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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.3.2019

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. General background

Regulation (EU) 2017/1129 of the European Parliament and of the Council¹ (the Prospectus Regulation) is due to become applicable on 21 July 2019. It creates a new and harmonised set of rules that helps companies raising money on capital markets to invest and grow and at the same time helps investors make better and more informed decisions. It also empowers and requires the Commission to lay down some of the details of the new rules.

The reform of prospectus requirements is an important component of the action plan for building a Capital Markets Union (CMU action plan). This Delegated Regulation contributes to the completion of the action plan, as set out in the communication from the Commission on the mid-term review of the Capital Markets Union².

The overarching objectives of the reform of the prospectus rules are to:

- facilitate fundraising on capital markets by cutting red tape and making prospectuses less burdensome for issuers;
- ensure investor protection;
- drive supervisory convergence at EU level by harmonising the scrutiny and approval of prospectuses across Member States.

The new rules will also help to strip away burdens and to deliver shorter prospectuses, better and more concise information for investors and a fast track regime for companies that frequently tap capital markets.

1.2. Objectives of the Delegated Regulation

The objectives of this Delegated Regulation are to set out the information that issuers must include in the prospectus (all types of prospectuses), either drawn up as a single document or as separate documents, and to ensure that EU national competent authorities and companies making a public offer or seeking to have their securities traded on regulated markets can all interpret and apply the technicalities of the new prospectus rules consistently. It details and clarifies the following points of the policy framework laid down in the Prospectus Regulation:

- the format of the prospectus, base prospectus and final terms, and the specific information which must be included in a prospectus;
- the reduced contents list and standard format of the EU Growth prospectus and its specific summary, bearing in mind that the EU Growth prospectus is intended to facilitate access to capital markets for SMEs while ensuring investor confidence;
- the reduced information to be included in the simplified prospectus for secondary issuances, taking into account the need to facilitate fundraising on capital markets and the importance of reducing the cost of capital;
- the minimum information to be included in the universal registration document, taking into account the need to ensure that it contains all necessary information on

¹ 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, amending Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12-82).

² COM(2017)292 final.

the issuer in order to be used equally for the subsequent offer to the public or admission to trading on a regulated market of equity or non-equity securities;

- criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information given, and procedures for approving prospectuses, aimed at creating a single rulebook that ensures consistent implementation across the EU;
- scrutiny criteria for the universal registration document and amendments to it, and the procedures for approving, filing and reviewing them. As regards the conditions for losing the status of frequent issuer, the conditions set out in Article 9(11) of the Prospectus Regulation were considered to be already exhaustive. Hence, no additional conditions were laid down in this Delegated Regulation.

1.3. Legal background

In accordance with Article 31 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, this Delegated Regulation joins together in a single act six empowerments of the Prospectus Regulation, namely Articles 9(14), 13(1), 13(2), 14(3), 15(2) and 20(11). The Prospectus Regulation, expressly or from context (Article 13(1)), requires the Commission to adopt delegated acts on these points by 21 January 2019. Other empowerments to adopt delegated acts conferred by the Council and Parliament do not have a deadline and may be acted upon at a later stage.

The Prospectus Regulation also empowers the European Securities and Markets Authority (ESMA) to develop draft Regulatory Technical Standards. This will be the subject of future delegated regulations.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission mandated ESMA to provide technical advice on possible delegated acts concerning the prospectus. On 29 February 2017, Commission staff formally requested technical advice from ESMA. On 6 July 2017, ESMA published three consultation papers with regard to its technical advice on this delegated act and received 128 responses to the consultation that occurred until 28 September 2017. ESMA delivered its technical advice on 28 March 2018. This Delegated Regulation is based on such technical advice.

In addition to publishing the Roadmap for this initiative for feedback purposes, Commission staff held meetings with stakeholders to discuss the future delegated measures throughout 2017 and 2018, for instance at a dedicated workshop in March 2017. At the meeting of the Expert Group of the European Securities Committee (EGESC) in June 2018, the delegated measures were discussed among Member States' experts, with observers from the European Parliament. This consultation process showed a broad consensus on the Delegated Regulation.

Following the internal consultation that occurred in July 2018, to take into account of the feedback received the Commission staff revised the Delegated Regulation with the objective to streamline its content, improve its structure and make the drafting clearer and more legally sound. Furthermore, some additional opportunities to alleviate the EU Growth prospectus were explored. The following are some key changes that were applied to the Delegated Regulation:

- to ensure that the EU Growth prospectus achieves the objective of being significantly lighter than the full prospectus to foster fund raisings through capital markets of SMEs, additional opportunities to alleviate the EU Growth prospectus for both equity

and non-equity securities have been introduced without compromising investor protection, in accordance with the objectives set out in the Prospectus Regulation;

- the drafting of the Delegated Regulation has been improved and further aligned to the primary act. For example, references to shares, debt and derivative securities included in ESMA's technical advice have been changed to references to equity and non-equity securities as defined in the Prospectus Regulation;
- the table of combination included in ESMA's technical advice has been removed and its content has been developed in the operative provisions;
- the Commission staff has clarified that on top of the list of harmonised criteria for the scrutiny of prospectuses, national competent authorities may perform additional scrutiny criteria where necessary for investor protection purposes;
- the Annexes to the Delegated Regulation, which set out the information to be included in the different types of prospectuses, have been grouped in 5 different sections according to the type of documents constituting the prospectus to which the information relates (e.g. registration documents and securities notes);
- to improve clarity and consistency, the Annexes about the simplified prospectus for secondary issuances, which in ESMA's technical advice were covering all types of securities, have been disaggregated to differentiate between equity and non-equity securities, in line with the prospectus for primary issuances;
- the prospectus for depository receipts issued over shares, which in ESMA's technical advice was featuring as a single document, has been split into a registration document and a securities note for such securities, in line with all other types of prospectuses;
- the role of national competent authorities and of the issuers has been clarified concerning the case of issuers having a complex financial history.

After providing an oral update about the state of play of the revision work during the meeting of the EGESC in September 2018, the Commission staff published a revised version of the Delegated Regulation on the Better Regulation portal for a 4 weeks feedback period throughout December 2018. In total, 16 stakeholders answered to such consultation. To allow the Commission staff to perform a detailed analysis of the comprehensive feedback received, incorporate some of the proposed changes and have the revised act translated, the adoption of the Delegated Regulation had to be postponed to the beginning of March 2019.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Chapter I: definitions

This chapter sets out definitions to explain the terminology used in the articles and annexes to the Delegated Regulation.

Chapter II: Content of the prospectus

This chapter sets out the specific information that must be included in the registration document (including the universal registration document) and in the securities note of the prospectus and the additional information that may be necessary to include depending on the type of issuer, issuance and securities to which the prospectus relates.

