information to be disclosed in the prospectus or, separately, in the registration document and in the securities note. Those Annexes should be the basis for the Commission to amend any delegated acts that impose a standardised format and sequence of sections of the prospectus, the base prospectus and the final terms, including on disclosure items within those sections. Furthermore, it is necessary to set out the standardised sequence of the information to be disclosed in the prospectus summary.

(18) The prospectus summary is a key document that serves as a guidance to support retail investors in better understanding and navigating through the whole prospectus and thus to make informed investment decisions. To make the prospectus summary more easily readable and comprehensible for retail investors, it is necessary to allow issuers to present or summarise information in the prospectus summary in the form of charts, graphs or tables.

(19) Regulation (EU) 2017/1129 allows issuers to extend the maximum length of the prospectus summary by one page when there is a guarantee attached to the securities, since information on both the guarantee and the guarantor needs to be provided. However, where there is more than one guarantor, an additional page may not be sufficient. It is therefore necessary to **allow for** extend**ing** further the ~~**maximum**~~ length of the prospectus summary in the event of guarantees that are provided by more than one guarantor.

(20) Regulation (EU) 2017/1129 allows an issuer which has received approval for a universal registration document for 2 consecutive years to file without prior approval all subsequent universal registration documents and any amendments thereto. To reduce unnecessary burdens and incentivise the use of the universal registration document, it is necessary to reduce the requirement of receiving the competent authority's approval to obtain the status of frequent issuer and the benefit to file only all subsequent universal registration documents and any amendments thereto to 1 year. Such alleviation will not affect investor protection, as a universal registration document and any amendments thereto may not be used as the constituent part of a prospectus without being **approved by**~~**resubmitted for approval to**~~ the relevant competent authority. Furthermore, a competent authority is allowed to review a universal registration document which has been filed with it on an ex-post basis whenever that competent authority deems it necessary and, where appropriate, request amendments.

(21) To facilitate the **introduction** ~~**IPO**~~ of private companies on Union's public markets and, in general, to reduce unnecessary costs and burdens for companies that are offering securities to the public or seeking admission to trading on a regulated market, the prospectus for both equity and non-equity securities should be significantly streamlined, while ensuring that a sufficient high level of investor protection is maintained.

(22) While being too prescriptive for SMEs, it appears that the level of disclosure in the EU Growth Prospectus would be fit for purpose **for instance** for companies seeking admission to trading on a regulated market. It is therefore appropriate to align Annexes I, II and III ~~**for the content of a prospectus**~~ to Regulation (EU) 2017/1129 **for the content of a prospectus** to the level of disclosure of the EU Growth ~~**p**~~**P**rospectus, by taking as reference the related Annexes laid down in Commission Delegated Regulation (EU) 2019/980[14].

[14] Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to

(23) Due to the growing importance of sustainability considerations in investment decisions, investors are increasingly considering information on environmental, social and governance (ESG) matters when taking informed investment decisions. It is therefore necessary to prevent greenwashing, by establishing ESG-related information to be provided, where relevant, in the prospectus for equity or non-equity securities offered to the public or admitted to trading on a regulated market. That requirement should, however, not overlap with the requirement laid down in **other parts of the** Union law to provide that information. Companies that offer equity securities to the public or seek the admission to trading of equity securities on a regulated market should therefore incorporate by reference in the prospectus, for the periods covered by the historical financial information, the management and consolidated management reports, which include the sustainability reporting, as required by Directive 2013/34/EU of the European Parliament and of the Council[15]. Moreover, the Commission should be empowered to set out ~~a~~ schedule**s** specifying the ESG-related information to be included in prospectuses for ~~equity and~~ non-equity securities ~~that are advertised as taking into account ESG factors or pursuing ESG objectives~~ **that are advertised as taking into account ESG factors or pursuing ESG objectives**.

(24) Article 14 of Regulation (EU) 2017/1129 provides for the possibility to draw up a simplified prospectus for secondary issuances by companies already admitted to trading on a regulated market or a SME growth market continuously for at least 18 months. However, the level of disclosure of the simplified prospectuses for secondary issuances is still considered too prescriptive and close to a standard prospectus to make a significant difference for secondary issuances of companies whose securities are already admitted to trading on a regulated market or an SME growth market and that are subject to periodic and ongoing disclosure requirements. To make the listing documentation easier to understand, and thus to make investor protection more effective, while reducing costs and burdens for issuers, a new and more efficient EU Follow-on prospectus for such secondary issuances should be introduced. However, to limit burdens for issuers and to protect investors, it is necessary to provide for a transitional period for prospectuses approved under the simplified disclosure regime for secondary issuances before the date of application of the new regime. Such EU

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trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).

15 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Follow-on prospectus should be available for **several categories of** issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months, or offerors of **such**~~those~~ securities. Those criteria should ensure that such issuers have complied with the periodic and ongoing disclosure requirements laid down in Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014, or, where applicable, Delegated Regulation (EU) 2017/565. ~~**To enable issuers to fully benefit from this alleviated prospectus type, the scope of the EU Follow-on prospectus should be broad and encompass public offers or admission to trading on a regulated market of securities that are fungible or not fungible with securities already admitted to trading. However, an issuer who has only non-equity securities admitted to trading on a regulated market or an SME growth market should not be allowed to draw up an EU Follow-on prospectus for the admission to trading on a regulated market of equity securities, as an IPO of equity securities requires the disclosure of a full prospectus to enable investors to take an informed investment decision.**~~

(24a) To enable issuers to fully benefit from the EU Follow-on prospectus as an alleviated prospectus type, the scope ~~of the EU Follow-on prospectus~~ should be broad and encompass public offers or admission to trading on a regulated market of securities that are fungible or not fungible with securities already admitted to trading. Furthermore, to enable successful companies to scale up and benefit from greater exposure to a broader pool of investors, the EU Follow-on prospectus should be available to companies that are seeking to make a transition from an SME growth market to a regulated market, provided that their securities have been admitted to trading on an SME growth market continuously for at least the last 18 months. However, an issuer who has only non-equity securities admitted to trading on a regulated market or an SME growth market should not be allowed to draw up an EU Follow-on prospectus for the admission to trading on a regulated market of equity securities, as this requires the disclosure of a full prospectus to enable investors to take an informed investment decision.

(25) The EU Recovery prospectus referred to in Article 14a of Regulation (EU) **2021/337** may no longer be used after 31 December 2022. That EU Recovery prospectus had the advantage that is was composed of a single document that was limited in size, making it easy for issuers to draw it up and easy for investors to understand it. For those reasons, the EU Follow-on prospectus should follow the same model~~, and should be subject to the same reduced scrutiny period as the EU Recovery prospectus~~. However, the requirements for the EU Follow-on prospectus should for obvious reasons not require Covid-19 crisis-related disclosures. As the EU Follow-on prospectus should replace both the simplified prospectus for secondary issuances and the EU Recovery prospectus, it should be permanent and available for both secondary issuances of equity and non-equity securities. ~~In addition, its use should not be subject to any restrictions beyond the requirement of the minimum and continuous period of admission of the securities concerned to trading on a regulated market or an SME growth market~~.

(26) The EU Follow-on prospectus should contain a**n** ~~short-form~~ **alleviated** summary as a useful source of information for investors, in particular retail investors. That summary should be set out at the beginning of the EU Follow-on prospectus and should focus on key information enabling investors to decide which offers to the public and admissions to trading of ~~shares~~ **securities** to study further, and subsequently to review the EU Follow-on prospectus as a whole to take an informed investment decision.

(27) In order to make the EU Follow-on prospectus a harmonised document and facilitate its readability for investors across the Union, irrespective of the jurisdiction where securities are offered to the public or admitted to trading on a regulated market, its format should be standardised for both equity and non-equity securities. For the same reason, the information in the EU Follow-on prospectus should be disclosed in a standardised sequence. **However, the scope of application of the EU Follow-on prospectus should be broad, and provide issuers with the possibility to draw it up either as a single document, or as separate documents, including with a universal registration document and, for non-equity securities, as a base prospectus.**

(27a) To improve the readability of the EU Follow-on prospectus and to make it easier for investors to analyse it and navigate through it, ~~**the number of pages of**~~ such prospectus should be **subject to a page** limit~~**ed**~~ for secondary issuances of shares ~~**or other transferable securities equivalent to shares in companies**~~. Such a page limit would, however, be inappropriate for the broad category of equity securities other than shares or non-equity securities, which include a wide range of different instruments, including complex ones. Furthermore, the summary, information incorporated by reference, **including a universal registration document approved by or filed ~~to~~ with a competent authority, information included in a universal registration document that is used as a constituent part of a prospectus** or information to be provided when the issuer has a complex financial history or has made a significant financial commitment**, or in the case of a significant gross change,** should be excluded from the page limit.

(28) One of the key objectives of the C**MU** ~~**apital Markets Union**~~ is to facilitate access of SMEs to public markets in the Union, to provide those SMEs with other sources of funding than bank lending and the opportunity to scale up and grow. The cost of producing a prospectus may be a deterrent for SMEs willing to offer securities to the public, considering the typical ~~**low**~~ **small** size of the consideration of those offers. The EU Growth prospectus is a lighter prospectus, introduced by Regulation (EU) 2017/1129, and is available for SMEs and **a** few other categories of beneficiaries, including companies with market capitalisation up to EUR 500 million the securities of which are already admitted to trading on an SME growth market. The EU Growth prospectus aimed to reduce the costs of preparing a prospectus for smaller issuers, while providing investors with material information to assess the offer and take an informed investment decision. While issuers who draw up an EU Growth prospectus can achieve quite substantial costs savings, the level of disclosure of an EU Growth prospectus is still considered too prescriptive and close to a standard prospectus to make a significant difference for SMEs. There is therefore a need for an EU Growth issuance **prospectus**~~**document**~~ that has light requirements to make the listing documentation for SMEs even less complex and burdensome and to enable SMEs to achieve even more important savings. In order to limit burdens for issuers and to protect investors, it is, however, necessary to provide for a transitional period for EU Growth prospectuses approved before the date of application of the new regime.

(29) The requirements ~~as to~~ **concerning** the content of the EU Growth issuance **prospectus**~~document~~ should be light, taking into account the level of disclosure of the EU Recovery prospectus and some of the most straightforward admission documents that some SME growth markets require issuers to produce in case of an exemption from the obligation to publish a prospectus, and which content is laid down in the SME growth markets' rulebooks. The reduced information to be disclosed in an EU Growth issuance **prospectus**~~document~~ should be proportionate to the size of the companies listed on SME growth markets and their fundraising needs and ensure an adequate level of investor protection. ~~**Eligible companies should be required to use the EU Growth issuance document for their offer of securities to the public, to facilitate the transition to a new and more efficient regime and to prevent the risk that advisors convince small companies to continue using the full prospectus.**~~ **Furthermore, the EU Growth issuance prospectus should consist of a single document, in order to make it an easy and straightforward document to be drawn up by companies, especially SMEs, and be easily read by investors, especially retail investors. However, issuers whose securities have been admitted to trading on an SME growth market continuously for at least the last 18 months, should be allowed to draw up an EU Follow-on prospectus, drawn up either as a single document or as separate documents, including with a universal registration document and, for secondary issuances of non-equity securites, as a base prospectus.**

(30) The EU Growth issuance **prospectus**~~document~~ should be available for SMEs, issuers other than SMEs the securities of which are admitted or are to be admitted to trading on an SME growth market, and offers from small unlisted companies up to EUR 50 000 000 over a period of 12 months. To avoid a two-tier disclosure standard on regulated markets depending on the size of the issuer, the EU Growth issuance **prospectus**~~document~~ should not be available for companies the securities of which are already admitted or are to be admitted to trading on regulated markets. However, in order to facilitate an upgrade to a regulated market and to enable issuers to benefit from an exposure to a broader investors' base, issuers **whose securities**~~that~~ have already **been**~~securities~~ admitted to trading on an SME growth market continuously for at least the last 18 months should be allowed to use an EU Follow-on prospectus to transfer to a regulated market~~, unless they benefit from an exemption for such follow-on issuance on a regulated market~~.

(31) The EU Growth issuance **prospectus**~~**document**~~ should contain a**n** ~~**short-form**~~ **alleviated** summary, as a useful source of information for retail investors, having the same format and content as the summary of the EU Follow-on prospectus. That summary should be set out at the beginning of the EU Growth issuance **prospectus**~~**document**~~ and should focus on key information enabling investors to decide which offers to the public ~~**and admissions to trading**~~ of ~~**shares**~~ securities to study further, and subsequently to review the EU Growth issuance **prospectus**~~**document**~~ as a whole in order to take an informed investment decision.

(32) The EU Growth issuance **prospectus**~~**document**~~ should be a harmonised document which is easy to **draw up by issuers, especially SMEs, and easy to be** read by investors, irrespective of the jurisdiction within the Union where the securities concerned are offered to the public ~~**or admitted to trading on a regulated market**~~. Its format should therefore be standardised for both equity and non-equity securities and the information included in the EU Growth issuance **prospectus**~~**document**~~ should be disclosed in a standardised sequence. To further standardise and improve the readability of the EU Growth issuance **prospectus**~~**document**~~ and make it easier for investors to analyse it and navigate through it, a page limit should be introduced in the event that an EU Growth issuance **prospectus**~~**document**~~ is drawn up for ~~**secondary**~~ issuances of shares ~~**or other transferable securities equivalent to shares in companies**~~. That page limit should also be efficient in terms of the lighter requirements as to the content of the EU Growth issuance **prospectus**~~**document**~~ and effective in terms of providing the necessary information to enable investors to make informed investment decisions. A page limit would, however, be inappropriate for the broad category of equity securities other than shares or non-equity securities, which include a wide range of different instruments, including complex ones. Furthermore, the summary, information incorporated by reference or information to be provided when the issuer has a complex financial history or has made a significant financial commitment**, or in the case of a significant gross change,** should be excluded from the page limit.

