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Subject:	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

Delegations will find attached document COM(2022) 762 final.

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2022/0411 (COD)

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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Political context

This proposal is part of the Listing Act package, a set of measures to make public markets more attractive for EU companies and facilitate access to capital for small and medium-sized companies (SMEs). It is in line with the Capital Markets Union (CMU) core aim to improve access to market-based sources of financing for EU companies at each stage of their development, including for smaller companies. Listed companies, including recently listed ones, often outpace privately owned companies in terms of annual revenue growth and job creation[1]. By listing on public markets, companies can diversify their investor base, reduce their dependency on bank financing, gain easier and cheaper access to additional equity capital and debt finance (through secondary offers), raise their public profile and increase brand recognition.

Since the publication of the first CMU Action Plan in 2015, progress has been made to make it easier and cheaper for companies, in particular SMEs, to access public markets. In January 2018, the Directive 2014/65/EU of the European Parliament and of the Council (the Markets in Financial Instruments Directive, or 'MiFID II')[2] introduced a new category of Multilateral Trading Facilities (MTFs), the SME growth markets,[3] to incentivise SMEs access to capital markets. In 2019, new EU rules were put forward by Regulation (EU) 2019/2115 of the European Parliament and of the Council[4] (SME Listing Act) to cut red tape and reduce regulatory burden for companies listing on SME growth markets while preserving a high level of investor protection and market integrity. Nevertheless, despite this progress, stakeholders argue that further regulatory action is needed to streamline the listing process and make it more flexible for issuers.

The new CMU Action Plan adopted in September 2020 announced that '*in order to promote and diversify small and innovative companies' access to funding, the Commission will seek to simplify the listing rules for public markets*'. Following up on this and building on the 2019 SME Listing Act, the Commission set up a Technical Expert Stakeholder Group (TESG) on SMEs which confirmed stakeholders' concerns that further legislative action is needed to

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

2 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 (recast) (OJ L 173 12.6.2014, p. 349).

3 For an MTF to qualify as an SME growth market, at least 50% of the issuers whose financial instruments are traded on the MTF need to be SMEs, defined under MiFID II as companies with an average market capitalisation of less than EUR 200 million (See Recital 132 of MiFID II). In order to ensure the appropriate level of investor protection, the listing rules on SME growth markets must also satisfy certain quality standards, including the need to draw up an appropriate admission document (when a prospectus is not required) and to comply with periodic financial reporting. The SME growth market framework was developed to further acknowledge the special needs of SMEs entering the equity and bond markets for the first time.

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).

support listing of companies and especially of SMEs. In its final report of May 2021[5], the TESG made 12 recommendations to amend the listing framework both on regulated markets, as well as on SME growth markets.

On 15 September 2021, President Von der Leyen announced in her letter of intent[6] addressed to the Parliament and the Presidency of the Council a legislative proposal to facilitate SMEs' access to capital, which has been included in the 2022 Commission work programme[7].

A company's decision to list is a complex one and is influenced by a multitude of factors, many of which are outside the reach of regulators and therefore cannot be addressed directly by a legislative intervention. For instance, the features of the ecosystem that determine the cost of listing services, and more broadly geopolitical instability, Brexit, Covid-19, and inflation, have all had (and will continue to have) an impact on the decision to list, on the timing of listing, and on whether to remain listed in the EU. Regulatory requirements and the associated costs and burden, however, are also an important factor in a company's decision to list and remain listed. The Listing Act package represents a targeted set of measures aiming to reduce the regulatory burden where it is considered to be excessive (i.e., where regulation could ensure investor protection/market integrity in a more cost efficient manner for stakeholders) and to increase the flexibility accorded under company law to a company's founder(s) or controlling shareholder(s) to choose how to distribute voting rights after the admission to trading of shares.

The regulatory framework applying to the listing process is multifaceted. Companies must comply with regulatory requirements before, during and after the initial public offering (IPO). This proposal focuses specifically on the regulatory burden that emerges at two moments: the IPO stage and the post-IPO stage. It addresses regulatory burden at the IPO stage by introducing targeted amendments to Regulation (EU) 2017/1129 of the European Parliament and of the Council[8] (the Prospectus Regulation) and it addresses regulatory burden at the post-IPO stage by introducing targeted amendments to Regulation No 596/2014 of the European Parliament and of the Council[9] (the Market Abuse Regulation or 'MAR'). It also contains limited technical amendments to Regulation No 600/2014 of the European Parliament and of the Council (the Markets in Financial Instruments Regulation or 'MiFIR')[10].