Chapter III: Format of the prospectus

This chapter sets out the format of the prospectus, the base prospectus and the final terms, as well as requirements relating to the summary of the prospectus.

Chapter IV: The EU Growth prospectus

This chapter addresses the content, format and sequence of the EU Growth prospectus, together with the content and format of its specific summary. In particular:

- the standardised format of the EU Growth prospectus under the proportionate disclosure regime is designed to be easy for issuers to complete, making it lighter, helping to minimise costs for SMEs and facilitating their access to finance while ensuring investor confidence;
- the specific summary of the EU Growth prospectus only requires relevant information already included in the EU Growth prospectus and is shorter than the summaries for other types of prospectuses.

Chapter V: Scrutiny and approval of the prospectus and review of the universal registration document

This chapter addresses:

- criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information given, and procedures for the approval of prospectuses. This Delegated Regulation aims at creating a single rulebook that can be implemented consistently throughout the EU. The scrutiny criteria allow competent authorities to take a proportionate approach to scrutiny of prospectuses, based on the specific circumstances of the issuer and the issuance.
- the criteria for scrutiny of the universal registration document and amendments to it, and the procedures for approving, filing and reviewing such documents. These criteria take into account the fact that the objectives and criteria of the *ex post* review of the universal registration document are aligned with those of *ex ante* scrutiny and relate to the completeness, consistency and comprehensibility of the information provided by the issuer.

Chapter VI: Final provisions

This chapter provides for the repeal of the existing Commission Regulation³ and the entry into application of the Delegated Regulation on 21 July 2019, which will coincide with the entry into application of most provisions of the Prospectus Regulation⁴.

³ Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149 30.4.2004, p. 1).

⁴ Pursuant to Article 49(2) of Regulation (EU) 2017/1129, Regulation (EU) 2017/1129 shall apply from 21 July 2019, except for Article 1(3) and Article 3(2) which shall apply from 21 July 2018 and points (a), (b) and (c) of the first subparagraph of Article 1(5) and the second subparagraph of Article 1(5) which shall apply from 20 July 2017.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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/EC⁵, and in particular Article 9(14), paragraphs (1) and (2) of Article 13, Articles 14(3), 15(2) and 20(11) thereof,

Whereas:

- (1) Regulation (EU) 2017/1129 lays down requirements to be complied with when drawing up prospectuses. The requirements concerning the scrutiny, review, approval and filing of the universal registration document and any amendments thereto, the requirements concerning the format of the prospectus, the base prospectus and the final terms, the specific information to be included in a prospectus, the minimum information to be included in the universal registration document, the reduced information to be included under the simplified disclosure regime for secondary issuances, the reduced content, the standardised format and the sequence of the EU Growth prospectus, the reduced content and standardised format of the specific summary and the scrutiny and approval of prospectuses all need to be specified.
- (2) The content and the format of a prospectus depend on a variety of factors, such as the type of issuer, type of security, type of issuance as well as the possible involvement of a third party as a guarantor and the question of whether or not there is an admission to trading. It is therefore not appropriate to lay down the same requirements for all types of prospectuses. Specific information requirements should be laid down instead and should be combined depending on those factors and the type of prospectus. This should however not prevent an issuer, offeror or person asking for admission to trading on a regulated market to provide in the prospectus the most comprehensive information available.
- (3) To ensure legal certainty and increase transparency for investors, issuers should state in their universal registration document whether the universal registration document has been approved by the competent authority or merely has been filed and published without prior approval.

⁵ OJ L 168, 30.6.2017, p. 12-82.

- (4) The alleviated information requirements for secondary issuances should reflect the specificities of equity and non-equity securities.
- (5) Collective investment undertakings of the close-end type pursue specific investment objectives and might be subject to specific investment restrictions. The registration documents for those undertakings should therefore be subject to specific information requirements.
- (6) Due to the indirect link between the investor and the underlying shares of depository receipts, it is important that the investor is informed about the issuer of the underlying shares. The prospectus for depository receipts should therefore contain, apart from information about the depository receipt and the issuer of the depository receipt, information about the underlying shares and the issuer of those underlying shares.
- (7) The information contained in prospectuses for non-equity securities should be adapted to the level of knowledge and expertise of each type of investor. Prospectuses for non-equity securities in which retail investors can invest should therefore be subject to more comprehensive and distinct information requirements than prospectuses for non-equity securities that are reserved to qualified investors.
- (8) The obligation to produce a prospectus applies to non-equity securities issued by third countries and their regional and local authorities in cases where those entities wish to make a public offer of securities in the Union or wish their securities to be admitted to trading on a regulated market. Due to the particular nature of those public entities, specific information requirements should be laid down.
- (9) Investors should be able to understand the situation of an issuer with a complex financial history and the expected effects of a transaction involving a significant financial commitment. Those issuers should therefore be required to include additional information in the prospectus to that effect.
- (10) Where securities are exchangeable for or convertible into shares that are already admitted to trading on a regulated market, shareholders and investors normally already have the information about the underlying shares of those securities. It is therefore sufficient to add to the prospectus a statement setting out the type of the underlying share and details of where information about the underlying share can be obtained.
- (11) Investors may want to invest in securities that are exchangeable for or convertible into shares that are or will be issued by the issuer of those securities or by an entity belonging to that issuer's group and that have not yet been admitted to trading on a regulated market. Those investors should have the same information about the ability of the issuer of the underlying shares to continue its operations and about its indebtedness compared to its capitalisation as investors that have invested in those shares directly. The prospectus should therefore contain a working capital statement as well as a statement of capitalisation and indebtedness of the issuer of the underlying shares.
- (12) Derivative securities entail particular risks for investors because, for instance, the losses might be higher than the investment made and because the underlying is not always admitted to trading on a regulated market and information about that underlying might therefore not be available. Some non-equity securities, such as structured bonds, also incorporate certain elements of a derivative security. Consequently, the securities note should contain additional information about the underlying of a derivative security or about the derivative component of the non-

equity security and, where applicable, a statement about the potential losses that investors might face.