(33) The EU Follow-on prospectus and the EU Growth issuance **prospectus**~~**document**~~ should complement the **standard** ~~**other forms of**~~ prospectus~~**es laid down**~~ in Regulation (EU) 2017/1129. Therefore, unless explicitly stated otherwise, all references to the term 'prospectus' under Regulation (EU) 2017/1129 should be understood as referring to all different forms of prospectuses, including the EU Follow-on prospectus and the EU Growth issuance **prospectus**~~**document**~~. **The voluntary nature of the prospectus types should implicate that an issuer may choose one of the prospectus types available to them when an offer to the public or admisstion to trading on a regulated market requires a prospectus.**

(33a) In order to instill confidence in the use of the EU Follow-on prospectus and the EU Growth issuance prospectus, it is important that their effectiveness and scope ~~**of application**~~ **are clear, as the EU Follow-on prospectus and the EU Growth issuance prospectus are subject to the same liability regime set out in Article 11 of Regulation (EU) 2017/1129 as a full prospectus, for both domestic and cross-border offers or admissions to trading. Therefore, where the issuer is entitled to use an EU Follow-on prospectus or an EU Growth issuance prospectus, which makes the preparation of the transaction at stake more efficient and less onerous, and no other material considerations against the use of any of those prospectuses exist, the issuers' choice among the prospectus types available to them should be protected and neither advisers nor competent authorities should drive issuers towards drawing up a full prospectus when this is not strictly required.**

(34) Risk factors that are material and specific to the issuer and **its**~~**his or her**~~ securities should be mentioned in the prospectus. For that reason, risk factors are also to be presented in a limited number of risk categories depending on their nature. However, **to ease the burden for** issuers ~~**should no longer be required to**~~ **the requirement to** rank the most material risk factors **in each category**~~**,**~~ **should be limited to the most material risk factor. To provide for some flexibility, issuers should however be allowed to rank more than one material risk factor in each category if they prefer to**~~**which is complicated and burdensome for issuers, but should be allowed to do so on a voluntarily basis**~~. To **make more**~~**improve the**~~ **comprehensible**~~**ility of**~~ the prospectus and make it easier for investors to take informed investment decisions, it is necessary to specify that issuers should not overload the prospectus with risk factors that are generic, that only serve as disclaimers, or that could **conceal**~~**obscure**~~ the specific risk factors that investors should be aware of.

(35) Under Article 17(1) of Regulation (EU) 2017/1129, where the final offer price and amount of securities offered to the public cannot be included in the prospectus, the investor has a withdrawal right which can be exercised within 2 working days after the final offer price or amount of securities to be offered to the public has been filed. To increase the level of investor protection, the period during which investor can exercise that withdrawal right should be extended. It is however important to limit the administrative burdens for issuers. Therefore, where the final offer price of securities only differs slightly from the maximum price that was disclosed in the prospectus, issuers should not be required to publish a supplement**. ~~without prejudice to the~~ Moreover, it should be clarified that where a supplement is not published, the possibility in this Article for investors to exercise their withdrawal right may be excersised upon the filing of the final offer price or amount of securities in accordance with the arrangements set out in Article 21(2)**.

(36) Article 19 of Regulation (EU) 2017/1129 gives issuers the possibility to incorporate into the prospectus certain information by reference. That possibility was introduced to reduce the burden for issuers and to avoid duplication of information that has already been disclosed and published under other Union financial services law. To significantly reduce burdens for issuers and to avoid duplication of information that has already been disclosed and published under other Union financial services law, that possibility should become a legal requirement when information is to be disclosed in a prospectus and fulfils the conditions laid down in Article 19(1) of Regulation (EU) 2017/1129 on incorporation by reference. Such legal requirement would only to a limited extent reduce the readability of information for investors that, in the future, should be able to access in a more efficient and effective way the company data centralised on the European Single Access Point ('ESAP')[16]. While the exact layout and perimeter of the future legislation are currently being debated by the co-legislators, the ESAP is expected to enable investors to find in a single place the majority of the relevant information, hence further facilitating access to information incorporated by reference in prospectuses. Nevertheless, companies should still be allowed to incorporate by reference on voluntary basis information that is not to be disclosed in a prospectus, provided that such information fulfils the conditions laid down in Article 19(1) of Regulation (EU) 2017/1129 on incorporation by reference. **~~Moreover, the availability of the information should be ensured during the validity of the prospectus.~~**

[16] Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (COM/2021/723 final).

(37) To remove unnecessary costs and burdens and to increase the efficiency and effectiveness of the incorporation into the prospectus of information by reference, **it should be clarified that** companies should not be required to publish a supplement for ~~updating the~~ **new** annual or interim financial information ~~incorporated by reference~~ in a base prospectus which is still valid**, contrary to the situations specified in Delegated Regulation (EU) 2019/979**. **The**~~is~~ **new annual or interim financial information should instead be incorporated by reference in the base prospectus, provided that the requirements for incorporation by reference, such as electronic publication and language requirements, are fulfilled. However, companies should be allowed to voluntarily** ~~update the annual or interim financial information in the base prospectus through the~~ **publisheation of such information in a supplement**.

(38) Regulation (EU) 2017/1129 promotes the convergence and harmonization of rules **related to**~~about~~ the scrutiny and approval of prospectuses by competent authorities. In particular, criteria for the scrutiny of the completeness, comprehensibility, and consistency of the prospectus were ~~streamlined and~~ laid down in Delegated Regulation (EU) 2019/980. That list of criteria is, however, not exhaustive, because it should allow for the possibility to take into account developments and innovations in financial markets. As a result, Delegated Regulation (EU) 2019/980 allows competent authorities to apply additional criteria for the scrutiny and approval of prospectuses where those competent authorities deem that necessary to protect investors. The peer review report ~~from the European Securities and Markets Authority ('ESMA')~~[17] **from the European Supervisory Authority (European Securities and Markets Authority), ('ESMA') established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council**[18] pointed out that that possibility has created material differences in the way competent authorities apply additional scrutiny criteria and request issuers to provide additional information in the prospectus under their scrutiny. To foster ~~harmonisation and~~ convergence **and harmonisation** of the prospectus supervisory activity by competent authorities, which should provide certainty to issuers and confidence to investors, it is appropriate to specify the circumstances under which a competent authority may use such additional criteria, the type of additional

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17 Peer review of the scrutiny and approval procedures of prospectuses by competent authorities of 21 July 2022 (ESMA42-111-7170).

18 **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 (OJ L 331, 15.12.2010, p. 84).**

information that competent authorities may require to be disclosed and the ~~procedures and~~ timeline for the approval of the prospectus. **In the case that the competent authority fails to take a decision on the prospectus within the set time limits it should notify the issuer, the offeror or the person asking for admission to trading on a regulated market ~~and ESMA~~ of the reasons for this. In addition, a maximum timeframe should be set for finalising the scrutiny and for the competent authority's decision on the prospectus. Considering that the duration of the scrutiny procedure is influenced also by factors outside the control of the competent authority, the timeframe should be established as the maximum duration of the procedure overall, covering activities~~actions~~ from both the person applying for approval of a prospectus and the competent authority. ~~In addition, the conditions for possible derogations should be specified a~~As it may be difficult to anticipate all situations where the scrutiny cannot be finalised within the set timeframe, it is important to specify the conditions for possible derogations from this timeframe. In addition, in the same way as for the time limits laid down in Article 20, a failure by the competent authority to take a decision on the prospectus within the maximum timeframe to be set should not be deemed to constitute approval of the prospectus. For the sake of legal clarity, the definition of "approval" should also clarify that it does not concern the accuracy of the information in a prospectus.**

(39) **ESMA's ~~P~~p**eer review~~s~~ **of the scrutiny and approval of prospectuses by competent authorities was** conducted **and the peer review report was published prior to the Commission proposal for this amending Regulation ~~by ESMA are an effective tool to promote supervisory convergence across the Union~~**. **~~In order to foster supervisory convergence on the scrutiny and approval processes of competent authorities when assessing the completeness, consistency and comprehensibility of the information contained in a prospectus, and to assess the impact of different approaches with regard to scrutiny and approval by competent authorities, it is appropriate to require ESMA to conduct recurrent at least one peer reviews on the scrutiny and approval of prospectuses within 4 years after the entry into force of this amending Regulation on a regular basis and specify the appropriate time periods. In addition,~~Considering that ESMA can conduct ~~such~~ peer reviews at any time ESMA deems appropriate in accordance with Regulation (EU) No 1095/2010, it is not necessary to specify such a requirement in Regulation (EU) 2017/1129. Paragraph 13 of Article 20 of that Regulation, providing that ESMA should organise and conduct a peer review of the**

scrutiny and approval procedures of competent authorities, should therefore be removed.

(40) Article 21 of Regulation (EU) 2017/1129 requires, for an ~~IPO~~ **initial offer to the public of a class** of shares **that is admitted to trading on a regulated market for the first time**, the publication of **a**~~**the**~~ prospectus at least 6 working days before the end of the offer. In order to foster swift book-building processes, especially in fast moving markets, and to increase the attractiveness of the inclusion of retail investors in ~~**IPOs**~~ **such offers**, the current minimum period of 6 days between the publication of the prospectus and the end of an offer of shares should be reduced, without affecting investor protection.

(41) In order to collect data that support the assessment of the EU Follow-on prospectus and the EU Growth issuance **prospectus**~~**document**~~, the storage mechanism referred to in Article 21(6) of Regulation (EU) 2017/1129 should cover both the EU Follow-on prospectus and the EU Growth issuance **prospectus**~~**document**~~, which should be clearly differentiated from the other types of prospectuses.

(42) To make the distribution of the prospectus to investors more sustainable, to increase digitalisation in the financial sector and to remove unnecessary costs, investors should no longer be entitled to request a paper copy of a prospectus. A copy of the prospectus should therefore only be delivered to investors in electronic format, upon request and free of charge.

(43) Article 23(3) of Regulation (EU) 2017/1129 requires financial intermediaries to inform investors who have purchased or subscribed securities through that financial intermediary of the possibility of a supplement being published and, under certain circumstances, to contact those investors on the day when a supplement is be published. Regulation (EU) 2021/337 introduced ~~**the new**~~ paragraphs 2a and 3a to that Article, which provide for a more proportionate regime to reduce burdens for financial intermediaries, while maintaining a high level of investor protection. Those paragraphs specify which investors should be contacted by financial intermediaries when a supplement is published and extended both the deadline by which those investors are to be contacted and the deadline for those investors to exercise their withdrawal rights. In addition, those paragraphs specify that financial intermediaries should contact investors who purchase or subscribe securities at the latest at the closing of the initial offer period. That period refers to the period during which issuers or offerors offer securities to the public as prescribed in the prospectus and excludes subsequent periods during which securities are resold on the market. The regime introduced

by Article 23(2a) and (3a) of Regulation (EU) 2017/1129 expire**ds** on 31 December 2022. Considering the overall positive stakeholders' feedback on that regime, it should be made permanent.

(44) Article 23(2a) and (3a) of Regulation (EU) 2017/1129 extended the deadline to contact eligible investors about the publication of a supplement to the end of the first working day following that on which the supplement is published. To enable financial intermediaries to comply with that deadline, it is necessary to lay down that financial intermediaries will only have to inform those investors who agreed to be contacted by electronic means, **for example by e-mail,** about the publication of a supplement. Furthermore, financial intermediaries should offer investors that indicated their wish to be contacted only by other means than electronic ones an opt-in for electronic contact to receive the notification of the publication of a supplement. It is also necessary to oblige financial intermediaries to point out to investors that do not agree to be contacted by electronic means and refuse the opt-in for electronic contact that they can consult the issuer's or the financial intermediary's website ~~**until the closing of the offer period or the delivery of the securities, whichever occurs first, to check whether**~~ **where** a supplement ~~**is**~~ **should be** published.

(45) To ensure investor protection and foster regulatory convergence across the Union, it is appropriate to lay down that a supplement to a base prospectus should not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus. Furthermore, ESMA should be requested, within 2 years from the entry into force of this Regulation, to provide additional clarity by means of guidelines on the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.

(46) Article 27 of Regulation (EU) 2017/1129 requires issuers to produce translations of their prospectus to enable authorities and investors to appropriately scrutinise those prospectuses and to assess risks. In most cases, a translation must be provided in at least one of the official languages accepted by the competent authorities of each Member State where an offer is made or admission to trading is sought. **In view of facilitating access to the information contained in a prospectus and to safeguard investor protection, the current requirement to draw up the prospectus in a language accepted by the competent authority of the home Member State should continue to apply for domestic offers to the public and admissions to trading. However, T**~~**T**~~to reduce unnecessary burdens

for issuers~~significantly~~, **they**~~companies~~ should be allowed to draw up the prospectus in a language customary in the sphere of international finance **where the offer to the public or admission to trading is cross border**, ~~irrespective of whether the offer or admission to trading is domestic or cross border,~~ while the translation requirement should **in those situations** be limited to the prospectus summary to ensure the protection of retail investors.

(47) Article 29 of Regulation (EU) 2017/1129 currently requires that third country prospectuses are approved by the competent authority of the home Member State of the issuer of the securities concerned, irrespective of whether those third **country** prospectuses have already been approved by the relevant third country authority. That Article also requires that the Commission adopts a decision stating that the information requirements imposed by the national law of such a third country are equivalent to the requirements under Regulation (EU) 2017/1129. To facilitate access of third country issuers, including SMEs, to public markets in the Union and provide investors in the Union with additional investment opportunities, while ensuring their protection, it is necessary to amend the **provisions on the** equivalence regime. ~~In particular, in order to offer the maximum level of protection for investors it should be clarified that for third country issuers offers of securities to the public in the Union are to be accompanied with an admission to trading on either a regulated market or an SME growth market established in the Union. Third country issuers are however allowed to use the procedure under Article 28 of Regulation (EU) 2017/1129 for any type of offers of securities to the public, by drawing up a prospectus in accordance with that Regulation. Furthermore, i~~**It** should be clarified that, in the case of an admission to trading on an EU regulated market**,** or **of** an offer of securities to the public in the Union, equivalent third country prospectuses that have already been approved by the third country supervisory authority, are only to be filed with the competent authority of the home Member State in the Union. Furthermore, the general equivalence criteria, which are currently to be based on the requirements laid down in Articles 6, 7, 8 and 13 of Regulation (EU) 2017/1129, should be exp**a**~~e~~nded to encompass provisions on liability, validity of the prospectus, risk factors, scrutiny, approval and publication of the prospectus~~, and advertisements~~ and supplements. To ensure the protection of investors in the Union, it is also necessary to specify that the third country prospectus is to entail all the rights and obligations provided for under Regulation (EU) 2017/1129. **Third country issuers are also**~~however~~ **allowed to use the procedure under Article 28 of Regulation (EU) 2017/1129 for any type of offers of securities to the public, by drawing up a prospectus in accordance with that Regulation.**

~~(48) An effective cooperation with supervisory authorities of third countries concerning the exchange of information with those authorities and the enforcement of obligations arising under Regulation (EU) 2017/1129 in third countries is necessary to protect investors in the Union and ensure level playing field between issuers established in the Union and third country issuers. In order to ensure an efficient and consistent exchange of information with supervisory authorities, ESMA should establish cooperation arrangements with the supervisory authorities of third countries concerned, and the Commission should be empowered to determine the minimum content and the template to be used for such arrangements. However, third countries that are in the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and in countering the financing of terrorism regimes that pose significant threats to the financial system of the Union should be excluded from such cooperation arrangements.~~

(49) It is necessary to ensure that the EU Follow-on prospectus, the EU Growth issuance **prospectus**~~**document**~~ and related prospectus summaries are subject to the same administrative sanctions and other administrative measures as other prospectuses. Those sanctions and measures should be effective, proportionate and dissuasive and ensure a common approach in Member States.