The proposed regulation is accompanied by two other legislative proposals:

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5 Final report of the Technical Expert Stakeholder Group (TESG) on SMEs - Empowering EU capital markets - Making listing cool again (europa.eu).

6 See p. 4: state_of_the_union_2021_letter_of_intent_en.pdf (europa.eu).

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Commission work programme 2022 Making Europe stronger together COM (2021) 645 final cwp2022_en.pdf (europa.eu).

8 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).

9 Regulation (EU) No 596/2014 of the European Parliament and of the Council 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).

10 Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

- a proposal for a directive amending MiFID II and repealing Directive 2001/34/EC of the European Parliament and of the Council[11] (the Listing Directive), which aims to both (i) streamline and clarify listing requirements and (ii) to increase the low level of investment research on SMEs;
- a proposal for a new directive on multiple-vote share structures, which aims to address the regulatory barriers that emerge at the pre-IPO phase and, in particular, the unequal opportunities faced by companies across the EU when choosing the appropriate governance structures when they list.

Reasons for the proposal

When making a decision on whether or not to list, companies weigh expected benefits against the costs. If costs prevail, or if alternative sources of financing offer a less costly and easier option, companies will not seek access to public markets. Feedback from the market indicates that the initial and ongoing costs of becoming a public company have risen considerably in recent decades, both in absolute terms and relative to private equity funding, in particular for SMEs. The regulatory environment impacts all stages of the listing process and is among the driving forces of the high costs of listing and staying listed. Companies are required to comply with several disclosure and reporting requirements under EU law, especially the Prospectus Regulation and MAR.

The aim of the Prospectus Regulation is to enhance the internal market for capital by ensuring investor protection and market efficiency while helping companies, including SMEs, access different forms of finance in the EU[12]. The Prospectus Regulation 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. A prospectus is a document presenting information about a company and the securities that such company offers to the public or seeks to admit to trading on a regulated market. This information should be the basis on which investors can decide whether to invest in securities issued by that company.

The Prospectus Regulation does not apply under certain circumstances, such as for non-equity securities issued by certain sovereign or supranational entities, or for offers of securities to the public with a total consideration in the Union below EUR 1 million over a period of 12 months. It also includes several exemptions from the obligation to publish a prospectus for offers of securities to the public or admission to trading on a regulated market. In particular, Member States may exempt from the obligation to publish a prospectus offers of securities to the public of up to EUR 8 million over a period of 12 months, provided that they do not require notification (a 'passport'). For offers below EUR 1 million or the relevant threshold set at national level, Member States may require national disclosure documents, provided that

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11 Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p.1).

12 The Prospectus Regulation entered into force on 21 July 2017 and into full application on 21 July 2019. Building on and replacing the previous Directive 2003/71/EC of the European Parliament and of the Council (Prospectus Directive), the Prospectus Regulation harmonised several requirements across the Union. It also introduced some innovations, such as the simplified disclosure regime for secondary issuances, the EU Growth prospectus, the Universal Registration Document, more liberal rules for incorporation by reference, a new format for prospectus summaries and revised rules for the disclosure of risk factors. The Prospectus Regulation has already been subject to few targeted amendments: i) in 2019, under the SME Listing Act; ii) in 2020, under Regulation (EU) 2020/1503 of the European Parliament and of the Council (Crowdfunding Regulation); in 2021, under Regulation (EU) 2021/337 of the European Parliament and of the Council as part of the Capital Markets Recovery Package.

they do not constitute a disproportionate or unnecessary burden. Hence, issuers willing to offer securities cross-border need to comply with the threshold and disclosure requirements set out by the concerned Member States, unless those issuers draw up a prospectus on a voluntary basis in order to benefit from the EU single passport.