- (13) Where a base prospectus is drawn up for securities linked to or backed by an underlying asset, that base prospectus should contain all information about the type of underlying asset where that underlying asset is known at the date of approval of the base prospectus. Market conditions may however change the choice of the underlying asset within a category of underlying assets. Only the final terms of the base prospectus should therefore contain specific details about that underlying asset.
- (14) Guarantees are intended to ensure that the payments related to the security are duly serviced. Given the potential diversity in guarantees, clear information requirements related to the nature and the scope of those guarantees should be laid down.
- (15) The format of the prospectus, base prospectus and final terms should be specified by determining the order in which the required information should be disclosed. However, due to the multipurpose character of the universal registration document, issuers who choose to draw up and publish a universal registration document every financial year should be granted more flexibility as regards the order of information to be provided in the universal registration document.
- (16) Whilst the base prospectus should contain all information available at the time of drawing up that base prospectus, it should be possible to leave blanks as regards specific information that only becomes available at a later stage and is to be found in the final terms, or to include a list of that missing information.
- (17) It is not always required to include a summary into the prospectus. That should however not prevent the insertion of an overview section into the prospectus. To avoid confusion among investors, such overview section should however not be called a summary, unless it complies with all the requirements for summaries.
- (18) The EU growth prospectus is intended to alleviate the administrative burden, in particular for SMEs. It is therefore appropriate to simplify the drafting of EU growth prospectuses by laying down a fixed order in which the information should be presented. However, to ensure that information is presented in a manner that is coherent and consistent with the different business models, flexibility should be allowed as regards the order of information items within each section of the EU growth prospectus.
- (19) To allow for flexibility and to encourage the use of the EU growth prospectus, it should be possible that the EU growth prospectus is composed of separate documents. To avoid the risk of duplicating information, separate detailed information requirements for the specific registration document on the one hand and for the specific securities note on the other should be laid down and adapted to the type of securities concerned, differentiating between equity and non-equity securities.
- (20) The specific summary of the EU Growth prospectus should provide investors with key information needed to decide which offers of securities they want to study further by reviewing the prospectus as a whole. It should therefore convey the essential characteristics of, and risks associated with, the issuer and the securities offered and contain the general terms and conditions of the offer. However, given that the specific summary is only an introduction to the EU Growth prospectus and must be read together with the other parts thereof, the content of the specific summary should be consistent with those other parts. To ensure that the size of the specific summary is

tailored to the reduced size of the EU Growth prospectus, the length of the summary should be restricted.

- (21) To ensure that competent authorities apply harmonised standards across the Union when scrutinising prospectuses, and in particular the completeness, comprehensibility and consistency of the information contained in draft prospectuses, criteria for prospectus scrutiny should be laid down. Those criteria should be applied for the entire draft prospectus and any of its constituent parts, including the universal registration document and any amendments and supplements to the prospectus.
- (22) A high level of investor protection should be ensured. Competent authorities should therefore be allowed to consider, where necessary, additional criteria for the scrutiny of the completeness, consistency and comprehensibility of draft prospectuses in order to adapt that scrutiny to the specific characteristics of a prospectus.
- (23) Some issuers are involved into very specific business activities that require a profound knowledge of the activities concerned to have a full understanding of the securities issued by those issuers. That would apply for example in the case of a property company that could be required to disclose a valuation report providing all relevant details in respect of material properties necessary for the purposes of the valuation. Competent authorities should therefore be able to take a proportionate approach and require, where appropriate, that those specialist issuers include in the prospectus specific and adapted information about those activities that goes beyond the information required from non-specialist issuers.
- (24) Due to the rapid evolution of securities markets, there is the possibility that certain types of securities that are not covered by the Annexes to this Regulation will be offered to the public or admitted to trading. In such a case, to enable investors to make an informed investment decision, competent authorities should decide in consultation with the issuer, offeror or person asking for admission to trading on a regulated market which information should be included in the prospectus.
- (25) To drive efficiency in the process of drawing up the prospectus and eliminate unnecessary burdens, it is appropriate to allow the omission of information items set out in the Annexes to this Regulation that are not pertinent to the issuer or to the securities being offered or admitted to trading on a regulated market.
- (26) Scrutiny and approval of prospectuses is an iterative process. As such, the decision of the competent authority to approve the draft prospectus may involve several rounds of analysis of the draft prospectus and ensuing improvements by the issuer, offeror or person asking for admission to trading on a regulated market to ensure that the draft prospectus meets the standards of completeness, comprehensibility and consistency. To provide certainty about the approval process, it is necessary to specify which documents should be provided to competent authorities at the different stages of the approval process.
- (27) For reasons of efficiency, competent authorities should be permitted to carry out a lighter scrutiny where a draft prospectus replicates information that has already been scrutinised or reviewed.
- (28) To enable competent authorities to search for specific terms or words in submitted documents and thus to ensure an efficient and timely scrutiny process of the prospectuses, draft prospectuses and accompanying information should be submitted in searchable electronic format and through electronic means acceptable to the competent authority.

- (29) Issuers, offerors or persons asking for admission to trading on a regulated market should be able to demonstrate to the competent authority how they addressed issues notified by that authority. Each draft of the prospectus submitted to the competent authority, with the exception of the first draft, should therefore contain both a marked-up version that clearly highlights all changes made to the previously submitted draft, and a clean version where such changes are not highlighted.
- (30) To minimise delays in the scrutiny process, competent authorities should be able to identify quickly information requirements that are not applicable or not relevant. For that purpose, the competent authorities should be informed about the information that has not been included in the draft prospectus.
- (31) To facilitate the drawing up of a prospectus and thus to facilitate the raising of capital by undertakings established in the Union, and to ensure that common standards are applied when scrutinizing and approving prospectuses, all requirements related to the format, content, scrutiny and approval of prospectuses should be laid down in a single Regulation.
- (32) Since this Delegated Regulation replaces Commission Regulation (EC) No 809/2004⁶, the latter has become obsolete and should therefore be repealed.
- (33) For reasons of coherence, the application of this Regulation should be deferred until the date of application of Regulation (EU) 2017/1129,

HAS ADOPTED THIS REGULATION:

CHAPTER I DEFINITIONS

Article 1 **Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (a) ‘asset-backed securities’ means non-equity securities which either:
- (i) represent an interest in assets, including any rights intended to ensure the servicing of those assets, the receipt or the timely receipt by holders of those assets of the amounts payable under those assets;
 - (ii) are secured by assets and the terms of the securities provide for payments calculated by reference to those assets;
- (b) ‘equivalent third country market’ means a third country market which has been deemed equivalent to a regulated market in accordance with the requirements set out in third and fourth subparagraphs of Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council⁷;
- (c) ‘profit estimate’ means a profit forecast for a financial period which has expired and for which results have not yet been published;

⁶ Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149 30.4.2004, p. 1).

⁷ 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. 349-496).

- (d) ‘profit forecast’ means a statement that expressly or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for current or future financial periods, or contains data from which a calculation of such a figure for future profits or losses can be made, even if no particular figure is mentioned and the word ‘profit’ is not used;
- (e) ‘significant gross change’ means a variation of more than 25 % to one or more indicators of the size of the issuer’s business.