(50) Article 47 of Regulation (EU) 2017/1129 requires ESMA to publish every year a report containing statistics on the prospectuses approved and notified in the Union and an analysis of trends. It is necessary to lay down that that report should also contain statistical information about the EU Growth issuance **prospectuses**~~**documents**~~, differentiated by types of issuers, and should analyse the usability of disclosure regimes applicable under the EU Follow-on prospectus, the EU Growth issuance **prospectuses**~~**documents**~~ and the universal registration documents. Finally, that report should also analyse the new exemption for secondary issuances of securities fungible with securities already admitted to trading on a regulated market or on an SME growth market.

(51) The Commission should, after an appropriate time period after the date of application of this amending Regulation, review the application of Regulation (EU) 2017/1129 and assess in particular whether the provisions on the prospectus summary, on the disclosure regimes for the EU Follow-on prospectus, on the EU Growth issuance **prospectus**~~**documents**~~ and on the universal registration document remain appropriate to meet the objectives pursued by those

provisions. It is also necessary to lay down that that report should analyse the relevant data, trends and costs in relation **to** the EU Follow-on prospectus and ~~**for**~~ the EU Growth issuance **prospectus**~~**document**~~. In particular, that report should assess whether those new regimes strike a proper balance between investor protection and the reduction of administrative burdens. ~~[**Based on the outcome of this review, and taking into account that provisions related to the responsibility for the information given in a prospectus differ between Member States, t**~~**T**~~**he Commission** ~~**could should**~~ **also assess whether further harmonisation of the provisions for prospectus liability could be warranted and, if relevant, propose amendments to the liability provisions set out in Article 11.**~~]~~

(52) Regulation (EU) No 596/2014 establishes a robust framework to preserve market integrity and investor confidence by preventing insider dealing, unlawful disclosure of inside information and market manipulation. It subjects issuers to several disclosure and record-keeping obligations and requires issuers to disclose inside information to the public. Six years after its entry into force, feedback from stakeholders collected in the context of public consultations and expert groups highlighted that some aspects of Regulation (EU) No 596/2014 place a particularly high burden on issuers. It is therefore necessary to enhance legal clarity, address disproportionate requirements for issuers and increase the overall attractiveness of Union capital markets, while ensuring an appropriate level of investor protection and market integrity.

(53) Article 14 and 15 of Regulation (EU) No 596/2014 prohibit insider dealing, the unlawful disclosure of inside information and market manipulation. Article 5 of that Regulation contains, however, an exception to those prohibitions for buy-back programmes and stabilisation. For a buy-back programme to benefit from that exemption, issuers are obliged to report to all the competent authorities of the trading venues on which the shares have been admitted to trading or are traded each transaction relating to the buy-back programme, including information specified in Regulation (EU) No 600/2014. In addition, issuers are obliged to subsequently disclose the trades to the public. Those obligations are overly cumbersome. It is therefore necessary to simplify the reporting procedure by requiring an issuer to report information on the buy-back programme transactions only to the competent authority of the most relevant market in terms of liquidity for its shares. It is also necessary to simplify the disclosure obligation by allowing an issuer to only disclose to the public aggregated information. **The aggregated form should indicate the aggregated volume and the weighted average price per day and per trading venue.**

(54) ~~Under Article 7(1), point (d), of Regulation (EU) No 596/2014, inside information comprises, for persons charged with the execution of orders concerning financial instruments, information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.~~ **The~~That~~** definition **in Article 7(1), point (d), of Regulation (EU) No 596/2014** is~~, however,~~ too limited in that it only applies to persons charged with the execution of orders, whereas also other persons may be aware of a forthcoming order or transaction. That definition should therefore be expanded to also cover cases where information is passed by virtue of management of a proprietary account or of a managed fund, and in particular to cover all categories of persons that may be aware of a future order.

(55) According to Article 11(1) of Regulation (EU) No 596/2014, market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it, such as its potential size or pricing, to one or more potential investors. Market sounding is an established practice which contributes to efficient capital markets. Market sounding may, however, require disclosure to potential investors of inside information and expose the parties involved to legal risks. The definition of market sounding should be broad in order to cater for the different typologies of soundings and different practices across the Union. The definition of market sounding should therefore also cover the communications of information not followed by any specific announcement, as also in that case inside information may be disclosed to potential investors and issuers should be able to benefit from the protection afforded by Article 11 of Regulation (EU) No 596/2014.

(56) Article 11(4) **second subparagraph** of Regulation (EU) No 596/2014 provides that the disclosure of inside information in the course of a market sounding is deemed to be made in the normal exercise of a person's employment, profession or duties, and therefore does not constitute unlawful disclosure of inside information, where the disclosing market participant complies with the requirements laid down in Article 11(3) and **Article 11(4) first subparagraph, ~~(5)~~** of that Regulation. In order to avoid an interpretation whereby disclosing market participants carrying out market sounding are obliged to comply with all

the requirements set out in Article 11**(4) first subparagraph, ~~(5)~~** of Regulation (EU) No 596/2014, it should be specified that the market sounding regime and the ~~**related**~~ requirements **in Article 11(4) first subparagraph** are a mere option for the disclosing market participants to benefit from the protection from the allegation of unlawful disclosure of inside information. At the same time, while there should be no presumption that disclosing market participants that do not comply with the requirements set out in Article 11**(4) first subparagraph** of Regulation (EU) No 596/2014 when conducting a market sounding have unlawfully disclosed inside information, those disclosing market participants should not be able to take advantage of the protection afforded to those that choose to comply with those requirements. To ensure the possibility for competent authorities to obtain an audit trail of a process that may imply disclosure of inside information to third parties, it should also be specified that the requirements set out in Article 11(3) of Regulation (EU) No 596/2014 are mandatory for all disclosing market participants.

(57) Liquidity in an issuer's shares can be enhanced through liquidity provision activities, including market making arrangements or liquidity contracts. A market making arrangement comprises a contract between the market operator and a third party who commits to maintaining the liquidity in certain shares and, in return, benefits from rebates on trading fees. A liquidity contract comprises a contract between an issuer and a third party who commits to provide liquidity in the shares of the issuer, and on its behalf. Regulation (EU) No 2019/2115 introduced into Article 13 of Regulation (EU) No 596/2014 the possibility for issuers of financial instruments admitted to trading on SME growth markets to enter into a liquidity contract with a liquidity provider, provided certain conditions are met. One of those conditions is that the market operator or the investment firm operating the SME growth market has acknowledged in writing to the issuer that it has received a copy of the liquidity contract and has agreed to that contract's terms and conditions. The operator of an SME growth market is, however, not a party to a liquidity contract and the requirement that such operator has agreed to the liquidity contract's terms and conditions leads to excessive complexity. In order to remove that complexity and to foster liquidity provisions on those SME growth markets, it is appropriate to remove the requirement for operators of SME growth markets to agree to the terms and conditions of liquidity contracts.

(58) The prohibition of insider dealing has the objective to prevent any possible exploitation of inside information and should apply as soon as that information is available. The requirement to disclose inside information aims to enable investors to take well-informed

decisions. When **inside** information is disclosed at a very early stage and is of a preliminary nature, it may mislead investors, rather than contribute to efficient price formation and address the information asymmetry**. ~~In a protracted process, given the different iterations information has still to go through, the~~ inside ~~information related to intermediate steps is not sufficiently mature.~~ ~~and hence~~ Therefore, the issuer** should not be **required to** disclose**~~d.~~ inside information related to intermediate steps in protracted processes if the issuer is able to ensure the confidentiality of that inside information**. **However**, **~~In that case,~~** the issuer **should be required to ~~should only~~** disclose the **inside** information related to the event **or the particular circumstances** that th**e~~is~~** protracted process intends to bring about**. Disclosure will be required by the issuer** at the moment when such information is sufficiently precise. **Hence, the disclosure obligation will be triggered when ~~the whole protracted process has reached a stage of maturity that allows the issuer to conclude that~~ the occurrence of the ~~the~~ event or the particular circumstances, that the protracted process intends to bring about may reasonably be expected**. **~~such as when the management board has taken, the relevant decision to bring about that event~~**. In the case of non-protracted processes related to one-off events, notably when the occurrence of those events does not depend on the issuer, the disclosure should take place as soon as the issuer becomes aware of that event.

(59) To facilitate the assessment of the **~~moment of~~** disclosure **requirement for ~~of the~~ ~~relevant~~ inside information related to protracted processes ~~information by the issuer~~** and **to** ensure a consistent interpretation of the requirement, the Commission should be empowered to adopt a delegated act to set out a non-exhaustive **~~indicative~~** list of **~~relevant~~inside** information **related to protracted processes**. **To bring legal clarity on how various pieces of inside information related to ~~such~~ protracted processes should be handled by the issuer it is also necessary that thate list provides guidance on the pieces of inside information related to intermediate steps that the disclosure requirement does not apply to. Thate list should also provide guidance on inside information relating to the event or the particular circumstances that the protracted process intends to bring about, and also the moment when the disclosure by the issuer can reasonably be expected.**

(60) Issuers should ensure the confidentiality of **inside** information related to intermediate steps where the event **or the particular circumstances**, that a protracted process intends to bring about, has not yet been disclosed. Once that event has been disclosed, the issuer should no

longer be required to protect the confidentiality of the information related to intermediate steps.

(61) Article 17(4) of Regulation (EU) No 596/2014 provides that an issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that specified conditions are met. **The conditions in 17(4) for delaying disclosure of inside information should not apply to inside information relating to intermediate steps in protracted processes since the information will be of a preliminary nature.** ~~**However, when the whole protracted process has reached a stage of maturity that allows the issuer to conclude that the occurrence of the the event or particular circumstances that the protracted process intends to bring about may reasonably be expected, the issuer may, on its own responsibility, chose to delay disclosure to the public of inside information, subject to all the requirements in Article 17(4). Hence, such delays should also be notified to the national competent authority. In such a case, an issuer is obliged to inform the competent authority that disclosure of the information was delayed and to provide a written explanation of how the conditions set out in that Article were met immediately after the information is disclosed to the public. To enable competent authorities to receive information on delays in a timely manner an issuer should notify the competent authority immediately after that issuer takes the decision to delay disclosure. However, competent authorities should not be required to authorise those delays**~~.

(62) Article 18(1) of Regulation (EU) No 596/2014 obliges issuers and any person acting on their behalf or on their account to draw up and to keep updated a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise perform tasks through which they have access to inside information, including advisers, accountants and credit rating agencies. Article 18(6) of Regulation (EU) No 596/2014, however, restricts that obligation for issuers whose financial instruments are admitted to trading on an SME growth market. Those issuers are to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information. ~~**Given the availability of other existing supervisory enforcement tools, it is appropriate to use the same approach for all issuers, rather than only for issuers whose financial instruments are admitted to trading on an SME growth market.**~~

(63) In some Member States, insider lists are considered particularly important for ensuring a high level of market integrity. For that reason, Article 18(6), second subparagraph, of Regulation (EU) No 596/2014 allows Member States to require issuers on SME growth markets to draw up the more extensive insider lists that include all persons who have access to inside information, however, on the basis of an alleviated format, requiring less information. To avoid excessive regulatory burden, while maintaining the essential information for competent authorities to investigate market abuse breaches, such an alleviated format should be used for all insider lists. ~~**Nevertheless, the option for Member States set out in Article 18(6), second subparagraph, of Regulation (EU) No 596/2014 should be maintained, provided that its use is justified by national market integrity concerns, and provided that it is only used in relation to issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years. To ensure proportionate treatment of SMEs, that option should not be used for SME growth markets. To facilitate companies' first time access to regulated markets as well as the companies' transition from SME growth markets to regulated markets, issuers whose securities have been admitted to trading on a regulated market for less than 5 years should also not be obliged to draw up more extensive lists.**~~

(64) Article 19 of Regulation (EU) No 596/2014 provides for preventive measures against market abuse and, more specifically, insider dealing, concerning persons discharging managerial responsibilities and persons closely associated with them. Such measures range from notification of transactions carried out on financial instruments of the relevant issuer to the prohibition to conduct transactions on such instruments in certain defined periods. In particular, Article 19(8) of Regulation (EU) No 596/2014 provides that persons discharging managerial responsibilities have to notify the issuer and the competent authority where those persons have transactions reaching the threshold of EUR 5 000 in a calendar year, as well as any subsequent transaction in the same year. The notifications concern, as regards issuers, transactions conducted by persons discharging managerial responsibilities or persons closely associated with them on their own account relating either to the shares or debt instruments of that issuer, or to derivatives or other financial instruments linked thereto. In addition to the EUR 5 000 threshold, Article 19(9) of Regulation (EU) No 596/201 provides that competent authorities may decide to increase the threshold to EUR 20 000.

(65) In order to avoid an undue requirement for persons discharging managerial responsibilities to report and for companies to disclose transactions which would not be meaningful to investors, it is appropriate to raise the threshold for reporting and related disclosure from EUR 5 000 to EUR 20 000, while allowing competent authorities to increase that threshold further, where justified.

(66) Article 19(11) of Regulation (EU) No 596/2014 prohibits persons discharging managerial responsibilities to trade, during a period of 30 calendar days before their company's financial reporting (closed period), shares or debt instruments of the issuer or derivatives or other financial instruments linked to them, unless the issuer gives his or her consent and specific circumstances are met. That exemption from the closed period requirement currently includes employee shares or saving schemes as well as qualifications or entitlement of shares. In order to promote consistency of rules across different asset classes that exemption should be expanded to include among the exempted employees' schemes those concerning financial instruments other than shares and also to cover the qualification or entitlement of instruments other than shares.

(67) Certain transactions or activities carried out by the person discharging managerial responsibilities during the closed period may relate to irrevocable arrangements entered into outside of a closed period. Those transactions or activities may also result from a discretionary asset management mandate executed by an independent third party under a discretionary asset management mandate. Such transactions or activities may also be the consequence of duly authorised corporate actions not implying advantageous treatment for the person discharging managerial responsibilities. Furthermore, those transactions or activities may be the consequence of the acceptance of inheritances, gifts and donations, or the exercise of options, futures, or other derivatives agreed outside the closed period. All such activities and transactions, do not, in principle, involve active investment decisions by the persons discharging managerial responsibilities. Prohibiting such transactions or activities throughout the closed period would excessively restrict the freedom of persons discharging managerial responsibilities, as there is no risk that they will benefit from an informational advantage. In order to ensure that the prohibition to trade in closed period applies only to transactions or activities that depend on the wilful investment activity of the person discharging managerial responsibilities, that prohibition should not cover transactions or activities that depend **exclusively** on external factors or that do not involve

active investment **or active involvment** decisions by the persons discharging managerial responsibilities.