Under the CMU Action Plan, progress has already been made to make it easier and cheaper for companies, in particular smaller ones, to draw-up a prospectus. The Prospectus Regulation introduced the EU Growth prospectus – an alleviated form of a standard prospectus - for SMEs listed on SME growth markets. It aimed to reduce the costs of preparing a prospectus by smaller issuers, while providing investors with material information to assess the offer and take an informed investment decision. The Prospectus Regulation also introduced a simplified prospectus for companies whose securities are admitted to trading continuously and for at least the last 18 months on a regulated market or an SME growth market and wishing to issue additional shares or raise debt (follow-on or secondary issuances). Issuers whose securities are admitted to trading on an SME growth market can also use this simplified prospectus to transfer subsequently to regulated markets. Finally, Regulation (EU) 2021/337 of the European Parliament and of the Council[13] introduced, as part of the Capital Markets Recovery Package (CMRP), a new type of short-form prospectus (the "EU Recovery prospectus"). The EU Recovery prospectus is available to issuers that have shares already admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and that issue additional shares to overcome the negative impact of the COVID-19 crisis and contain excessive indebtedness. The EU Recovery prospectus regime will however expire on 31 December 2022.

Despite the alleviations introduced, feedback from stakeholders indicated that the requirement to produce a prospectus remains overly burdensome. This refers to both instances where companies seek access to public markets for the first time (IPO) and where they access public markets for follow-on of equity or non-equity securities.

The current rules in particular contribute to overly lengthy prospectuses. For example, in some cases, the Prospectus Regulation requires information that may not be indispensable for investors to make an informed investment decision (i.e., not justified from the investor protection point of view). Feedback to the public consultation (echoed during the stakeholders' meetings) confirmed the view that neither the standard prospectus nor the EU Growth prospectus strikes an appropriate balance between effective investor protection and the proportionate administrative burden for issuers, especially SMEs. In other cases, a prospectus is required when a lot of information is already available in the public domain (in particular, in the case of follow-on issuances). The excessive length of the prospectus can also discourage some, in particular smaller, investors from consulting it and translate into a higher cost of investing for larger investors. It also requires a longer period of time for the national competent authority (NCA) to scrutinise and approve the prospectus.

The current rules also contribute to very divergent prospectuses across the EU. Data reported by Oxera[14] and by the European Securities and Markets Authorities (ESMA)[15] shows a large

[13] 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).

[14] Final report on primary and secondary equity markets in the EU, available at: https://www.oxera.com/wp-content/uploads/2020/11/Oxera-study-Primary-and-Secondary-Markets-in-the-EU-Final-Report-EN-1.pdf

discrepancy between Member States regarding the length of prospectuses, which is indicative of a lack of uniformity of prospectuses in the EU. This discrepancy stems also from the fact that the current rules do not sufficiently frame supervisory scrutiny by NCAs.

Feedback from stakeholders highlighted that the EU regulatory framework places overly burdensome requirements also on already listed issuers, in particular under MAR. Since its entry into application on 1 July 2016, MAR has been extended to MTFs, including SME growth markets. MAR aims to increase market integrity and investor confidence. It prohibits from: (i) engaging or attempting to engage in insider dealing[16]; (ii) recommending that another person engages in insider dealing or induces another person to engage in insider dealing; (iii) unlawfully disclosing inside information[17]; or (iv) engaging in or attempting to engage in market manipulation. Issuers are also subject to several disclosure and record-keeping obligations under MAR. In particular, issuers are under a general obligation to disclose all inside information to the public as soon as possible[18].

Feedback from stakeholders indicated that some aspects of the MAR disclosure regime place a disproportionately high burden on issuers. In particular, stakeholders perceive as burdensome the obligation to disclose as soon as possible all inside information. This is due to the broadness of the notion of inside information (which gives rise to difficulties for issuers when delineating between what is and what is not inside information), as well as to the fact that the same notion applies both for the purpose of the prohibition of insider dealing and for the purpose of disclosure. While the broadness of the notion of inside information allows to cater for a wide and very early prohibition of insider dealing, it also implies that issuers are required to disclose information at a very early stage, when information on circumstances or events have not yet reached a high degree of certainty.