CHAPTER II CONTENT OF THE PROSPECTUS

SECTION 1

MINIMUM INFORMATION TO BE INCLUDED IN THE REGISTRATION DOCUMENTS

Article 2

Registration document for equity securities

For equity securities, the registration document shall contain the information referred to in Annex 1 to this Regulation, unless it is drawn up in accordance with Articles 9, 14 or 15 of Regulation (EU) 2017/1129.

Article 3

Universal registration document

A registration document that is drawn up in accordance with Article 9 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 2 to this Regulation.

Article 4

Registration document for secondary issuances of equity securities

A specific registration document for equity securities that is drawn up in accordance with Article 14 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 3 to this Regulation.

Article 5

Registration document for units of closed-end collective investment undertakings

For units issued by collective investment undertakings of the closed-end type, the registration document shall contain the information referred to in Annex 4.

Article 6

Registration document for depository receipts issued over shares

For depository receipts issued over shares, the registration document shall contain the information referred to in Annex 5.

Article 7

Registration document for retail non-equity securities

For non-equity securities other than those referred to in Article 8(2) of this Regulation, the registration document shall contain the information referred to in Annex 6 to this Regulation,

unless it is drawn up in accordance with Articles 9, 14 or 15 of Regulation (EU) 2017/1129 or contains the information referred to in Annex 1 to this Regulation.

Article 8

Registration document for wholesale non-equity securities

1. For non-equity securities as referred to in paragraph 2, the registration document shall contain the information referred to in Annex 7 to this Regulation, unless the registration document is drawn up in accordance with Articles 9, 14 or 15 of Regulation (EU) 2017/1129 or contains the information referred to in Annexes 1 or 6 to this Regulation.
2. The requirement referred to in paragraph 1 shall apply to non-equity securities that comply with one of the following conditions:
 - (a) they are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in such securities;
 - (b) they have a denomination per unit of at least than EUR 100 000 or, where there is no individual denomination, can only be acquired on issue for at least EUR 100 000 per security.

Article 9

Registration document for secondary issuances of non-equity securities

A specific registration document for non-equity securities that is drawn up in accordance with Article 14 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 8 to this Regulation, unless it contains the information referred to in Annex 3 to this Regulation.

Article 10

Registration document for asset-backed securities

By way of derogation from Articles 7 and 8, a registration document that is drawn up for asset-backed securities, shall contain the information referred to in Annex 9.

Article 11

Registration document for non-equity securities issued by third countries and their regional and local authorities

By way of derogation from Articles 7 and 8, a registration document that is drawn up for non-equity securities issued by third countries or their regional or local authorities, shall contain the information referred to in Annex 10.

SECTION 2

MINIMUM INFORMATION TO BE INCLUDED IN THE SECURITIES NOTES

Article 12

Securities note for equity securities or units issued by collective investment undertakings of the closed-end type

For equity securities or units issued by collective investment undertakings of the closed-end type, the securities note shall contain the information referred to in Annex 11 to this

Regulation, unless it is drawn up in accordance with Articles 14 or 15 of Regulation (EU) 2017/1129.

Article 13

Securities note for secondary issuances of equity securities or of units issued by collective investment undertakings of the closed-end type

A specific securities note for equity securities or units issued by collective investment undertakings of the closed-end type that is drawn up in accordance with Article 14 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 12 to this Regulation.

Article 14

Securities note for depository receipts issued over shares

For depository receipts issued over shares, the securities note shall contain the information referred to in Annex 13.

Article 15

Securities note for retail non-equity securities

For non-equity securities other than those referred to in Article 8(2) of this Regulation, the securities note shall contain the information referred to in Annex 14 to this Regulation, unless a specific securities note is drawn up in accordance with Articles 14 or 15 of Regulation (EU) 2017/1129.

Article 16

Securities note for wholesale non-equity securities

For non-equity securities as referred to in Article 8(2) of this Regulation, the securities note shall contain the information referred to in Annex 15 to this Regulation, unless it contains the information referred to in Annex 14 to this Regulation or unless a specific securities note is drawn up in accordance with Articles 14 or 15 of Regulation (EU) 2017/1129.

Article 17

Securities note for secondary issuances of non-equity securities

A specific securities note for non-equity securities that is drawn up in accordance with Article 14 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 16 to this Regulation.

SECTION 3

ADDITIONAL INFORMATION TO BE INCLUDED IN THE PROSPECTUS

Article 18

Complex financial history and significant financial commitment of issuers of equity securities

1. Where the issuer of an equity security has a complex financial history, or has made a significant financial commitment, additional information with respect to an entity other than the issuer shall be included in the prospectus, as referred to in paragraph 2.

2. With respect to an entity, other than the issuer, additional information shall be all information referred to in Annexes 1 and 20 to this Regulation that investors need to make an informed assessment as referred to in Article 6(1) and Article 14(2) of Regulation (EU) 2017/1129, as if that entity were the issuer of the equity security.

Such additional information shall be preceded by a clear explanation of why that information is needed for investors to make an informed assessment and shall specify the effects of the complex financial history or of the significant financial commitment on the issuer or on the issuer's business.

3. For the purposes of paragraph 1, an issuer shall be considered as having a complex financial history where all of the following conditions are fulfilled:
 - (a) at the time of drawing up the prospectus, the information referred to in the relevant Annexes does not represent the issuer's undertaking accurately;
 - (b) the inaccuracy referred to in point (a) affects the ability of investors to make an informed assessment as referred to in Article 6(1) and Article 14(2) of Regulation (EU) 2017/1129;
 - (c) additional information relating to an entity other than the issuer is needed for investors to make an informed assessment as referred to in Article 6(1) and Article 14(2) of Regulation (EU) 2017/1129.
4. For the purposes of paragraph 1, a significant financial commitment is a binding agreement to undertake a transaction that is likely to give rise to a variation of more than 25 % relative to one or more indicators of the size of the issuer's business.

Article 19

Securities that are exchangeable for or convertible into shares

1. Where securities are exchangeable for or convertible into shares that are admitted to trading on a regulated market, the securities note shall contain as additional information the information referred to in item 2.2.2 of Annex 17.
2. Where securities are exchangeable for or convertible into shares that are or will be issued by the issuer or by an entity belonging to that issuer's group and that are not admitted to trading on a regulated market, the securities note shall also contain the following additional information:
 - (a) the information referred to in items 3.1 and 3.2 of Annex 11 in respect of that issuer or of that entity belonging to the issuer's group;
 - (b) the information referred to in Annex 18 in respect of the underlying share.
3. Where securities are exchangeable for or convertible into shares that are or will be issued by a third party issuer and that are not admitted to trading on a regulated market, the securities note shall contain as additional information the information referred to in Annex 18.