(68) The increasing integration of markets heightens the risk of cross-border market abuses. To protect market integrity, competent authorities should cooperate in a swift and timely manner, also with ESMA. To strengthen such cooperation, ESMA should be able to act ~~on its own~~ **at the** initiative **of one or more competent authorities** to facilitate the collaboration of competent authorities with a possibility to coordinate the investigation or inspection that has cross-border effect. Collaboration platforms established by the European Insurance and Occupational Pensions Authority have proven to be useful as a supervisory tool to strengthen the exchange of information and to enhance collaboration among authorities. It is therefore appropriate to introduce the possibility also for ESMA to, **at the initiative of one or more competent authorities,** set up and coordinate such platforms in the field of securities markets when there are concerns about market integrity or the good functioning of markets. Considering the strong relations between financial and spot markets, ESMAshould also**, at the initiative of one or more competent authorities,** be able to set up such platforms ~~also~~ with public bodies monitoring wholesale commodity markets **as well**, including the Agency for the Cooperation of Energy Regulators (ACER), when such concerns affect both financial and spot markets.

(69) The monitoring of order ~~book~~ data is crucial for the surveillance of market activity. Competent authorities should therefore have easy access to data that they need for their supervisory activity. Some of those data concern instruments that are traded in a trading venue located in another Member State. To enhance the effectiveness of supervision, competent authorities should set up a mechanism to exchange order ~~book~~ data on an ongoing basis. Considering its technical expertise, ESMA should draft implementing technical standards specifying the arrangements required by that mechanism for the exchange of order **data** ~~book~~ among competent authorities. To ensure that the scope of that mechanism for exchanging order ~~book~~ data is proportionate in relation to its use, only competent authorities that supervise markets that have a high level of cross-border activity should be obliged to participate to that mechanism. **Other Member States with competent authorties that would like to take part in the mechanism on a voluntary basis should apply the same provisions and contribute to the funding of the mechanism. ESMA has demonstrated its expertise in setting up data exchange hubs, such as the exchange of transaction reporting data through the proven implementation of TREM or EMIR**

data access under TRACE. Therefore, participating competent authorities would be able to set up this new mechanism to exchange order data by delegating the project development to ESMA. The **list of trading venues that have a significant cross-border dimension** ~~**level of cross-border dimensions**~~ should be determined by the Commission in a delegated act **by taking into account for each class of financial instruments at least the trading volume on that trading venue as well as the trading volume on that trading venue in financial instruments for which the competent authority of the most relevant market differs from the competent authority of that trading venue**. Furthermore, that mechanism for exchanging order ~~**book**~~ data should at first only concern shares, **before being extended to** bonds and futures, considering the relevance of those financial instruments in terms of both cross-border trading and market manipulation. However, to ensure that such mechanism for exchanging order ~~**book**~~ data ~~**takes into account**~~ **reflects** developments in financial markets and the capacity of competent authorities to process new data, the Commission should be empowered to broaden the scope of instruments the order ~~**book**~~ data of which can be exchanged through that mechanism **and potentially postpone the inclusion of bonds and futures, taking into account ESMA's analysis of the deployment of the mechanism, particularly in terms of costs**.

(70) The monitoring of order ~~**book**~~ data is crucial for the supervision of markets by competent authorities. To enhance that monitoring through technological developments, competent authorities should be able to access order ~~**book**~~ data not only on an ad-hoc request, but also on an ongoing basis. Moreover, to facilitate the processing of order ~~**book**~~ data by national competent authorities, it is necessary to harmonise the format of such data.

(71) ~~**Administrative sanctions imposed in cases of infringements related to the disclosure regime (public disclosure of inside information, insider lists and managers' transactions) are set out as a minimum of the maximum, which allows Member States to set a higher level of the maximum sanctions in national law.**~~ The risk of inadvertent breach of disclosure requirements under Regulation (EU) No 596/2014 and associated administrative sanctions are an important factor that dissuades companies from seeking admission to trading. To avoid an excessive burden on companies, in particular SMEs**,** **including micro-sized enterprises,** the **final amount of** sanctions for infringements committed by legal persons in relation to disclosure requirements should be proportionate to the size of the company~~**, while considering all relevant circumstances under Article 31 of Regulation (EU) No 596/2014.**~~ **Points** ~~**Those sanctions should be determined based on**~~

~~the total annual turnover of the company~~ **(j)(iii) and (iv) of Article 30(2) of Regulation (EU) No 596/2014 establish a minimum of the maximum amount of the sanctions that can be imposed by a national competent authority in an infringement related to the disclosure regime. To ensure proportionality,~~. The sanctions~~ such amounts should be** determined**, as a general rule,** based **on the total annual turnover of the company. Nevertheless, where by applying the maximum established in national law based on the total annual turnover, the final amount of the sanction imposed** ~~on absolute amounts should be applied exceptionally and only if competent authorities deem that the amount of the administrative sanction based on the total annual turnover~~ would be disproportionately low in light of the circumstances set out in Article 31 of Regulation (EU) No 596/2014**, Member States should ensure that national competent authorities may increase the final amount of sanctions, by taking into account the maximum established in national law, as expressed in absolute amounts.** In those cases, it is also appropriate **to allow each Member states** to ~~lower~~ **in** ~~their~~ **its national law apply a lower** ~~the minimum of~~ **the** maximum level of sanctions for SMEs, as expressed in absolute amounts, ~~in order~~ **as a way to ensure their proportionate treatment**. **Nevertheless, a Member State should be allowed to establish in its national law the same maximum as expressed in absolute amounts for all types of issuers.**

(72) Regulations (EU) No 596/2014, (EU) No 600/2014 and (EU) 2017/1129 should therefore be amended accordingly.

(73) When processing personal data within the framework of ~~this~~ Regulation (EU) No 596/2014, competent authorities should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council[19]. With regard to the processing of personal data by ESMA within the framework of that Regulation, ESMA should comply with the Regulation (EU) No 2018/1725 of the European Parliament and of the Council[20]. In particular, ESMA and national competent authorities shall keep personal data for no longer than is necessary for the purposes for which the personal data are processed.

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19 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).

20 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(74) In order to specify the requirements set out in this Regulation, in accordance with its objectives, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of revising the format and content of the prospectus, **specifying the reduced content and the standardised format and sequence for the EU Follow-on prospectus and the EU Growth issuance prospectus** ~~**and the reduced content and the standardised format of the specific summary**~~, fostering convergence in the scrutiny and approval of the prospectus by competent authorities, further specifying general equivalence criteria for prospectuses drawn up by third country issuers, ~~**determining the minimum content of cooperation arrangements between ESMA and third country supervisory authorities, pursuant to Regulation (EU) 2017/1129,**~~ as well as revising the alleviated template setting out the list of persons who have access to inside information, and expanding the list of financial instruments to enable competent authorities to obtain order ~~**book**~~ data, pursuant to Regulation (EU) No 596/2014. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[21]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States'' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(75) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, as the measures introduced require full harmonisation across the Union, but can rather, by reason of scale and effects be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

[21] OJ L 123, 12.5.2016, p. 1.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2017/1129

Regulation (EU) 2017/1129 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraph 4 is amended as follows:

(i) the following points (da) and (db) are inserted:

‘(da) an offer of securities to be admitted to trading on a regulated market or an SME growth market and that are fungible with securities already admitted to trading on the same market, provided that they represent, over a period of 12 months, less than ~~**40 %**~~**30 %** of the number of securities already admitted to trading on the same market**, provided that a document containing the information set out in Annex IX is filed, in electronic format, with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2) at the same time as it is filed with the competent authority**;

(db) an offer of securities fungible with securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities, provided that all of the following conditions are met:

(i) the securities offered to the public are not issued in connection with a takeover by means of an exchange offer, a merger or a division;

(ii) the issuer of the securities is not ~~**under**~~ **subject to a restructuring or** ~~**an**~~ insolvency ~~**or restructuring procedure**~~ **proceedings**;

(iii) a document containing the information set out in Annex IX is filed**, in electronic format,** with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2) **at the same time as it is filed with the competent authority**.;

(ii) in point (j), the introductory wording is replaced by the following:

'(j) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities:';

(iii) point (l) is deleted;

(iv) the following subparagraphs are added:

'The document referred to in **the first subparagraph,** point **(da) and** (db)(iii), shall have a maximum length of **12~~10~~** sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.

The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (j), shall take into account the total aggregated consideration of all **ongoing offers to the public and** offers of securities **made** to the public **~~that have been made in~~ within** the 12 months preceding the start date of a new offer of securities to the public, except **for** those offers of securities to the public **for which a prospectus was published or** that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph, or pursuant to Article 3(2). **Moreover, the total aggregated consideration of the securities offered to the public shall include all types and classes of securities offered.**';

(c) paragraph 5 is amended as follows:

(i) the first subparagraph is amended as follows:

(1) points (a) and (b) are replaced by the following:

‘(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than ~~**40 %**~~**30 %** of the number of securities already admitted to trading on the same regulated market,

(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than ~~**40 %**~~**30 %** of the number of shares of the same class already admitted to trading on the same regulated market, subject to the ~~**third**~~**second** subparagraph;’;

(2) the following point (ba) is inserted:

‘(ba) securities fungible ~~**either**~~ with securities that have been admitted to trading on a regulated market continuously for at least the last 18 months before the admission to trading of the new securities, ~~**or with securities that have been offered to the public with a prospectus and admitted to trading on an SME growth market continuously for at least the last 18 months before the admission to trading of the new securities,**~~ provided that all of the following conditions are met:

(i) the securities to be admitted to trading on a regulated market are not issued in connection with a takeover by means of an exchange offer, a merger or a division;

(ii) the issuer of the securities is not ~~under~~ **subject to a restructuring or** ~~an~~ insolvency ~~or restructuring procedure~~ **proceedings**;

(iii) a document containing the information set out in Annex IX is filed**, in electronic format,** with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2) **at the same time as it is filed with the competent authority**.’**;**

(3) in point (i), the introductory wording is replaced by the following:

‘(i) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 150 000 000 per credit institution calculated over a period of 12 months, provided that those securities:’;

(4) points (j) and (k) are deleted;

(ii) in the second subparagraph the introductory wording is replaced by the following:

‘The requirement that the resulting shares represent, over a period of 12 months, less than **30 %**~~40 %~~ of the number of shares of the same class already admitted to trading on the same regulated market as referred to in the first subparagraph, point (b), shall not apply in any of the following cases:’;

(iii) the following two subparagraphs are added:

'The document referred to in **the first subparagraph,** point (ba)(iii)**,** shall have a maximum length of **12~~10~~** sides of A4-sized paper when printed, shall be presented and laid out in a way that is easy to read, using characters of readable size and shall be drawn up in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.

The total aggregated consideration of the offers of securities to the public referred to in the first subparagraph, point (i), shall take into account the total aggregated consideration of all **ongoing offers to the public and** offers of securities **made** to the public ~~**that have been made**~~ **with**in the 12 months preceding the start date of a new offer of securities to the public, except for those offers of securities to the public **for which a prospectus was published or** that were subject to any other exemption from the obligation to publish a prospectus in accordance with the first subparagraph~~**, or pursuant to Article 3(2)**~~.'; **Moreover, the total aggregated consideration of the securities offered to the public shall include all types and classes of securities offered.**

(d) paragraph 6 is replaced by the following:

'6. The exemptions from the obligation to publish a prospectus that are set out in paragraphs 4 and 5 may be combined together. However, the exemptions in paragraph 5, first subparagraph, points (a) and (b), shall not be combined together where such combination could lead to the immediate or deferred admission to trading on a regulated market over a period of 12 months of more than **30 %** ~~**40 %**~~ of the number of shares of the same class already admitted to trading on the same regulated market, without a prospectus being published.';

(2) Article 2 is amended as follows:

~~(a) point (z) is deleted;~~

~~(b~~ a) the following points ~~(da) and (db)~~ are inserted:

'(da) 'restructuring' means restructuring as defined in Article 2(1), point (1), of Directive (EU) 2019/1023 of the European Parliament and of the Council [*1];

(db) 'insolvency proceedings' means insolvency proceedings as defined in Article 2(4) of Regulation (EU) 2015/848 of the European Parliament and of the Council[*2];

(c) point (r) is amended as follows:

(r) 'approval' means the positive act at the outcome of the scrutiny by the home Member State's competent authority of the completeness, the consistency and the comprehensibility of the information given in the prospectus, but does not concern the accuracy of that information".

(~~b~~**d**) **point z is deleted;**

(~~c~~e) the following point (za) is added:

'(za) 'electronic format' means an electronic format as defined in Article 4(1), point (62a) of Directive 2014/65/EU**.';~~;~~'~~.~~

[*1] **Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).**

[*2] **Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (OJ L 141, 5.6.2015, p. 19).';**

(3) in Article 3, paragraphs 1 and 2 are replaced by the following:

'1. Without prejudice to Article 1(4) and paragraph 2 of this Article, securities shall only be offered to the public in the Union after prior publication of a prospectus in accordance with this Regulation.

2. Without prejudice to Article 4, a Member State shall exempt offers of securities to the public from the obligation to publish a prospectus set out in paragraph 1 provided that:

(a) such offers are not subject to notification in accordance with Article 25;

(b) **the** total aggregated consideration in the Union for the securities offered is less than EUR 12 000 000 per issuer or offeror calculated over a period of 12 months.

By way of derogation from the first subparagraph, point (b), Member States may instead exempt offers of securities to the public from the obligation to publish a prospectus set out in paragraph 1 provided that the total aggregated consideration in the Union for the securities offered is less than EUR 5 000 000 per issuer or offeror calculated over a period of 12 months.

Member States shall notify the Commission and ESMA whether they decide to apply the exemption threshold of EUR 5 000 000 pursuant to the second subparagraph. They shall also notify the Commission and ESMA of any subsequent decision to adopt instead the exemption threshold of EUR 12 000 000 referred to in the first subparagraph, point (b).