The notion of inside information covers not only events that have already occurred but also events which are "reasonably expected to occur" (i.e., for which there is a realistic prospect to occur) and, in the context of protracted processes (such as a merger), the intermediate steps which are connected with bringing about a future event. As a consequence, issuers incur high compliance costs to understand which steps of a protracted process may constitute inside information and when a certain piece of information is mature enough to be disclosed. At the same time, the effectiveness of disclosure in reducing information asymmetries between issuers and investors is limited if information is too preliminary, incomplete and still potentially subject to fundamental changes. Too early disclosure of information could mislead investors and trigger action on his/her part that could prove to be suboptimal in hindsight (e.g., divesting the stock too soon or not divesting soon enough), thus increasing the opportunity cost for investors.

Furthermore, issuers face a lack of legal clarity around the conditions that need to be met to delay disclosure when immediate disclosure would be likely to prejudice the legitimate

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15 ESMA peer review of the scrutiny and approval procedures of prospectuses by competent authorities (ESMA42-111-7170), points 113 to 121 (pages 33 to 37), available at: esma42-111-7170_final_report_-_prospectus_peer_review.pdf (europa.eu)

16 Insider dealing occurs when a legal or natural person in possession of inside information takes unfair advantage of that information by entering into market transactions or by amending or cancelling an existing order, to the detriment of third parties who are unaware of such information.

17 Unlawful disclosure occurs if any natural or legal person discloses inside information in a situation other than the normal course of their employment, profession or duties.

18 Inside information is defined in Article 7(1)(a) as "information of a precise nature, which has not been made public, relating to the issuer or to a financial instrument, and which, if it were made public, would be likely to have a significant effect on the price of that financial instrument or on the price of a related derivative financial instrument".

interests of the issuers (e.g., by jeopardising the successful conclusion of ongoing negotiations).

A few additional reporting and disclosure requirements under MAR place a disproportionately high burden on issuers, such as the provisions on managers' transactions, insider lists, and market sounding. Current MAR rules also create a disproportionate sanctioning regime for disclosure-related infringements, in particular for SMEs, which may potentially be sanctioned at the same level as large companies.

Objectives of the proposal

The overall objective of this initiative is to introduce technical adjustments to the EU rulebook in order to reduce regulatory and compliance costs for companies seeking to list or already listed with a view to streamlining the listing process and enhancing legal clarity, while ensuring an appropriate level of investor protection and market integrity. This, in turn, is expected to help diversify funding sources for companies in the EU and increase investments, economic growth, job creation and innovation in the EU.

The proposed targeted amendments to the Prospectus Regulation aim in particular to make it easier and cheaper for issuers to draw up a prospectus, while enabling investors to make the right investment decision by providing comprehensible, easy to analyse and concise information. They also seek to introduce sizable simplifications to, or even exemptions from, the prospectus requirements in cases where the issuer is already known to investors and a lot of information is already publicly available (follow-on issuances). These amendments are accompanied by amendments aimed at fostering the convergence of and streamlining the scrutiny and approval process by NCAs (for example, by narrowly frame the ability of NCAs to request issuers to include additional information in the prospectus).

In the case of an offer of securities to the public or the admission to trading on a regulated market, the proposal streamlines and further standardises the standard prospectus (referring to a non-alleviated prospectus type, irrespective of whether it relates to equity or non-equity securities, or whether is drawn up as a single document or consists of separate documents). The proposal aligns the level of disclosure of the standard prospectus to the level of disclosure currently required under the EU Growth prospectus regime, introduces a fixed order of disclosure and makes incorporation by reference a legal requirement. The proposal also introduces the possibility for issuers to draw up the prospectus in English only as the language customary in the sphere of international finance (except for the summary which in practice is the only document that most retail investors consult), and to publish it in an electronic format only (i.e., no paper copies on request). At the same time, only for shares or other transferable securities equivalent to shares in companies, a limit number of pages (300 pages) is introduced to avoid overly lengthy prospectuses for companies that do not have a complex financial history. Jointly, these amendments seek to provide a tangible cost and burden reduction for issuers, while ensuring that investors can take advantage of a document that is easier to read and navigate and more easily compare financial instruments and issuers.

The proposal also seeks to make it easier for SMEs to raise funds on public markets, in particular on SME growth markets, by generating further cost savings for SMEs and better tailoring disclosure to the needs of investors. For companies offering securities to the public and listing on SME growth markets (as well as for offers of securities to the public by smaller companies), the EU Growth prospectus is replaced by a mandatory new short-form EU Growth issuance document. This document builds on the level of disclosure currently required under the EU Recovery prospectus regime and existing admission documents required by SME growth markets (where the obligation to publish a prospectus does not apply), follows a

fixed order of disclosure and is subject, in the case of shares and other equivalent transferable securities, to a page limit.