Article 20

Securities giving rise to payment or delivery obligations linked to an underlying asset

1. For securities other than those referred to in Article 19 that give the right to subscribe or to acquire shares that are or will be issued by the issuer or by an entity belonging to that issuer's group and that are admitted to trading on a regulated market, the

securities note shall contain as additional information the information referred to in Annex 17.

2. For securities other than those referred to in Article 19 that give the right to subscribe or acquire shares that are or will be issued by the issuer or by an entity belonging to that issuer's group and that are not admitted to trading on a regulated market, the securities note shall also contain the following additional information:
 - (a) the information referred to in Annex 17 except for the information referred to in item 2.2.2 of that Annex;
 - (b) the information referred to in Annex 18 in respect of the underlying share.
3. For securities other than those referred to in Article 19 that are linked to an underlying other than shares referred to in paragraphs 1 and 2 of this Article, the securities note shall contain as additional information the information referred to in Annex 17.

Article 21

Asset backed securities

For asset-backed securities, the securities notes shall also contain the additional information referred to in Annex 19.

Article 22

Guarantees

For non-equity securities that include guarantees, the securities notes shall also contain the additional information referred to in Annex 21.

Article 23

Consent

Where the issuer or the person responsible for drawing up a prospectus consents to its use as referred to in the second subparagraph of Article 5(1) of Regulation (EU) 2017/1129, the prospectus shall contain the following additional information:

- (a) the information referred to in items 1 and 2A of Annex 22 to this Regulation where the consent is provided to one or more specified financial intermediaries;
- (b) the information referred to in items 1 and 2B of Annex 22 to this Regulation where the consent is given to all financial intermediaries.

CHAPTER III FORMAT OF THE PROSPECTUS

Article 24

Format of a prospectus

1. Where a prospectus is drawn up as a single document, it shall be composed of the following elements set out in the following order:
 - (a) a table of contents;
 - (b) a summary, where required by Article 7 of Regulation (EU) 2017/1129;
 - (c) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;

- (d) any other information referred to in the Annexes to this Regulation that is to be included in that prospectus.

The issuer, offeror or person asking for admission to trading on a regulated market may decide the order in which the information referred to in the Annexes to this Regulation is set out in the prospectus.

2. Where a prospectus is drawn up as separate documents, the registration document and the securities note shall be composed of the following elements set out in the following order:
 - (a) a table of contents;
 - (b) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;
 - (c) any other information referred to in the Annexes to this Regulation that is to be included in that registration document or that securities note.

The issuer, offeror or person asking for admission to trading on a regulated market may decide the order in which the information referred to in the Annexes to this Regulation is set out in the registration document and the securities note.

3. Where the registration document is drawn up in the form of a universal registration document, the issuer may include the risks factors referred to in point (b) of paragraph 2 amongst the information referred to in point (c) of that paragraph provided that those risk factors remain identifiable as a single section.
4. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information contained in that universal registration document shall be presented in accordance with [OP please insert a reference to the Commission Delegated Regulation of 17.12.2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format]⁸.
5. Where the order of the information referred to in point (d) of paragraph 1 and in point (c) of paragraph 2 is different from the order in which that information is presented in the Annexes to this Regulation, competent authorities may request to provide a list of cross references indicating the items of those Annexes to which that information corresponds.

The list of cross references referred to in the first subparagraph shall identify any items set out in the Annexes to this Regulation that have not been included in the draft prospectus due to the nature or type of issuer, securities, offer or admission to trading.

6. Where no list of cross-references is requested in accordance with paragraph 5 or is not voluntarily submitted by the issuer, offeror or person asking for admission to trading on a regulated market, it shall be indicated in the margin of the draft prospectus to which information in the draft prospectus the relevant information items set out in the Annexes to this Regulation correspond.

⁸ C(2018) 8612 final.

Article 25

Format of a base prospectus

1. A base prospectus drawn up as a single document shall be composed of the following elements set out in the following order:
 - (a) a table of contents;
 - (b) a general description of the offering programme;
 - (c) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;
 - (d) any other information referred to in the Annexes to this Regulation that is to be included in the base prospectus.

The issuer, offeror or person asking for admission to trading on a regulated market may decide the order in which the information referred to in the Annexes to this Regulation is set out in the base prospectus.

2. Where a base prospectus is drawn up as separate documents, the registration document and the securities note shall be composed of the following elements set out in the following order:
 - (a) a table of contents;
 - (b) in the securities note, a general description of the offering programme;
 - (c) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;
 - (d) any other information referred to in the Annexes to this Regulation that is to be included in the registration document and the securities note.

The issuer, offeror or person asking for admission to trading on a regulated market may decide the order in which the information referred to in the Annexes to this Regulation is set out in the registration document and the securities note.

3. An issuer, offeror or person asking for admission to trading on a regulated market may compile in one single document two or more base prospectuses.
4. Where the registration document is drawn up in the form of a universal registration document, the issuer may include the risks factors referred to in point (c) of paragraph 2 amongst the information referred to in point (d) of that paragraph provided that those risk factors remain identifiable as a single section.
5. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information contained in that universal registration document shall be presented in accordance with [OP please insert a reference to the Commission Delegated Regulation of 17.12.2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format].
6. Where the order of the information referred to in point (d) of paragraphs 1 and 2 is different from the order in which that information is presented in the Annexes to this Regulation, competent authorities may request to provide a list of cross references indicating the items of those Annexes to which that information corresponds.

The list of cross references referred to in the first subparagraph shall identify any items set out in the Annexes to this Regulation that have not been included in the

draft base prospectus due to the nature or type of issuer, securities, offer or admission to trading.

7. Where no list of cross-references is requested in accordance with paragraph 6 or is not voluntarily submitted by the issuer, offeror or person asking for admission to trading on a regulated market, it shall be indicated in the margin of the draft base prospectus to which information in the draft base prospectus the relevant information items set out in the Annexes to this Regulation correspond.

Article 26

Information to be included in the base prospectus and the final terms

1. The information referred to as 'Category A' in Annexes 14 to 19 and 27 to this Regulation shall be included in the base prospectus.
2. The information referred to as 'Category B' in Annexes 14 to 19 and 27 to this Regulation shall be included in the base prospectus except for details of that information that are not known at the time of approval of that base prospectus. Such details shall be inserted in the final terms.
3. The information referred to as 'Category C' in Annexes 14 to 19 and 27 to this Regulation shall be inserted in the final terms, unless it is known at the time of approval of the base prospectus, in which case it may be inserted in that base prospectus instead.
4. In addition to the information referred to in paragraphs 2 and 3 of this Article, the final terms may only contain the information referred to in Annex 28 to this Regulation. The form of the final terms referred to in Article 8(2)(a) of Regulation (EU) 2017/1129 shall indicate which of the information referred to in Annex 28 to this Regulation is to be determined in the final terms.
5. The final terms shall not contradict the information included in the base prospectus.