The total aggregated consideration for the securities offered **to the public**, as referred to in the first subparagraph, point (b) **and in the second subparagraph**, shall take into account the total aggregated consideration of all **ongoing offers to the public and** offers of securities **made** to the public ~~**that have been made**~~ **with**in the 12 months preceding the start date of a new offer of securities to the public, except **for** those offers of securities to the public **for which a prospectus was published or** that were subject to any exemption from the obligation to publish a prospectus pursuant to Article 1(4), first subparagraph. **Moreover, the total aggregated consideration of the securities offered to the public shall include all types and classes of securities offered.**

Where an offer of securities to the public is exempted from the obligation to publish a prospectus pursuant to the first **or second** subparagraph, a Member State may require other disclosure requirements at national level, to the extent that such requirements do not constitute **a prospectus or** a disproportionate or unnecessary burden.';

(4) in Article 4, paragraph 1 is replaced by the following:

'1. Where an offer of securities to the public or an admission of securities to trading on a regulated market is exempted from the obligation to publish a prospectus in accordance with Article 1(4) or (5) or Article 3(2), an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to voluntarily draw up a prospectus in accordance with this Regulation.';

(5) in Article 5(1), the first subparagraph is replaced by the following:

'Any subsequent resale of securities which were previously the subject of one or more of the types of offer of securities to the public listed in Article 1(4), points (a) to (db), shall be considered as a separate offer and the definition set out in Article 2, point (d), shall apply for the purpose of determining whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus unless one of the exemptions listed in Article 1(4), points (a) to (db) applies in relation to the final placement.';

(6) Article 6 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'Without prejudice to Article 14b(2), Article 15a(2) and Article 18(1), a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:';

(b) paragraph 2 is replaced by the following:

'2. The prospectus shall be a document of a standardised format and the information disclosed in a prospectus shall be presented in a standardised sequence, in accordance with delegated acts referred to in Article 13(1). The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form, taking into account the factors set out in paragraph 1, second subparagraph, of this Article.';

By way of derogation from the first subparagraph and from paragraph 4, information included in a universal registration document may be included without regard to the standardised format, the standardised sequence and the maximum length';

(c) the following paragraphs 4 and 5 are added:

'4. A prospectus that relates to shares ~~**or other transferrable securities equivalent to shares in companies**~~ shall be of maximum length of 300 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.

5. The summary, the information incorporated by reference in accordance with Article 19**,** ~~**or**~~ the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Commission Delegated Regulation (EU) 2019/980 ***3**~~***1**~~, **or in the case of a significant gross change, as referred to in Article 1(e) of that Delegated Regulation,** shall not be taken into account for the maximum length referred to in paragraph 4 of this Article.

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***3*1** Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).';

(7) Article 7 is amended as follows:

(a) in paragraph 3, the following subparagraph is added:

'Without prejudice to the first subparagraph of this paragraph, the summary may present or summarise information in the form of charts, graphs or tables.';

(b) in paragraph 4, the introductory wording is replaced by the following:

'The summary shall be made up of the following four sections in the following order:';

(c) paragraph 5 is amended as follows:

(i) in the first subparagraph, the introductory wording is replaced by the following:

'The section referred to in paragraph 4, point (a), shall contain the following information in the following order:';

(ii) in the second subparagraph, the introductory wording is replaced by the following:

'It shall contain the following warnings in the following order:';

(d) in paragraph 6, the introductory sentence is replaced by the following:

'The section referred to in paragraph 4, point (b), shall contain the following information in the following order:';

(e) paragraph 7 is amended as follows:

(i) the introductory sentence is replaced by the following:

'The section referred to in paragraph 4, point (c), shall contain the following information in the following order:';

(ii) the fifth subparagraph is replaced by the following:

'Where the summary contains the information referred to in the first subparagraph, point (c), the maximum length set out in paragraph 3 shall be extended by one additional side of A4-sized paper~~**, where there is one guarantor only, or by one3 additional sides of A4-sized paper**~~ **per guarantor,** ~~**where there are more guarantors,**~~ **provided that the additional sides of A4-sized paper are dedicated to the description of the guarantors**.';

(f) in paragraph 8, the introductory sentence is replaced by the following:

'The section referred to in paragraph 4, point (d), shall contain the following information in the following order:';

(g) paragraph 12a is deleted;

(h) the following paragraph 12b is added:

'12b. By way of derogation from paragraphs 3 to 12 of this Article **~~and subject to paragraph 1 subparagraph 2 points (a) and (b) of this Article~~**, an EU Follow-on prospectus drawn up in accordance with Article 14b **~~or an EU Growth issuance document drawn up in accordance with Article 15a~~** shall contain a summary drawn up in accordance with this paragraph.

By way of derogation from paragraphs 3 to 12 of this Article, an EU Growth issuance prospectus drawn up in accordance with Article 15a shall contain a summary drawn up in accordance with this paragraph.

The summary of an EU Follow-on prospectus or of an EU Growth issuance **prospectus~~document~~** shall be drawn up as a short document written in a concise manner and of a maximum length of 5 sides of A4-sized paper when printed.

The summary of an EU Follow-on prospectus or of an EU Growth issuance **prospectus~~document~~** shall not contain cross-references to other parts of the prospectus or incorporate information by reference and shall comply with the following requirements:

(a) it shall be presented and laid out in a way that is easy to read, using characters of readable size;

(b) it shall be written in a language that is clear, non-technical, concise and comprehensible for investors and in a style that facilitates the understanding of the information;

(c) it shall be made up of the following four sections in the following order:

(i) an introduction, containing all of the information referred to in paragraph 5 of this Article, including warnings and the date of approval of the EU **Follow-on~~Secondary~~** prospectus or of the EU Growth issuance **prospectus~~document~~**;

(ii) key information on the issuer;

(iii) key information on the securities, including the rights attached to those securities and any limitations on those rights;

(iv) key information on the offer of securities to the public or the admission to trading on a regulated market, or both;

(v) where there is a guarantee attached to the securities, key information on the guarantor and on the nature and scope of the guarantee.

Without prejudice to the ~~**third**~~ **fourth** subparagraph, points (a) and (b), the summary of an EU Follow-on prospectus or of an EU Growth issuance **prospectus**~~**document**~~ may present or summarize information in the form of charts, graphs or tables.

Where the summary of an EU Follow-on prospectus or of an EU Growth issuance **prospectus**~~**document**~~ contains the information referred to in the third subparagraph, point (c)(v), the maximum length as referred to in the second subparagraph shall be extended by one additional side of A4-sized paper~~**, where there is one guarantor only, or by one3 additional sides of A4-sized paper**~~ **per guarantor,** ~~**where there are more guarantors,**~~ **provided that the additional sides of A4-sized paper are dedicated to the description of the guarantors**.';

(8) in Article 9(2), the second subparagraph is replaced by the following:

'After the issuer has had a universal registration document approved by the competent authority for one financial year, subsequent universal registration documents may be filed with the competent authority without prior approval.';

(9) in Article 11(2), second subparagraph, the introductory part is replaced by the following:

'However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary pursuant to Article 7, including any translation thereof, unless:';

(10) Article 13 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

'The Commission shall **by [18 months after entry into force of this Regulation]** adopt delegated acts in accordance with Article 44 to supplement this Regulation regarding the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.';

(ii) in the second subparagraph, the following points (f) and (g) are added:

'(f) whether the issuer **of equity securities** is required to provide sustainability reporting, together with the related assurance opinion, in accordance with Directive 2004/109/EC and Directive 2013/34/EU of the European Parliament and of the Council[*24];

(g) whether non-equity securities offered to the public or admitted to trading on a regulated market are advertised as taking into account environmental, social or governance (ESG) factors or pursuing ESG objectives.

[*4*2] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).';

(b) in paragraph 2, the first subparagraph is replaced by the following:

'The Commission shall **by [18 months after entry into force of this Regulation]** adopt delegated acts in accordance with Article 44 to supplement this Regulation by setting out the schedule specifying the minimum information to be included in the universal registration document.';

(c) paragraph 3 is replaced by the following:

'3. The delegated acts referred to in paragraphs 1 and 2 shall ~~**be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, in particular by the International Organisation of Securities Commissions (IOSCO) and**~~ comply with Annexes I, II and III to this Regulation.';

(11) Articles 14 and 14a are deleted;

(12) the following Article 14b is inserted:

'*Article 14b*

EU Follow-on prospectus

1. The following persons may draw up an EU Follow-on prospectus in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market:

(a) issuers whose securities have been admitted to trading on a regulated market ~~**or an SME growth market**~~ continuously for at least the 18 months preceding the offer to the public or the admission to trading on a regulated market of the new securities;

(b) issuers whose securities have been admitted to trading on an SME growth market continuously for at least the 18 months preceding the offer to the public of the new securities;

(c) issuers who seek admission to trading on a regulated market of securities fungible with securities that have been ~~offered to the public with a prospectus and~~ admitted to trading on an SME growth market continuously for at least the last 18 months preceding the admission to trading of the ~~new~~ securities;

(d~~b~~) offerors of securities admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of securities to the public~~.~~**;**

~~**(c) issuers referred to in Article 15a(1) points (a) and (b) whose securities have been admitted to trading on an SME growth market continuously for at least the last 18 months preceding the offer to the public or admission to trading on a regulated market, provided that those issuers have no securities already admitted to trading on a regulated market.**~~

By way of derogation from the first subparagraph, an issuer who has only non-equity securities admitted to trading on a regulated market or an SME growth market shall not be allowed to draw up an EU Follow-on prospectus for the admission to trading of equity securities on a regulated market. ~~**Moreover, issuers and offerors referred to in Article 15a(1) points (c) and (d) shall not be allowed to draw up an EU Follow-on prospectus.**~~

2. By way of derogation from Article 6(1), and without prejudice to Article 18(1), the EU Follow-on prospectus shall contain all the information that investors need to understand all of the following:

(a) the prospects and financial performance of the issuer and the significant changes in the financial and business position of the issuer that have occurred since the end of the last financial year, if any;

(b) the essential information on the securities, including the rights attached to those securities and any limitations on those rights;

(c) the reasons for the issuance and its impact on the issuer, including on the overall capital structure of the issuer, and the use of proceeds.

3. The information contained in the EU Follow-on prospectus shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors, especially retail investors, to make an informed investment decision, taking into account the regulated information that has already been disclosed to the public pursuant to Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, information referred to in Commission Delegated Regulation (EU) 2017/565[*5~~*3~~].

4. The EU Follow-on prospectus **may**~~**shall**~~ be drawn up as a single document **or as separate documents.**

The EU Follow-on prospectus shall contain~~**ing**~~ the minimum information set out in Annex IV or Annex V, depending on the types of securities.

5. An EU Follow-on prospectus that relates to shares ~~or other transferable securities equivalent to shares in companies~~ shall be of maximum length of 50 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.

6. The summary, the information incorporated by reference in accordance with Article 19 of this Regulation**,** ~~or~~ the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Delegated Regulation (EU) 2019/980, **or the information to be provided in the case of a significant gross change, as referred to in Article 1(e) of that Delegated Regulation,** shall not be taken into account for the maximum length referred to in paragraph 5 of this Article.

7. The EU Follow-on prospectus shall be a document of a standardised format and the information disclosed in an EU Follow-on prospectus shall be presented in a standardised sequence based on the order of disclosure set out in Annex IV or Annex V, depending on the types of securities.

By way of derogation from the first subparagraph and from paragraph 5, information included in a universal registration document may be included without regard to the standardised format, the standardised sequence and the maximum length.

8. The Commission shall, by [18 months after entry into force of this Regulation], adopt delegated acts in accordance with Article 44 to supplement this Regulation by specifying the reduced content and the standardised format and sequence for the EU Follow-on prospectus, as well as the reduced content and the standardised format of the specific summary.

Those delegated acts shall be based on Annexes IV and V.

~~*5~~*3 Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).';

(13) Article 15 is deleted;

(14) the following Article 15a is inserted:

‘*Article 15a*

EU Growth issuance prospectus~~document~~

1. Without prejudice to Article 1(4) and Article 3(2), the following persons **may choose to~~shall~~** draw up an EU Growth issuance **prospectus~~document~~** in the case of an offer of securities to the public, provided that they have no securities admitted to trading on a regulated market:

(a) SMEs;

(b) issuers, other than SMEs, whose securities are, or are to be admitted to trading on an SME growth market;

(c) issuers, other than those referred to in points (a) and (b), where the total aggregated consideration in the Union for the securities offered to the public is less than EUR 50 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499;

(d) offerors of securities that have been issued by issuers as referred to in points (a) and (b).

~~**By way of derogation from the first subparagraph, the persons referred to in points (a) and (b) of that subparagraph, whose securities have been admitted to trading on an SME growth market continuously for at least the last 18 months, may draw up an EU Follow-on prospectus in the case of an offer of securities to the public or an admission to trading on a regulated market, provided that those issuers have no securities already admitted to trading on a regulated market.**~~

The total aggregated consideration for the securities offered to the public, as referred to in the first subparagraph, point (c), shall take into account the total aggregated consideration of all **ongoing offers to the public and** offers of securities **made** to the public ~~**that have been made with**~~in the 12 months preceding the start date of a new offer of securities to the public, except for **those** offers of securities to the public **for which a prospectus was published or** that were subject to any exemption from the obligation to publish a prospectus **pursuant to**~~**in accordance with**~~ Article 1(4), first subparagraph, or pursuant to Article 3(2). **Moreover, the total aggregated consideration of the securities offered to the public shall include all types and classes of securities offered.**

2. By way of derogation from Article 6(1) and without prejudice to Article 18(1), an EU Growth issuance **prospectus**~~**document**~~ shall contain the relevant reduced and proportionate information that is necessary to enable investors to understand the following:

(a) the prospects and financial performance of the issuer and the significant changes in the financial and business position of the issuer since the end of the last financial year, if any, as well as its growth strategy;

(b) the essential information on the securities, including the rights attached to those securities and any limitations on those rights;

(c) the reasons for the issuance and its impact on the issuer**, including** on the overall capital structure of the issuer, and the use of proceeds.

3. The information contained in the EU Growth issuance **prospectus**~~**document**~~ shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors in particular retail investors, to make an informed investment decision.

4. The EU Growth issuance **prospectus**~~**document**~~ shall be drawn up as a single document containing the information set out in Annex VII or Annex VIII, depending on the types of securities.

5. An EU Growth issuance **prospectus**~~**document**~~ that relates to shares ~~**or other transferable securities equivalent to shares in companies**~~ shall be of maximum length of 75 sides of A4-sized paper when printed and shall be presented and laid out in a way that is easy to read, using characters of readable size.

6. The summary, the information incorporated by reference in accordance with Article 19 or the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Delegated Regulation (EU) 2019/980, **or the information to be provided in the case of a significant gross change, as referred to in Article 1(e) of that Delegated Regulation,** shall not be taken into account for the maximum length referred to in paragraph 5 of this Article.

7. The EU Growth issuance **prospectus**~~**document**~~ shall be a document of a standardised format and the information disclosed in an EU Growth issuance **prospectus**~~**document**~~ shall be presented in a standardised sequence based on the order of disclosure set out in Annex VII or Annex VIII, depending on the types of securities.

