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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 12.6.2015 amending Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements

Delegations will find attached document C(2015) 3834 final.

Encl.: C(2015) 3834 final



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COMMISSION DELEGATED REGULATION (EU) No .../..

of 12.6.2015

amending Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Prospectus¹ and Transparency² Directives provide that the financial information contained (1) in the prospectuses filed by third country issuers, seeking to list their securities in the EU and (2) in the financial statements prepared by third country issuers whose securities are already listed in the EU, is to be prepared in accordance with International Financial Reporting Standards (IFRS) or any other standard which has been declared equivalent to IFRS.

In order to ensure that a determination of the equivalence of third country accounting standards is made in all cases that are relevant to EU markets, a mechanism³ to determine the equivalence of the Generally Accepted Accounting Principles (GAAP) from third countries was established in 2007. Accordingly, the Commission adopted a Decision⁴ and a Regulation⁵ that allowed issuers to use financial statements prepared in accordance with the GAAP of India within the EU on a temporary basis, until 31 December 2014.

The objective of the regulation is to deal with the expiry of the transitional period for which the Commission granted equivalence to GAAP of India under Commission Regulation (EC) 809/2004 implementing Directive 2003/71/EC of the European Parliament and the Council as regards elements related to prospectuses and advertisements.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In February 2014, the Commission services requested the European Securities and Markets Authorities (ESMA) to provide an update on developments towards IFRS in India. ESMA delivered its report in October 2014. Based on this update the Commission services prepared a staff working paper that provides an update on the progress of the authorities of India towards adoption of or convergence with IFRS accordingly.

On the basis of this input, the Commission services drafted three legal acts designed to update and prolong the equivalence mechanism and the related measures which expire at the end of 2014.

¹ 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).

² 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).

³ Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (the "Equivalence Mechanism Regulation").

⁴ Commission Decision 2008/961/EC of 12 December 2008 on the use of third countries' issuers of securities of certain third country's national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements, OJ L 340, 19.12.2008, p. 112.

⁵ Commission Delegated Regulation (EU) No 311/2012 of 21 December 2011 amending Commission Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements (OJ L 103, 13.4.2012, p.13).

During the process of drafting, the text has been brought to the attention of the Experts Group of the European Securities Committee and the consulted national experts did not express any objections or reservations.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Prospectus Directive has been amended to reflect the changes introduced by the Treaty of Lisbon as regards in particular a clear distinction between delegated and implementing acts (Articles 290 and 291 respectively). Consequently, the Article which serves as a legal basis for the determination of equivalence has also been amended and provides for the adoption of delegated acts. Therefore, the present amending Regulation takes the form of a delegated act.

This delegated Regulation amends Article 35 of Regulation (EC) 809/2004 in order to take due account of the changes in the situation in India and to deal with the expiry of the transitional period granted to them. It is proposed to extend the transitional equivalence status of Indian GAAP for a period of one year in order to allow the authorities of India to complete the convergence process they have started and become fully compliant with IFRS by the expiry of that period.

COMMISSION DELEGATED REGULATION (EU) No .../..

of 12.6.2015

amending Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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/EC⁶, and in particular Article 7(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 809/2004⁷ requires third country issuers to prepare the historical financial information in prospectuses for offer of securities to the public or the admission of securities to trading on a regulated market in accordance with International Financial Reporting Standards (IFRS) or with the national accounting standards of a third country provided they are equivalent to these standards.
- (2) In order to assess the equivalence of the Generally Accepted Accounting Principles (GAAP) of a third country with adopted IFRS, Commission Regulation (EC) No 1569/2007⁸ provides for the definition of equivalence and establishes a mechanism for the determination of equivalence of the GAAP of a third country. According to the conditions of the equivalence mechanism, third country issuers could be permitted to use the GAAP of third countries which were converging or committed to adopt IFRS for a transitional period ending on 31 December 2014. It is important to assess the efforts of those countries which have taken steps to converge their accounting standards to or adopt IFRS. Therefore, Regulation (EC) No 1569/2007 should be amended to extend this transitional period until 31 March 2016. The Commission took

⁶ OJ L 345, 31.12.2003, p. 64.

⁷ 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, 30.04.2004, p. 1).

⁸ Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66).

account of the report provided by the European Securities and Markets Authority (ESMA) in October 2014 on India, which had received a transitional period by Commission Decision 2008/961/EC and Regulation (EC) No 809/2004 adopted under the equivalence mechanism.

- (3) The government of India and the Indian Institute of Chartered Accountants made a public commitment to adopt IFRS by 31 December 2011 with the aim that Indian GAAP would be fully IFRS compliant by the end of the programme. This process has been delayed. In October 2014, ESMA submitted to the Commission a report on the equivalence of Indian GAAP. In this report ESMA observed that Indian GAAP appear to have a number of differences from IFRS which could be significant in practice.
- (4) In March 2014 the Indian Institute of Chartered Accountants published a new roadmap for implementation of convergence of Indian GAAP with IFRS. In January 2015, the Ministry of Corporate Affairs of India announced a revised roadmap for the implementation of Indian GAAP that will be converged with IFRS. This roadmap foresees the mandatory use of Indian GAAP, converged with IFRS, by all listed companies for accounting periods beginning on or after 1 April 2016. However, uncertainties remain about the timetable for the implementation of an IFRS-compliant reporting system and IFRS enforcement.
- (5) Accordingly, it is appropriate to extend the transitional period for no more than until 1 April 2016, in order to allow third country issuers to prepare their annual and half-yearly financial statements in accordance with the Indian GAAP for use within the Union. This additional period should be sufficient to allow Indian authorities to complete the convergence of Indian GAAP with IFRS.
- (6) Since the period for which the Commission had put in place conditions for granting equivalence to the Generally Accepted Accounting Principles (GAAP) of third countries expired on 31 December 2014, this Regulation should apply from 1 January 2015 and enter into force without delay. This is necessary in order to provide legal certainty to issuers from the relevant third countries listed in the Union and avoid the risk that they might have to reconcile their financial statements with International Financial Reporting Standards (IFRS). The provision of retroactivity thus alleviates any potential additional burden on the issuers concerned.
- (7) Regulation (EC) No 809/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In paragraph 5a of Article 35 of Regulation (EC) No 809/2004 all references to the date 1 January 2015 are replaced by the date 1 April 2016.

Article 2

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

It shall apply from 1 January 2015.

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

Done at Brussels, 12.6.2015

*For the Commission
The President
Jean-Claude JUNCKER*