Article 27

Prospectus summary

1. An overview section of a prospectus shall only use the term "summary" if it complies with the requirements laid down in Article 7 of Regulation (EU) 2017/1129.
2. Where the summary of a prospectus is to be supplemented in accordance with Article 23 of Regulation (EU) 2017/1129, the new information shall be integrated in the summary of that prospectus in a way that enables investors to easily identify the changes. The new information shall be integrated in the summary of the prospectus either by producing a new summary or by supplementing the original summary.

CHAPTER IV THE EU GROWTH PROSPECTUS

Article 28

EU Growth registration document for equity securities

A specific registration document for equity securities that is drawn up in accordance with Article 15 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 24 to this Regulation.

Article 29

EU Growth registration document for non-equity securities

A specific registration document for non-equity securities that is drawn up in accordance with Article 15 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 25 to this Regulation.

Article 30

EU Growth securities note for equity securities

A specific securities note for equity securities that is drawn up in accordance with Article 15 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 26 to this Regulation.

Article 31

EU Growth securities note for non-equity securities

A specific securities note for non-equity securities that is drawn up in accordance with Article 15 of Regulation (EU) 2017/1129 shall contain the information referred to in Annex 27 to this Regulation.

Article 32

Format of the EU Growth prospectus

1. An EU Growth prospectus that is drawn up as a single document shall be composed of the following elements in the following order:
 - (a) a table of contents;
 - (b) where applicable, all information incorporated by reference in accordance with Article 19 of Regulation (EU) 2017/1129;
 - (c) the specific summary;
 - (d) where the EU Growth prospectus is drawn up in the form of a base prospectus, a general description of the offering programme;
 - (e) the information referred to in section 1 of Annex 24 or section 1 of Annex 25 to this Regulation, depending on the type of securities;
 - (f) the information referred to in section 2 of Annex 24 or section 2 of Annex 25 to this Regulation, depending on the type of securities;
 - (g) where equity securities are issued by an issuer with a market capitalisation above EUR 200 000 000, the information referred to in section 2 of Annex 26 to this Regulation;
 - (h) the information referred to in section 3 of Annex 24 and section 3 of Annex 26, or the information referred to in section 3 of Annex 25 and section 2 of Annex 27, depending on the type of securities;
 - (i) the information referred to in section 4 of Annex 26 or in section 3 of Annex 27 to this Regulation, depending on the type of securities;
 - (j) the information referred to in section 5 of Annex 26 or in section 4 of Annex 27 to this Regulation, depending on the type of securities;

- (k) the information referred to in section 4 of Annex 24 or section 4 of Annex 25, depending on the type of securities;
 - (l) the information referred to in section 5 of Annex 24 or section 5 of Annex 25 to this Regulation, depending on the type of securities;
 - (m) the information referred to in section 6 of Annex 24 or section 6 of Annex 25 to this Regulation, depending on the type of securities;
 - (n) where non-equity securities include guarantees, the information referred to in section 5 of Annex 27 to this Regulation;
 - (o) the information referred to in section 7 of Annex 24 or section 7 of Annex 25 to this Regulation, depending on the type of securities.
2. Where an EU Growth prospectus is drawn up as separate documents, the EU Growth registration document and the EU Growth securities note shall contain the following elements in the following order:
- (a) EU Growth registration document:
 - (i) a table of contents;
 - (ii) where applicable, all information incorporated by reference in accordance with Article 19 of Regulation (EU) 2017/1129;
 - (iii) any other information referred to in Annex 24 or 25 to this Regulation that, depending on the type of securities, is to be included in the EU Growth registration document following the order of the sections set out in those Annexes.
 - (b) EU Growth securities note:
 - (i) a table of contents;
 - (ii) where applicable, all information incorporated by reference in accordance with Article 19 of Regulation (EU) 2017/1129;
 - (iii) a general description of the programme, in the case of a base prospectus;
 - (iv) any other information referred to in Annex 26 or 27 to this Regulation that, depending on the type of securities, is to be included in the EU Growth securities note following the order of the sections set out in those Annexes.
3. An EU Growth prospectus drawn up either as a single document or as separate documents may take the form of a base prospectus.
4. The SMEs, issuers and offerors referred to in Article 15(1) of Regulation (EU) 2017/1129 shall follow the order of the sections of the Annexes to this Regulation. They may however deviate from the order of the information items within those sections.

Article 33

Specific summary for the EU Growth prospectus

1. The specific summary for the EU Growth prospectus shall provide the key information that investors need to understand the nature and the risks of the issuer, of the guarantor and of the securities that are being offered.

2. The content of the specific summary shall be accurate, fair, clear and not misleading.
3. The specific summary shall be consistent with the other parts of the EU Growth prospectus.
4. The specific summary shall be drawn up as a short document written in a concise manner and shall have a maximum length of six sides of A4-sized paper when printed. The specific summary shall:
 - (a) be presented and laid out in a way that is easy to read, using characters of readable size;
 - (b) be written in a clear, non-technical and concise language that facilitates the understanding of the information and its comprehensibility by investors.

The first subparagraph shall also apply where information is presented in a tabular format.

5. The specific summary shall contain the information referred to in Annex 23 to this Regulation.
6. The specific summary shall not contain cross-references to other parts of the EU Growth prospectus or incorporate information by reference.
7. The specific summary may use sub-headings to present the information referred to in sections 2, 3 and 4 of Annex 22 to this Regulation.
8. The total number of risk factors referred to in items 2.3.1, 3.3(d) and 3.4.1 of Annex 23 to this Regulation and included in the specific summary shall not exceed 15.
9. Where securities are also subject to Regulation (EU) No 1286/2014 of the European Parliament and of the Council⁹, the competent authority of the home Member State may require the SMEs, the issuers and offerors referred to in Article 15(1) of Regulation (EU) 2017/1129 to substitute the information referred to in section 3 of Annex 23 to this Regulation with the information set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014.
10. Where the substitution referred to in paragraph 9 is not required by the competent authority of the home Member State, the SMEs, the issuers and offerors referred to in Article 15(1) of Regulation (EU) 2017/1129 may substitute the information referred to in section 3 of Annex 23 to this Regulation with the information set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014.
11. Where the information referred to in paragraphs 9 and 10 is substituted, it shall be included as a distinct section of the specific summary and that section shall clearly be identified as including the information set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014.
12. The maximum length of the specific summary referred to in paragraph 4 shall be extended by:
 - (a) one additional side of A4-sized paper where the specific summary contains information about a guarantee attached to the securities;

⁹ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1-23).