8. The Commission shall, by [18 months after entry into force of this Regulation], adopt delegated acts in accordance with Article 44 to supplement this Regulation by specifying the reduced content and the standardised format and sequence for the EU Growth issuance prospectus~~**, as well as the reduced content and the standardised format of the specific summary.**~~

Those delegated acts shall be based on Annexes VII and VIII.';

(15) in Article 16, paragraph 1 is replaced by the following:

'1. The risk factors featured in a prospectus shall be limited to risks which are specific to the issuer and to the securities and which are material for taking an informed investment decision, as corroborated by the content of the prospectus.

A prospectus shall not contain risk factors that are generic, that only serve as disclaimers, or that do not give a sufficiently clear picture of the specific risk factors that investors are to be aware of.

When **assessing the materiality of the risk factors**~~**drawing up the prospectus**~~, issuers, offerors or persons asking for admission to trading on a regulated market shall **include in the assessment**~~**assess the materiality of the risk factors based on**~~ the probability of their occurrence and the expected magnitude of their negative impact.

The issuer, the offeror or the person asking for admission to trading on a regulated market shall adequately describe each risk factor, and explain how that risk factor affects the issuer, or affects the securities being offered or to be admitted to trading. Issuers, offerors or persons asking for admission to trading on a regulated market may also disclose the assessment of the materiality of the risk factors referred to in the third subparagraph by using a qualitative scale of low, medium or high, at their choice.

The risk factors shall be presented in a limited number of categories depending on their nature. **In each category at least the most material risk factor shall be mentioned first according to the assessment provided for in the third subparagraph.**';

(16) Article 17 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

'(a) the acceptances of the purchase or subscription of securities may be withdrawn for not less than 3 working days after the final offer price or amount of securities to be offered to the public has been filed; or';

(b) in paragraph 2, the following subparagraph is added:

'Where the final offer price referred to in the first subparagraph differs by no more than **10 %**~~**20 %**~~ from the maximum price disclosed in the prospectus as referred to in paragraph 1, point (b)(i), the issuer shall not be required to publish a supplement in accordance with Article 23(1). **Nevertheless,** ~~**T**~~**the acceptances of the purchase or subscription of securities may be withdrawn for not less than 3 working days after the final offer price/or amount of securities to be offered to the public has been filed**.';

(17) Article 19 is amended as follows:

(a) paragraph 1, first subparagraph, is amended as follows:

(i) the introductory wording is replaced by the following:

'Information that is to be included in a prospectus pursuant to this Regulation and the delegated acts adopted on the basis of it, shall be incorporated by reference in that prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the following documents:';

(ii) point (a) is replaced by the following:

'(a) documents which have been approved by a competent authority, or filed with it, in accordance with this Regulation, including a universal registration document or any sections therof;

(ii**i**) point (b) is replaced by the following:

‘(b) the documents referred to in Article 1(4), first subparagraph, points **(da),** (db) and (f) to (i), and in Article 1(5), first subparagraph, points (ba) and (e) to (h);’;

(iii**i**) point (f) is replaced by the fllowing:

‘(f) management reports as referred to in Chapters 5 and 6 of Directive 2013/34/EU including, where applicable, the sustainability reporting;’;

(b) the following paragraphs 1a**,** ~~**and**~~1b **and 1c** are inserted:

‘1a. Information that is not to be included in a prospectus may still be incorporated by reference in that prospectus on a voluntary basis, where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 and where it is contained in one of the documents referred to in paragraph 1, first subparagraph.

1b. An issuer, an offeror or a person asking for admission to trading on a regulated market shall not be required to publish a supplement pursuant to Article 23(1) for ~~**updating the**~~ **new** annual or interim financial information **published when** ~~**incorporated by reference in**~~ a base prospectus ~~**that**~~ is still valid under Article 12(1)**,** ~~**provided that such updated annual or interim financial information is incorporated by reference in that base prospectus in accordance with Article 19. Where that new annual or interim financial information is published electronically, it may be incorporated by reference in the base prospectus in accordance with pargraph (1)(d). However, an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to voluntarily publish a supplement for updating the annual or interim financial such information in a base prospectus that is still valid under Article 12(1)**.’;

1c. By way of derogation from paragraph 1, where a universal registration document is used as a constituent part of a prospectus, in accordance with Article 10(3) fourth subparagraph, incorporation by reference of the information contained in the documents referred to under points (c) to (i) of paragraph 1 shall not be mandatory.'

(c) paragraph 2 is replaced by the following:

'2. When incorporating information by reference, issuers, offerors or persons asking for admission to trading on a regulated market shall ensure that the information is available to the public ~~during the validity of the prospectus~~ in accordance with the arrangements set out in Article 21(2)~~(a)~~ and (7). Moreover, a cross-reference list shall be provided in the prospectus in order to enable investors to identify easily specific items of information, and the prospectus shall contain hyperlinks to all documents containing information which is incorporated by reference.';

(18) Article 20 is amended as follows:

(a) **in paragraph 2, the second subparagraph is replaced by the following:**

'Where the competent authority fails to take a decision on the prospectus within the time limits laid down in the first subparagraph of this paragraph and paragraphs 3 and 6, that competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market ~~and ESMA~~ of the reasons for not reaching a decision. However, such failure shall not be deemed to constitute approval of the application.';

(b) paragraph 6a is deleted;

~~**(cb) the following paragraph 6b is inserted:**~~

~~**'6b. By way of derogation from paragraphs 2 and 4, the time limits set out in paragraph 2, first subparagraph, and paragraph 4 shall be reduced to 7 working days for an EU Follow-on prospectus. The issuer shall inform the competent authority at least 5 working days before the date envisaged for the submission of an application for approval.';**~~

(**cd**~~**e**~~) paragraph 11 is replaced by the following:

'11. The Commission is empowered to adopt**, after consulting with ESMA,** delegated acts in accordance with Article 44 to supplement this Regulation by specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus, and all of the following:

(a) the circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus, where deemed necessary for investor protection, and the type of additional information that may be required to be disclosed ~~**in such circumstances**~~ **under the additional criteria**;

~~**(b) the consequences for a competent authority that fails to take a decision on the prospectus as referred to in paragraph 2, second subparagraph;**~~

(**be**) the maximum **overall** timeframe **within which the scrutiny of the prospectus shall be finalised and a decision reached by the competent authority**~~**for a competent authority to finalise the scrutiny of the prospectus and to reach a decision**~~ on whether that prospectus is approved~~**,**~~ or whether the approval is refused and the review process terminated**, and the conditions for possible derogations from this timeframe**.

The maximum timeframe referred to in point (**be**) shall **take into account point (a) of this paragraph, the average number of iterations between the issuer, offeror and the person asking for admission to trading on a regulated market and the competent authority within the same application for approval of a draft prospectus, and the timeframes laid down in paragraps 2 to 4 and 6 ~~include any competent authority's requests to issuers to change the prospectus or provide supplementary information, as referred to in paragraph 4.';~~**

Where the competent authority fails to take a decision on the prospectus within the maximum timeframe referred to in point (b), such failure shall not be deemed to constitute approval of the prospectus.';

(**ded**) paragraph 13 is **deleted;~~replaced by the following:~~**

~~'13. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall organise and conduct, at least once every 3 years, at least one peer review of the scrutiny and approval procedures of competent authorities, including notifications of approval between competent authorities. The peer review shall also assess the impact of different approaches with regard to scrutiny and approval by competent authorities on issuers' ability to raise capital in the Union. The report on the peer review shall be published by [43 years after the date of entry into force of this amending Regulation] and every 3 years thereafter. In the context of the peer review, ESMA shall take into account the advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.';~~

(19) Article 21 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be made available to the public at least **43** ~~43~~ working days before the end of the offer.';

(b) paragraph 5a is deleted;

(c) the following paragraphs ~~**5b and 5c**~~ are inserted:

'5b. An EU Follow-on prospectus shall be separately classified in the storage mechanism referred to in paragraph 6.

5c. An EU Growth issuance **prospectus**~~**document**~~ shall be classified in the storage mechanism referred to in paragraph 6 in a way that it is differentiated from the other types of prospectuses.';

(d) paragraph 11 is replaced by the following:

'11. A copy of the prospectus shall be delivered in electronic format to any potential investor, upon request and free of charge, by the issuer, the offeror, the person asking for admission to trading on a regulated market or the financial intermediaries placing or selling the securities.';

(20) Article 23 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within 3 working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy referred to in paragraph 1 arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.

The supplement shall contain a prominent statement concerning the right of withdrawal, which clearly states all of the following:

(a) a right of withdrawal is only granted to those investors who had already agreed to purchase or subscribe for the securities before the supplement was published and where the securities had not yet been delivered to the investors at the time when the significant new factor, material mistake or material inaccuracy arose or was noted;

(b) the period in which investors can exercise their right of withdrawal;

(c) whom investors may contact if they wish to exercise the right of withdrawal.’;

(b) paragraph 2a is deleted;

(c) paragraph 3 is replaced by the following:

'3. Where investors purchase or subscribe securities through a financial intermediary between the time when the prospectus for those securities is approved and the closing of the initial offer period, that financial intermediary shall:

(a) inform those investors of the possibility of a supplement being published, where and when it would be published, including on its website, and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such a case;

(b) inform those investors in which case the financial intermediary would contact them by electronic means pursuant to the second subparagraph to notify that a supplement has been published and subject to their agreement to be contacted by electronic means;

(c) offer those investors that agree to be contacted only by means other than electronic ones an opt-in for electronic contact solely for the purpose of receiving the notification of the publication of a supplement**.** ~~**The investor's agreement shall be valid until the end of the offer period**~~;

(d) warn those investors that do not agree to be contacted by electronic means and refuse the opt-in for electronic contact as referred to in point (c) to monitor the issuer's or the financial intermediary's website ~~**until the closing of the offer period or the delivery of the securities, whichever occurs first,**~~ to check whether a supplement is published.

Where the investors referred to in the first subparagraph of this paragraph have the right of withdrawal referred to in paragraph 2, the financial intermediary shall contact those investors by electronic means ~~**by**~~ **no later than** the end of the first working day following that on which the supplement is published.

Where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the possibility of a supplement being published**, where** and **when** ~~**where**~~ it would be published and that, in such a case, they could have a right to withdraw the acceptance.';

(d) paragraph 3a is deleted;

(e) the following paragraph 4a is inserted:

'4a. A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus.';

(f) the following paragraph 8 is added:

'8. ESMA shall by [2 years after the date of entry into force of this amending Regulation] develop guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus.';

(21) Article 27 is amended as follows:

(a) paragraph~~s 1 and~~ 2 **is~~are~~** replaced by the following:

~~'1. Where an offer of securities to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authority of the home Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.~~

~~The summary referred to in Article 7 shall be available in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State. That competent authority shall not require the translation of any other part of the prospectus~~.

2. Where an offer of securities to the public is made or admission to trading on a regulated market is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by **the competent authorities of the home and host Member States** ~~**the competent authorities of each of those Member States**~~ or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

The summary referred to in Article 7 shall be available in the official language of each Member State, or at least one of the official languages of each Member State, or in another language accepted by the competent authority of each Member State. Member States shall not require the translation of any other part of the prospectus.';

(b) paragraph 3 is deleted;

(c) paragraph 4 is replaced by the following:

'4. The final terms shall be drawn up in the same language as the language of the approved base prospectus.

The summary of the individual issue shall be available in the official language of the home Member State, or at least one of its official languages, or in another language accepted by the competent authority of that Member State.

When, in accordance with Article 25(4), the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with paragraph 2, second subparagraph.';

(22) Article 29 is replaced by the following:

'*Article 29*

Equivalence

1. A third country issuer may **offer securities to the public in the Union or** seek admission to trading of securities on a regulated market established in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that all of the following conditions are met:

(a) the Commission has adopted an implementing act in accordance with paragraph 5;

(b) the third country issuer has filed the prospectus with the competent authority of its home Member State;

(c) the third country issuer has provided a written confirmation that the prospectus has been approved by a third country supervisory authority and has provided the contact details of that authority;

(d) the prospectus fulfils the language requirements set out in Article 27;

(e) all relevant advertisements disseminated in the Union by the third country issuer comply with the requirements set out in Article 22(2) to (5);

(f) ~~**ESMA**~~ **The competent authority of the home Member State** has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.

~~**2. A third country issuer may also offer securities to the public in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of the third country issuer, provided that all the conditions referred to in points (a) to (f) of paragraph 1 are met and that the offer of securities to the public is accompanied with an admission to trading on either a regulated market or an SME growth market established in the Union**~~.

2.~~3.~~ Where, in accordance with paragraph~~s~~ 1 ~~**and 2**~~, a third country issuer offers securities to the public or seeks an admission to trading on a regulated market in a Member State other than the home Member State, the requirements set out in Articles 24, 25 and 27 shall apply.

3~~4~~. Where all criteria laid down in paragraph~~s~~ 1 ~~**and 2**~~, are met, the third country issuer shall have the rights and be subject to all obligations in accordance with this Regulation under the supervision of the competent authority of the home Member State.

4~~5~~. The Commission may adopt an implementing act, in accordance with the examination procedure referred to in Article 45(2), determining that the legal and supervisory framework of a third country ensures that a prospectus drawn up in accordance with the national law of that third country (hereinafter 'third country prospectus') complies with legally binding requirements which are equivalent to the requirements referred to in this Regulation, provided that all of the following conditions are met:

(a) the third country's legally binding requirements ensure that the third country prospectus contains the necessary information that is material to enable investors to make an informed investment decision in an equivalent way as the requirements laid down in this Regulation;

(b) where retail investors are enabled to invest in securities for which a third country prospectus is drawn up, that prospectus contains a summary providing the key information that retail investors need to understand the nature and the risks of the issuer, the securities and, where applicable, the guarantor, and that is to be read together with the other parts of that prospectus;

(c) the third country's laws, regulations and administrative provisions on civil liability apply to the persons responsible for the information given in the prospectus, including at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market and, where applicable, the guarantor;

(d) the third country's legally binding requirements specify the validity of the third country prospectus and the obligation to supplement the third country prospectus where a significant new factor, material mistake or material inaccuracy of the information included in that prospectus could affect the assessment of the securities, as well as the conditions for investors to exercise their withdrawal rights in such a case;

(e) the third country's supervisory framework for the scrutiny and approval of third country prospectuses and the arrangements for the publication of third country prospectuses have an equivalent effect as the provisions referred to in Articles 20 and 21.

The Commission may make the application of such implementing act subject to the effective and continuous compliance by a third country with any requirements set out in that implementing act.

5~~6~~. The Commission is empowered to adopt delegated acts, in accordance with Article 44, to supplement this Regulation by specifying further the **conditions**~~criteria~~ referred to in paragraph **4**~~5~~.';

~~(23) Article 30 is amended as follows:~~

~~(a) paragraph 1 is replaced by the following:~~

~~'1. For the purpose of Article 29 and, where deemed necessary, for the purpose of Article 28, ESMA shall establish cooperation arrangements with the supervisory authorities of third countries concerning the exchange of information between ESMA and the supervisory authorities of third countries concerned and the enforcement of obligations arising under this Regulation in third countries unless that third country, in accordance with a delegated act referred to in Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council[*4], is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union. Those cooperation arrangements shall ensure an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.~~

~~[*4] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).';~~

~~(b) paragraph 2 is deleted;~~

~~(c) paragraphs 3 and 4 are replaced by the following:~~

~~'3. ESMA shall establish cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 35. Such exchange of information shall be intended for the performance of the tasks of competent authorities.~~

~~**4. The Commission is empowered to adopt delegated acts in accordance with Article 44 to supplement this Regulation by determining the minimum content of the cooperation arrangements referred to in paragraph 1 and the template document to be used for such cooperation arrangements.';**~~

(2**34**) in Article 38(1), first subparagraph, point (a) is replaced by the following:

'(a) infringements of Article 3, Articles 5 and 6, Article 7(1) to (11) and (12b), Articles 8 to 10, Article 11(1) and (3), Article 14b(1), Article 15a(1), Article 16(1), (2) and (3), Articles 17 and 18, Article 19(1) to (3), Article 20(1), Article 21(1) to (4) and (7) to (11), Article 22(2) to (5), Article 23 (1), (2), (3), (4a) and (5), and Article 27;';

(2**45**) in Article 40, the second subparagraph is replaced by the following:

'For the purposes of Article 20, a right of appeal shall also apply where the competent authority has neither taken a decision to approve or to refuse an application for approval nor has made any request for changes or supplementary information within the time limits set out in Article 20(2), (3) **and**~~,~~ (6) ~~**and (6b)**~~ in respect of that application.';

(2**56**) Article 44 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The power to adopt delegated acts referred to in Article 1(7), Article 9(14), Article 13(1) and (2), **Article 14b(8), Article 15a(8),** Article 16(5), Article 20(11) **and**~~,~~ Article 29(**56**) ~~**and Article 30(4)**~~ shall be conferred on the Commission for an indeterminate period from 20 July 2017.

3. The delegation of powers referred to in Article 1(7), Article 9(14), Article 13(1) and (2), **Article 14b(8), Article 15a(8),** Article 16(5), Article 20(11) **and**~~,~~ Article 29(**56**) ~~**and Article 30(4)**~~ may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(b) paragraph 6 is replaced by the following:

'6. A delegated act adopted pursuant to Article 1(7), Article 9(14), Article 13(1) and (2), **Article 14b(8), Article 15a(8),** Article 16(5), Article 20(11) **and~~,~~** Article 29(**5~~6~~**) **~~and Article 30(4)~~** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.';

(2**6~~7~~**) Article 47 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

'(a) the types of issuers, in particular the categories of persons referred to in Article 15a(1), points (a) to (d) ;';

(b) in paragraph 2, point (a) is replaced by the following:

'(a) an analysis of the extent to which the disclosure regimes set out in Articles 14b, 15a, the universal registration document referred to in Article 9 are used throughout the Union;';

(c) the following paragraph 3 is added:

'3. In addition to the requirements set out in paragraphs 1 and 2, ESMA shall include in the report referred to in paragraph 1 the following information:

(a) an analysis of the extent to which the exemptions referred to in Article 1(4), first subparagraph, point**s (da)** and (db), and in Article 1(5), first subparagraph, point (ba), are used throughout the Union, including statistics on the documents referred to in those Articles that have been filed with competent authorities;

(b) statistics on the universal registration documents referred to in Article 9 that have been filed with competent authorities.';

(27**8**) Article 47a is deleted;

(28**9**) ~~in~~ Article 48 **is amended as follows:**~~,~~

(a) paragraphs 1 and 2 are replaced by the following:

'1. By 31 December…[5 years from date of the entry into force of this amending Regulation] the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, where appropriate, by a legislative proposal.

2. The report shall contain an assessment of, inter alia, whether the prospectus summary, the disclosure regimes set out in Articles 14b, 15a and the universal registration document referred to in Article 9 remain appropriate in light of their pursued objectives. The report shall contain all of the following:

(a) the number of EU Growth issuance **prospectuses**~~**documents**~~ of persons in each of the categories referred to in Article 15a(1), points (a) to (d), and an analysis of the evolution of each such number and of the trends in the choice of trading venues by the persons entitled to use the EU Growth issuance **prospectuses**~~**documents**~~;

(b) an analysis of whether the EU Growth issuance **prospectus**~~**document**~~ strikes a proper balance between investor protection and the reduction of administrative burdens for the persons entitled to use it;

(c) the number of EU Follow-on prospectuses approved and an analysis of the evolution of such number;

(d) an analysis of whether the EU Follow-on prospectus strikes the proper balance between investor protection and the reduction of administrative burden for the persons entitled to use it;

(e) the cost of preparing and having an EU Follow-on prospectus and an EU Growth issuance **prospectus**~~**document**~~ approved compared to the current costs for the preparation and approval of a standard prospectus, together with an indication of the overall financial savings achieved and of which costs could be further reduced for both the EU Follow-on prospectus and the EU Growth issuance **prospectus**~~**document**~~;

(f) an analysis of whether the document set out in Annex IX strikes the proper balance between investor protection and the reduction of administrative burden for the persons entitled to use it.';

(b) the following paragraph is added:

The Commission shall, by 31 December 2025, present a report to the European Parliament and to the Council analysing the issue of liability for the information given in a prospectus, assessing whether further harmonisation of the prospectus liability in the Union could be warranted and, if relevant, propose amendments to the liability provisions set out in Article 11 of this Regulation.

(**2930**) the following Article **50** is added:

'Article 50

Transitional provisions

1. Prospectuses approved in accordance with Regulation (EU) 2017/1129 before [date of entry into force of the amending Regulation ~~minus one day~~] shall continue to be governed by the provisions of that Regulation until the end of their validity, or until twelve months have elapsed after the [date of entry into force of the amending Regulation ~~minus one day~~], whichever occurs first.

2. Article 14 of Regulation (EU) 2017/1129 as applicable on … [date of entry into force of this amending Regulation minus one day] shall continue to apply **~~to prospectuses drawn up in accordance with that Article 14 and approved before that date until the end of their validity~~ until [18 months after entry into force of this Regulation]**.

3. Article 15 of Regulation (EU) 2017/1129 as applicable on … [date of entry into force of this amending Regulation minus one day] shall continue to apply **~~to EU Growth prospectuses approved before that date until the end of their validity.~~ until [18 months after entry into force of this Regulation]**.;

(3**01**) Annexes I to V are replaced by the text in Annex I to this Regulation;

(3**12**) Annex Va is deleted;

(3**23**) the text set out in Annex II to this Regulation is added as Annexes VII to IX.

Article 2

Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

(**1**~~**34**~~) Article 5 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public in an aggregated form;’;

(b) paragraph 3 is replaced by the following:

‘3. In order to benefit from the exemption laid down in paragraph 1, the issuer shall report all transactions relating to the buy-back programme to the competent authority of the most relevant market in terms of liquidity as referred to in Article 26(1) of Regulation (EU) No 600/2014. The receiving competent authority shall, upon request, forward the information to the competent authorities of the trading venue on which the shares have been admitted to trading and are traded.’;

(**2**~~**35**~~) in Article 7(1), point (d) is replaced by the following:

‘(d) information conveyed by a client or by other persons acting on the client’s behalf or information known by virtue of management of a proprietary account or of a managed fund and relating to pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.’;

(**3**~~**36**~~) Article 11 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'A market sounding comprises the communication of information prior to the announcement of a transaction, if any, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:';

(b) paragraph 4 is replaced by the following:

'4. A market participant may choose to comply with all of the following conditions:

(a) having obtained the consent of the person receiving the market sounding to receive inside information;

(b) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;

(c) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates;

(d) having informed the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential;

(e) having made and maintained a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d), and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure;

(f) having provided that record to the competent authority upon request.

In case of compliance with all the~~ose~~ conditions **set out in paragraphs 3 and 4, first subparagraph**, the **disclosing** market participant shall be deemed to have disclosed inside information ~~**made**~~ in the course of a market sounding in the normal exercise of a person's employment, profession or duties for the purposes of Article 10(1). **There shall be no presumption of unlawful disclosure of inside information in case the disclosing market participant chooses not to comply with all the conditions set out in the previous subparagraph.**';

(c) paragraph 5 is deleted;

(d) paragraphs 6 and 7 are replaced by the following:

6. Where information that has been disclosed in the course of a market sounding pursuant to paragraph 4 ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible. This obligation shall not apply in cases where the information has been announced publicly otherwise.

The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority upon request.

7. Notwithstanding this Article, the person receiving the market sounding shall assess for him- or herself whether he or she possesses inside information.';

(**4**~~37~~) in Article 13(12), point (d) is replaced by the following:

'(d) the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract.';

(**5**~~38~~) Article 17 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. That requirement shall not apply to **inside information related to** intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about ~~a~~ **particular** ~~set of~~ circumstances or an event.'

(b) the following paragraphs 1a ~~(i and ii)~~ and 1b are inserted:

'1a. The Commission shall be empowered to adopt a delegated act to **supplement this Regulation by** set**ting** out ~~and review, where necessary,~~ a non-exhaustive**,** ~~indicative~~ list **specifying** ~~of relevant information and, for each information,~~ the moment when the issuer can be reasonably expected to disclose ~~it~~ **inside information related to protracted processes which directly concerns the issuer as referred to in paragraph 1**. ~~In setting out this list, t~~**The Commission shall** ~~liaise~~ **set out the list after consulting with ESMA**.

The list shall also define, for the purposes of paragraph 1, the following:

(i) the intermediate steps to which the disclosure requirement does not apply,

(ii) the event or particular circumstances that the protracted process intends to bring about.'

1b. An issuer shall ensure the confidentiality of the information which meets the criteria of inside information set out in Article 7 until that information is disclosed pursuant to paragraph 1. ~~Where the issuer is no longer able to ensure the confidentiality of that inside information is no longer ensured, the issuer shall disclose that inside information to the public as soon as possible.'~~

(c) paragraph 4 is amended as follows:

(i) the first subparagraph is replaced by the following:

'4. An issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;

(b) the inside information that the issuer intends to delay meets the following conditions:

(i) it is not materially different from the previous public announcement of the issuer on the matter to which the inside information refers to;

(ii) it does not regard the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced;

(iii) it is not in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, including interviews, roadshows or any other type of communication organised by the issuer or with its approval;

(c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

~~**Where an issuer or emission allowance market participant intends to delay the disclosure of inside information under this paragraph, it shall inform the competent authority specified in accordance with paragraph 3 of its intention to delay the disclosure of inside information and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the decision to delay is taken.';**~~

~~**(c) paragraph 4 is amended as follows:**~~

(ii) the second subparagraph ~~2~~ is deleted;

(iii) in the fourth subparagraph the introductory wording is replaced by the following~~4 becomes the new subparagraph 3 and is amended as follows~~:

'By way of derogation from the second subparagraph of this paragraph~~, an issuer whose financial instruments are admitted to trading only on an SME growth market shall provide a written explanation to the competent authority specified under paragraph 3 only upon request. As long as the issuer is able to justify its decision to delay, the issuer shall not be required to keep a record of that explanation.~~';

(~~ii~~iv) the following subparagraph 4 is added:

'Non-disclosure by an issuer ~~or an emission allowance market participant~~ of inside information related to intermediate steps in protracted processes, according to paragraph 1, is not subject to the requirements provided for in this paragraph.';

(d) in paragraph 5 the introductory wording is replaced by the following:

'An issuer that is a credit institution or a financial institution or an issuer that is a parent undertaking ~~**or related undertaking**~~ of such an institution, may, on its own responsibility, delay the public disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:';

(e) ~~**in**~~ paragraph 7 ~~**the second subparagraph**~~ is replaced by the following:

'7. Where disclosure of inside information has been delayed in accordance with paragraph 4 or 5, or when inside information relating to intermediate steps in a protracted process has not been disclosed in accordance with article 17(1), and the confidentiality of that inside information is no longer ensured, the issuer or the emission allowance market participant shall disclose that inside information to the public as soon as possible.'

'This paragraph includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed in accordance with paragraph 4 or 5, **or** ~~**whento**~~ **inside information related to intermediate steps in a protracted process** ~~**that**~~ **has not been disclosed in accordance with paragraph 1,** where that rumour is sufficiently accurate ~~**and reliable**~~ to indicate that the confidentiality of that information is no longer ensured.';

(f) paragraph 11 is replaced by the following:

'11. ESMA shall issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers, as referred to paragraph 4, point (a), and if necessary, of ~~**to supplement paragraph 4, point (b), with**~~ **situations where a delay of disclosure of inside information is likely to be materially different from the previous public announcement of the issuer on the matter to which the inside information refers to or likely to be in contrast with market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, as referred to in paragraph 4, point (b).';**

(~~6~~**39**) Article 18 is amended as follows:

~~**(a) paragraph 1 is replaced by the following:**~~

~~**'1. Issuers shall:**~~

~~**(a) draw up a list of all persons who, due to the nature of their function or position within the issuer, have regular access to inside information (permanent insider list);**~~

~~**(b) promptly update the permanent insider list in accordance with paragraph 4; and**~~

~~**(c) provide the permanent insider list to the competent authority as soon as possible upon its request.';**~~

~~**(b) the following paragraphs 1a and 1b are inserted:**~~

~~**'1a. Any person acting on the issuer's behalf or on the issuer's account shall draw up its own list of all persons having access to inside information that directly concerns that issuer. Paragraph 1, points (b) and (c), shall apply.**~~

~~**1b. By way of derogation from paragraph 1, and where justified by specific national market integrity concerns, Member States may require issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years to draw up a list of all persons having access to inside information and working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, including advisers, accountants or credit rating agencies (full insider list). Paragraph 1, points (b) and (c), shall apply.';**~~

~~(c) in paragraph 2, the first subparagraph is replaced by the following:~~

~~'Issuers and any person acting on their behalf or on their account shall request from the persons on the insider list the acknowledgement of their legal and regulatory duties entailed in a durable medium. Persons included in the insider list shall acknowledge their legal and regulatory duties in a durable medium without undue delays.';~~

(a) In paragraph 6 the second subparagraph is replaced by the following:

'**By way of derogation from the first subparagraph of this paragraph and where justified by specific national market integrity concerns, Member States may require issuers whose financial instruments are admitted to trading on an SME growth market to include in their insider lists all persons referred to in point (a) of paragraph 1.**';

~~(d)~~**(b) In** paragraph 6**, the fourth, fifth and sixth subparagraphs 4, 5 and 6 are**~~is~~ deleted.