- (b) two additional sides of A4-sized paper where a specific summary covers several securities which differ only in very limited details such as issue price or maturity date;
- (c) three additional sides of A4-sized paper where there is a substitution of information as referred to in paragraphs 9 and 10.

For the purposes of point (c), three additional sides of A4-sized paper may be used for each security where the specific summary covers several securities which differ only in very limited details such as issue price or maturity date.

Article 34

Supplements to the specific summary for the EU Growth prospectus

Where the specific summary of an EU Growth prospectus is to be supplemented in accordance with Article 23 of Regulation (EU) 2017/1129, the new information shall be integrated in the specific summary of that EU Growth prospectus in a way that enables investors to easily identify the changes. The new information shall be integrated in the specific summary of the EU Growth prospectus either by producing a new specific summary or by supplementing the original specific summary.

CHAPTER V SCRUTINY AND APPROVAL OF THE PROSPECTUS AND REVIEW OF THE UNIVERSAL REGISTRATION DOCUMENT

Article 35

Scope of the scrutiny

For the purposes of the scrutiny of the prospectus and the review of the universal registration document, references to the prospectus shall mean the prospectus or any of its constituent parts, including a universal registration document whether submitted for approval or filed without prior approval and any amendments thereto as well as supplements to the prospectus.

Article 36

Criteria for the scrutiny of the completeness of the information contained in the prospectus

1. For the purposes of scrutinising the completeness of the information in a draft prospectus, competent authorities shall consider all of the following:
 - (a) whether the draft prospectus is drawn up in accordance with Regulation (EU) 2017/1129 and this Regulation, depending on the type of issuer, the type of issuance, the type of security and the type of offer or admission to trading;
 - (b) whether the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18.
2. For the purposes of point (b) of paragraph 1, competent authorities may require the issuer to include, modify or remove information from a draft prospectus, taking into account the following:
 - (a) the type of securities;

- (b) the information already included in the prospectus and the existence and content of information already included in a prospectus of the entity other than the issuer, as well as the applicable accounting and auditing principles;
- (c) the economic nature of the transactions by which the issuer has acquired, or disposed of, its undertaking or any part of it, and the specific nature of that undertaking;
- (d) whether the issuer can obtain with reasonable effort information about the entity other than the issuer.

Article 37

Criteria for the scrutiny of the comprehensibility of the information contained in the prospectus

1. For the purposes of scrutinising the comprehensibility of the information in a draft prospectus, competent authorities shall consider all of the following:
 - (a) whether the draft prospectus has a clear and detailed table of contents;
 - (b) whether the draft prospectus is free from unnecessary reiterations;
 - (c) whether related information is grouped together;
 - (d) whether the draft prospectus uses an easily readable font size;
 - (e) whether the draft prospectus has a structure that enables investors to understand its contents;
 - (f) whether the draft prospectus defines the components of mathematical formulas and, where applicable, clearly describes the product structure;
 - (g) whether the draft prospectus is written in plain language;
 - (h) whether the draft prospectus clearly describes the nature of the issuer's operations and its principal activities;
 - (i) whether the draft prospectus explains trade or industry specific terminology.

However, competent authorities shall not be required to consider points (g), (h) and (i) where a draft prospectus is to be used exclusively for the purposes of admission to trading on a regulated market of non-equity securities for which a summary is not required by Article 7 of Regulation (EU) 2017/1129.

2. For the purposes of the first paragraph, competent authorities may, on a case-by-case basis and in addition to the information referred to in Article 7 of Regulation (EU) 2017/1129 and Article 33 of this Regulation, require that certain information provided in the draft prospectus be included in the summary.

Article 38

Criteria for the scrutiny of the consistency of the information contained in the prospectus

For the purposes of scrutinising the consistency of the information in a draft prospectus, the competent authority shall consider all of the following:

- (a) whether the draft prospectus is free of material discrepancies between the different pieces of information provided therein, including any information incorporated by reference;

- (b) whether any material and specific risks disclosed elsewhere in the draft prospectus are included in the risk factors section;
- (c) whether the information in the summary is in line with information elsewhere in the draft prospectus;
- (d) whether any figures on the use of proceeds correspond to the amount of proceeds being raised and whether the disclosed use of proceeds is in line with the disclosed strategy of the issuer;
- (e) whether the description of the issuer in the operating and financial review, the historical financial information, the description of the issuer's activity and the description of the risk factors are consistent;
- (f) whether the working capital statement is in line with the risk factors, the auditor's report, the use of proceeds and the disclosed strategy of the issuer and how that strategy will be funded.

Article 39

Scrutiny of the information contained in the prospectus of specialist issuers

Competent authorities may require additional information to be included in the prospectus based on the activities of the specialist issuers falling under one of the categories set out in Annex 29.

Article 40

Additional criteria for the scrutiny of the completeness, consistency and comprehensibility of the information contained in the prospectus

Where necessary for investor protection, the competent authority may apply criteria in addition to those laid down in Articles 36, 37 and 38 for the purposes of scrutinising the completeness, comprehensibility and consistency of the information in the draft prospectus.

Article 41

Proportionate approach in the scrutiny of draft prospectuses and review of the universal registration document

1. Where a first draft of a prospectus that is submitted to a competent authority is substantially similar to a prospectus that the same competent authority has already approved, and where that draft prospectus highlights all changes made to that approved prospectus, the competent authority shall only be required to apply the criteria laid down in Articles 36, 37 and 38 to scrutinise those changes and any other information affected by them.
2. For the purposes of scrutinizing a universal registration document filed without prior approval that has already been reviewed, or an amendment to such a document, competent authorities shall only be required to apply the criteria laid down in Article 36, 37 and 38 to those parts of the universal registration document or the amendment that have not been reviewed.
3. Where a first draft of a prospectus that incorporates information by reference to a document that has been approved in accordance with Regulation (EU) 2017/1129 or in accordance with the national provisions transposing Directive 2003/71/EC of the

European Parliament and of the Council¹⁰, competent authorities shall only be required to apply the criteria laid down in Article 38 of this Regulation to scrutinise that information.

4. When applying paragraphs 1, 2 or 3, competent authorities shall request the issuer, offeror or person asking for admission to trading on a regulated market to confirm that all information in the final draft of the prospectus or universal registration document is up-to-date and contains all the information referred to in the Annexes to this Regulation applicable to that prospectus or universal registration document.
5. Where subsequent drafts of the prospectus are submitted to the competent authority, that competent authority, when scrutinising such subsequent drafts, shall only be required to apply the criteria laid down in Articles 36, 37 and 38 to changes made to the preceding draft and to any other information affected by those changes.

Article 42

Submission of an application for approval of a draft prospectus or filing of a universal registration document or of amendments thereto

1. All drafts of a prospectus shall be submitted to the competent authority in searchable electronic format via electronic means.