~~(e)~~**(c)** paragraph 9 is replaced by the following:

'9. ESMA shall review the implementing technical standards on the alleviated format of the insider lists for issuers admitted to trading on SME growth markets to extend the use of such a format to all insider lists referred to in paragraphs 1 **and 6, first and second subparagraphs**.

ESMA shall submit those draft implementing technical standards to the Commission [by 9 months after the application/entering into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(**7**~~**40**~~) Article 19 is amended as follows:

(a) paragraphs 8 and 9 are replaced by the following:

'8. Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR 20 000 has been reached within a calendar year. The threshold of EUR 20 000 shall be calculated by adding without netting all transactions referred to in paragraph 1.

9. A competent authority may decide to increase the threshold set out in paragraph 8 to EUR 50 000 and shall inform ESMA of its decision and the justification for its decision, with specific reference to market conditions, to adopt the higher threshold prior to its application. ESMA shall publish on its website the list of thresholds that apply in accordance with this Article and the justifications provided by competent authorities for such thresholds.';

(b) paragraph 12 is replaced by the following:

'12. Without prejudice to Articles 14 and 15, an issuer may allow a person discharging managerial responsibilities within it to trade or to make transactions on its own account or for the account of a third party during a closed period as referred to in paragraph 11:

(a) on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares **or financial instruments other than shares**; or

(b) due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme and employees' schemes concerning financial instruments other than shares, qualification or entitlement of shares and qualifications or entitlements of financial instruments other than shares, or transactions where the beneficial interest in the relevant security does not change; or

(c) where those transactions or trade activities do not imply active investment decisions **or active involvement** by the person discharging managerial responsibilities, or result **exclusively** from external factors or third parties, or are the exercise of derivatives based on predetermined terms.';

(**8**~~41~~) in Article 23(2), point (g) is replaced by the following:

'(g) to require existing recordings of telephone conversations, electronic communications or data traffic records held by investment firms, credit institutions or financial institutions as well as benchmark administrators or supervised contributors;';

(**9**~~42~~) **in** Article 25 ~~**is amended as follows:**~~

~~**(a)**~~ the following paragraph 1a is inserted:

'1a. ESMA shall**, at the request of one or more competent authorities,** facilitate and coordinate the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. When justified by the character of the case, and at the request of the competent authority, ESMA shall contribute to the investigation of the case by the competent authority.';

~~**(b) in paragraph 6, the second subparagraph is replaced by the following:**~~

~~**'A requesting competent authority may inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA may decide to coordinate the investigation or inspection.';**~~

(**10~~43~~**) the following Articles **~~25a and 25b~~** are inserted:

'Article 25a

Mechanism to exchange order ~~b~~ook data

1. Competent authorities supervising trading venues with a significant cross-border dimension shall, by [**~~1~~224** months from the date of entry into force of this Regulation], set up a mechanism to permit ongoing and timely exchange of order **~~book~~** data **on the financial instruments** referred to in paragraph 2 **point (a)** and collected from those trading venues in accordance with Article 25 of Regulation (EU) No 600/2014 with respect to the **financial** instruments traded in such market. Competent authorities may delegate the set-up of the mechanism to ESMA.

The ongoing and timely exchange of order data on the financial instruments referred to in paragraph 2 point (b) and point (c) shall be made operational through this mechanism by [60 months from the date of entry into force of this Regulation].

Where a competent authority submits a request for data under paragraph 2, the requested competent authority shall **~~provide~~ request** that data **from the relevant trading venue** in a timely manner and not later than **~~1 calendar day~~ one week** from the date of the request. **The requested data shall be made available to the competent authority that submitted the first request as soon as possible within the timeframe determined in paragraph 4 point (c).**

The relevant trading venue shall establish and maintain appropriate arrangements, systems and procedures to permit ongoing and timely exchange of order data by 24 months from the date of entry into force of this Regulation.

The request for ongoing data from a competent authority may be submitted for a specific set of **financial** instruments.

2. A competent authority may obtain order ~~**book**~~ data originating from a trading venue that has a **siginificant** cross-border dimension when that competent authority is the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 **and this data is needed in the supervisory activities of this authority** for the following financial instruments:

(a) shares;

(b) bonds;

(c) futures.

3. A Member State may decide that its competent authority participates in the mechanism set up pursuant to paragraph 1 even if none of the trading venues under the supervision of such competent authority has a significant cross-border dimension. Such decision shall be communicated to ESMA which shall make it public on its website.

When a Member State makes a decision in accordance with the first subparagraph, that Member State and its competent authority shall comply with the provisions of this Article.

~~**When a competent authority is not part of the mechanism set up pursuant to paragraph 1, it shall still comply with a request of exchange of ongoing order**~~

~~**book data pursuant to Article 25 in a timely manner and not later than 5 calendar days from the date of the request.**~~

4. ESMA shall develop draft implementing technical standards

(a) to specify the appropriate mechanism for the exchange of order ~~book~~ data. In particular, the implementing technical standards shall lay down the operational arrangements to ensure the swift transmission of information between competent authorities~~.~~**;**

(b) to determine appropriate arrangements, systems and procedures for trading venues to comply with the requirement in paragraph 1, third subparagraph, and

(c) to determine the format and the timeframe for provision of the requested data in paragraph 1, third subparagaph.

ESMA shall submit those draft implementing technical standards to the Commission by [9 months after the application/entering into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the implementing technical standards referred to in the first subparagraph in accordance with Article~~s 10 to 14~~**15** of Regulation (EU) No 1095/2010.

5. The Commission ~~is empowered to~~ **shall** adopt delegated acts **in accordance with Article 35** to establish a list of designated trading venues that have a significant cross-border dimension in the supervision of market abuse, by taking into account **for each class of financial instruments** at least **all the following:**

(a) the ~~market share~~ **trading volume** ~~of~~ **on** the trading venue~~s on the instruments.~~**; and**

(b) the trading volume on that trading venue in financial instruments for which the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 differs from the competent authority of the trading venue.

With regard to shares, the criterion referred to in the first subparagraph, of point (a), shall be measured as turnover in shares aggregated at the level of the trading venue, and shall not be below EUR 100 billion per year in any of the last 4 years. The criterion referred to in the first subparagraph, of point (b), shall be defined as the ratio between the turnover in shares for which the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 is different from the competent authority of the trading venue and the total turnover in all shares traded on that venue in a year. This ratio shall not be below 50 percent.

The Commission shall review such list at least every 4 years.

5a. By [48 months after the date of entry into force of this Regulation], ESMA shall submit a report to the Commission on the functioning of the mechanism.

That report shall cover at least the following:

(a) a description of technical challenges faced by the trading venues, competent authorities, and ESMA during the implementation of the mechanism for shares;

(b) the costs incurred by competent authorities and ESMA in the set-up of the mechanism for shares.

The report shall include a cost-benefit analysis linked to the future development of the mechanism with regards to the inclusion in the scope of possible relevant financial instruments, including those referred to in points (b) and (c) of paragraph 2. The report shall also include recommendations on the extension of the scope to the financial instruments referred to in paragraph 2, taking into account the added value, technical challenges and expected costs.

6. The Commission ~~is empowered to~~ **shall** adopt delegated acts in accordance with Article 35 to amend paragraph 2 **and 5** by updating the **list of designated trading venues with a significant cross-boarder dimension and** financial instruments, **and amend the second subparagraph of paragraph 1 to postpone the extension of the mechanism to bonds and futures,** taking into account **the report mentioned in paragraph 5a,** the developments in financial markets and the capacity of competent authorities to process the data on those financial instruments.

Article 25b

Collaboration platforms

1. ESMA may~~, on its own initiative or~~ at the request of one or more competent authorities, in the case of **justified serious** concerns about market integrity or the ~~good~~ **orderly** functioning of markets, set up and coordinate a collaboration platform.

2. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.

3. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority ~~or on its own initiative~~, assist the competent authorities in reaching an agreement in accordance with Article 19(1) **first subparagraph** of Regulation (EU) No 1095/2010.

ESMA may also**, at the request of one or more competent authorities,** ~~decide to initiate and~~ coordinate on-site inspections. ~~It shall invite the~~ **The** competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform **may invite ESMA** to participate in such on-site inspections.

ESMA may also, **at the request of one or more comptetent authorities,** set up a collaboration platform jointly with ACER and the public bodies monitoring wholesale commodity markets where the concerns about market integrity and the ~~good~~ **orderly** functioning of markets affect both financial and spot markets.';

(**11**~~**44**~~) Article 28 is deleted

(**12**~~**45**~~) Article 29 is replaced by the following:

'*Article 29*

Disclosure of personal data to third countries

1. Competent authorities of a Member State may transfer personal data to a third country provided the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council[*7] are fulfilled and only on a case-by-case basis. Competent authorities shall ensure that such a transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.

2. Competent authorities of a Member State shall only disclose personal data received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement from the competent authority which transmitted the data and, where applicable, provided that the data are disclosed solely for the purposes for which that competent authority gave its agreement.'

[*7] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).';

(**13~~46~~**) Article 30 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) points (e) to (g) are replaced by the following:

‘(e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors;

(f) in the event of repeated infringements of Article 14 or 15, a ~~**permanent**~~ ban of **at least ten years of** any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms as well as benchmark administrators or supervised contributors;

(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account as well as benchmark administrators or supervised contributors;’;

(ii) point (j) is replaced by the following:

‘(j) in respect of legal persons, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body or EUR 15 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Article 16, 2 % of its total annual turnover according to the last available accounts approved by the management body, or EUR 2 500 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(iii) for infringements of Article 17, 2 % of its total annual turnover according to the last available accounts approved by the management body. **Where competent authorities deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h), ~~.Instead of the minimum amount based on the total annual turnover~~ Member States shall ensure that such ~~competent~~** authorities may ~~**alternatively exceptionally**~~ impose administrative sanctions of at least EUR 2 500 000**~~., or, w~~W**here the legal person is an SME, **Member States may ensure that such authorities may alternatively impose administrative sanctions of at least** EUR 1 000 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014 ~~**if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h)**~~;

(iv) for infringements of Articles 18 and 19, 0,8 % of its total annual turnover according to the last available accounts approved by the management body. **Where competent authorities deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h), ~~.Instead of the minimum amount based on the total annual turnover,~~ Member States shall ensure that such ~~competent~~** authorities may ~~**alternatively exceptionally**~~ impose administrative sanctions of at least EUR 1 000 000**~~., or w~~W**here the legal person is

an SME, **Member States may ensure that such authorities may alternatively impose administrative sanctions of at least** EUR 400 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014 ~~**if they deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h)**~~;

(v) for infringements of Article 20, 0,8 % of its total annual turnover according to the last available accounts approved by the management body, or EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014.';

(iii)~~**(b) paragraph 2,**~~ **in the third subparagraph the introductory wording is replaced by the following**~~**is amended as follows:**~~

'For the purposes of points (j)(i) to (v) ~~and (ii)~~ of the first subparagraph, ~~where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU ([13]), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives — Council Directive 86/635/EEC ([14]) for banks and Council Directive 91/674/EEC ([15]) for insurance companies — according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.'~~;

(b)~~(c)~~ the following paragraph 4 is added:

'4. For the purpose of this Article, 'small and medium-sized enterprise' or 'SME' means a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to Commission Recommendation 2003/361/EC[*8].

[*8] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).';

(**14**~~47~~) in Article 31, paragraph 1 is replaced by the following:

'1. Member States shall ensure that when determining the type and level of administrative sanctions, competent authorities take into account all relevant circumstances, in order to apply proportionate sanctions, including, where appropriate:

(a) the gravity and duration of the infringement;

(b) the degree of responsibility of the person responsible for the infringement;

(c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual personal income of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;

(e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous infringements by the person responsible for the infringement;

(g) measures taken by the person responsible for the infringement to prevent its repetition; and

(h) **the disadvantage for the person responsible for the infringement resulting from** the duplication of criminal and administrative proceedings and penalties for the same **conduct** ~~**breach against the responsible person**~~.';

(**15**~~**48**~~) Article 35 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The power to adopt delegated acts referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), Article 25a**(5) and** (6) and Article 38 shall be conferred on the Commission for a period of five years from 31 December 20XX. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph**,** Article 17(2), third subparagraph, Article 17(3), Article 19(13) and (14), Article 25a**(5) and** (6) and Article 38, may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(b) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), third subparagraph, Article 17(3), Article 19(13) or (14), Article 25a(5)~~, Article 25a(5)~~ **and** (6) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.';

(**16**~~49~~) Article 38, first subparagraph, is amended as follows:

(a) the introductory wording is replaced by the following:

'By [5 years after entry into force of this amending Regulation], the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation, together with a legislative proposal to amend it if appropriate. That report shall assess, inter alia:';

(b) point (d) is replaced by the following:

'(d) the functioning of the cross-market order ~~book~~ **data** surveillance mechanism in relation to market abuse, including recommendations for enforcing such mechanism; ~~and~~'.

(c) the following points (f) and (g) are added~~inserted~~:

'(f) ~~W~~whether the provisions on non-disclosure of inside information relating to intermediate steps in a protracted process in Article 17 are appropriate with a view to preventing information asymmetries between issuers and investors and competent authorities effective combating of market abuse;

(g) the proportionality of the absolute amounts, as expressed in Article 30(2)(j)(iii) and (iv), and their appropriateness in relation to micro, small and medium-sized enterprise.'

Article 3

Amendments to Regulation (EU) No 600/2014

Article 25 of Regulation (EU) No 600/2014 is amended as follows:

(50) paragraph 2 is replaced by the following:

'2. The operator of a trading venue shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The competent authority of the trading venue may request those data on an ongoing basis. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transactions that stem from that order and the details of which shall be reported in accordance with Article 26(1) and (3). ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under this paragraph.';

(51) paragraph 3 is replaced by the following:

'3. ESMA shall develop draft regulatory technical standards to specify the details and formats of the relevant order data required to be maintained under paragraph 2 of this Article that is not referred to in Article 26.

ESMA shall submit those draft regulatory technical standards to the Commission by [9 months after the date of enter into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'.

Article 4

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. Article 1, **point (3),** point(6)(b) and (c), **point (12) and point (14) and Article 2,** point (~~3~~**5**)(a)**, (b), (c) and (e) and (10)** shall apply from [**18**~~**12**~~ months after the date of entry into force].

3. Member states shall take necessary measures to comply with Article 1, point (9) and (23), and Article 2, point (13)(a) and (14) by [18 months after the date of entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*