When submitting the first draft of the prospectus, the issuer, offeror or person asking for admission to trading on a regulated market shall provide the competent authority with a contact point for the competent authority to submit all notifications in writing and by electronic means.
2. The following information shall also be submitted to the competent authority in searchable electronic format via electronic means:
 - (a) the list of cross references, where requested by the competent authority in accordance with Article 24(5) of this Regulation, or when submitted on own initiative;
 - (b) where no list of cross reference is requested, a document that identifies any items set out in the Annexes to this Regulation that, due to the nature or type of issuer, securities, offer or admission to trading, have not been included in the draft prospectus;
 - (c) any information that is incorporated into the prospectus by reference as referred to in Article 19 of Regulation (EU) 2017/1129, unless such information has already been approved by or filed with the same competent authority in searchable electronic format;
 - (d) any reasoned request to the competent authority to authorise the omission of information from the prospectus as referred to in Article 18 of Regulation (EU) 2017/1129;
 - (e) any request to the competent authority to make a notification as referred to in Article 25(1) of Regulation (EU) 2017/1129;
 - (f) any request to the competent authority to make a notification as referred to in Article 26(2) of Regulation (EU) 2017/1129;

¹⁰ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64-89).

- (g) an appendix as referred to in Article 26(4) of Regulation (EU) 2017/1129, unless no summary is required pursuant to the second subparagraph of Article 7(1) of that Regulation;
 - (h) a confirmation that, to the best of the knowledge of the issuer, all regulated information which was required to be disclosed under the national provisions transposing Directive 2004/109/EC of the European Parliament and of the Council¹¹, where applicable, and under Regulation (EU) No 596/2014 of the European Parliament and of the Council¹², has been filed and published in accordance with those acts over the last 18 months or over the period since the obligation to disclose that regulated information commenced, whichever is the shorter, where the issuer is submitting for approval a draft universal registration document or filing a universal registration document without prior approval and seeks to obtain the status of frequent issuer;
 - (i) where a universal registration document is filed without prior approval, an explanation as to how a request for amendment or supplementary information as referred to in the second subparagraph of Article 9(9) of Regulation (EU) 2017/1129 has been taken into account in the universal registration document;
 - (j) any other information requested by the competent authority for the purposes of the scrutiny and approval of the prospectus or the scrutiny, review and approval of the universal registration document.
3. Where a universal registration document that is filed without prior approval is annotated in the margin in accordance with Article 24(6), it shall be accompanied by an identical version without annotations in the margin.
 4. Where a universal registration document is filed without prior approval or where a universal registration document is amended, the information referred to in points (a), (b), (c), (d), (h) and (i) of paragraph 2 shall be submitted at the time when the universal registration document is filed with the competent authority whilst the information referred to in point (j) of paragraph 2 shall be submitted during the review process. In all other cases, the information referred to in paragraph 2 shall be submitted together with the first draft of the prospectus submitted to the competent authority or during the scrutiny process.
 5. Where a frequent issuer informs the competent authority that it intends to submit an application for approval of a draft prospectus in accordance with the second sentence of the first subparagraph of Article 20(6) of Regulation (EU) 2017/1129, that frequent issuer shall do so in writing and by electronic means.

The information referred to in the first subparagraph shall indicate the Annexes to this Regulation relevant for that draft prospectus.

¹¹ 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. 38-57).

¹² Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1-61).

Article 43

Changes to a draft prospectus during the approval procedure

1. Each version of the draft prospectus submitted after the first draft prospectus shall highlight all changes made to the preceding draft and shall be accompanied by an unmarked draft. Competent authorities shall accept marked extracts of the preceding draft prospectus where only limited changes have been made.
2. Where competent authorities, in accordance with Article 45(2) of this Regulation, have notified the issuer, offeror or person asking for admission to trading on a regulated market that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency as referred to in Article 20(4) of Regulation (EU) 2017/1129, the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the outstanding issues notified by competent authorities have been addressed.
3. Where changes made to a draft prospectus are self-explanatory or clearly address the outstanding issues notified by the competent authority, an indication of where the changes have been made to address the outstanding issues shall be considered sufficient explanation for the purposes of paragraph 2.

Article 44

Submission for approval of the final draft of the prospectus

1. The final draft of the prospectus shall be submitted for approval together with all the information referred to in Article 42(2) that has changed compared to the previous submission, with the exception of the information referred to in points (a) and (h) of that Article. The final draft of the prospectus shall not be annotated in the margin.
2. Where no changes have been made to the information referred to in Article 42(2), the issuer, offeror or person asking for admission to trading on a regulated market shall confirm so in writing and by electronic means.

Article 45

Acknowledgment of the receipt of an application for approval of a draft prospectus, or of the filing of a universal registration document or of an amendment thereto, and processing of an application for approval of a draft prospectus

1. Competent authorities shall acknowledge receipt of the initial application for approval of a draft prospectus or of the filing of a universal registration document as referred to in the second subparagraph of Article 9(2) of Regulation (EU) 2017/1129, or of an amendment to that universal registration document in writing and by electronic means as soon as possible and no later than by close of business on the second working day following the receipt of the application or filing.

Upon receipt of the initial application for approval of a draft prospectus and of the filing of a universal registration document, or of an amendment thereto, the competent authority shall inform the issuer, offeror or person asking for admission to trading on a regulated market of the following:

- (a) the reference number of the application or of the filing;
- (b) the contact point within the competent authority to which queries regarding the application or the filing may be addressed.

2. Where the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval or where changes or supplementary information are needed, competent authorities shall inform the issuer, offeror or person asking for admission to trading on a regulated market thereof in writing and by electronic means.

Where the universal registration document referred to in the second subparagraph of Article 9(2) of Regulation (EU) 2017/1129, or an amendment to that universal registration document, does not meet the standards of completeness, comprehensibility and consistency or where amendments or supplementary information are needed, competent authorities shall inform the issuer thereof in writing and by electronic means. Where the shortcoming must be addressed without undue delay, as required by the third subparagraph of Article 9(9) of Regulation (EU) 2017/1129, the competent authority shall inform the issuer thereof.

3. The competent authority shall notify the issuer, offeror or person asking for admission to trading on a regulated market about its decision regarding the approval of the draft prospectus in writing and by electronic means as soon as possible and by no later than by close of business of the day on which that decision is taken.

CHAPTER VI FINAL PROVISIONS

Article 46

Repeal

Regulation (EC) No 809/2004 is repealed.

Article 47

Entry into force and application

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

It shall apply from 21 July 2019.

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

Done at Brussels, 14.3.2019

*For the Commission
The President
Jean-Claude JUNCKER*