While the proposal exempts, under certain conditions, from the prospectus requirement offers of securities fungible with securities already admitted to trading (for which the publication of a summary document will suffice), it subjects follow-on issuances of non-fungible securities to the approval and publication of a new mandatory short-form EU Follow-on prospectus, largely building on the current EU Recovery prospectus regime. These amendments seek to ensure that companies can fully benefit from the advantages of accessing public capital markets, including easier and quicker access to additional equity capital and debt finance through follow-on offers. At the same time, they safeguard investor protection as these companies are already subject to periodic and ongoing disclosure and reporting requirements and, in addition, issuers will be required to publish the most relevant information for investors.

Finally, the amendments to the Prospectus Regulation aim to foster cross-border offers by harmonising and increasing to EUR 12 million the threshold for exempting small offers of securities to the public from the obligation to publish a prospectus. This amendment also seeks to benefit smaller issuers, including SMEs, as in certain cases they will no longer have to produce a prospectus, lowering substantially their regulatory costs and incentivising them to access public capital markets. The proposal also introduces amendments to the rules on equivalence for third countries prospectuses to make them workable.

The proposed targeted amendments to MAR aim to reduce legal uncertainty on what constitutes inside information for the purpose of disclosure as well as on the timing of disclosure. While the proposal maintains the current broad notion of inside information for the purposes of the insider dealing regulation, it narrows down the scope of the disclosure obligation. The proposal clarifies in particular that the obligation to disclose all inside information to the public does not cover the information relating to the intermediate steps of a protracted process, as this information is too preliminary and hence not mature enough for disclosure. At the same time, the proposal introduces an empowerment for the Commission to establish, by way of a delegated act a non-exhaustive list of the relevant information as well as, for each information, an indication of the timing when issuers are expected to disclose it. Jointly, these amendments seek to make the MAR disclosure regime less costly to comply with by issuers, more predictable from the investors' point of view and more conducive to effective price formation.

The amendments to the disclosure obligation are accompanied by improvements to the regime for the exchange of information among NCAs to enable them to better identify cases of market manipulation by setting up a cross market order book surveillance (CMOBS) mechanism,[19] thus increasing the integrity of EU markets and enhancing their appeal for investors. In the same vein, the proposal introduces a possibility for ESMA to establish collaboration platforms, in particular for the purpose of monitoring wholesale commodity markets, to address concerns about market integrity and the good functioning of financial and, in particular, spot markets.

Finally, the proposal seeks to make the sanctioning regime for MAR disclosure-related infringements more proportionate for SMEs to avoid discouraging smaller issuers from listing or remaining listed.

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[19] The Commission can provide technical support to NCAs, under Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021, to facilitate the development of such mechanism to exchange order book data by NCAs.

The proposal also aims at alleviating the regulatory hurdles resulting from the application of the managers' transactions, insider list and market sounding regimes while ensuring that these alleviations do not impair investor protection and market integrity.

The creation of a CMOBS mechanism requires also targeted amendments to the MiFIR framework to specify that a competent authority can request order book data on an ongoing basis to a trading venue under its supervision, and to confer to ESMA the role to harmonise the format of the template used to store such data.

The proposed targeted amendments aim to build the necessary conditions for structural improvements in EU public capital markets to occur over time. A more favourable regulatory regime would encourage the development of a more favourable ecosystem, contributing in a multi-faceted manner to the CMU objective of improving access to financing by companies. Furthermore, this proposal should be analysed in conjunction with other proposed and upcoming initiatives. The proposed amendments are part of a broader package of measures outlined in the CMU Action Plan, which aim to address other issues currently preventing companies from raising capital on public markets.

- **Consistency with existing policy provisions in the policy area**

The proposal is in line with the overarching objectives of the Prospectus Regulation to facilitate fund raisings through capital markets, ensure investor protection, and foster supervisory convergence throughout the EU. The proposal is also in line with the overarching goals of MAR to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets as well as with the objective of MiFIR to ensure that EU markets in financial instruments are transparent and work efficiently.

The proposal is furthermore consistent with the reporting obligations laid down in Directive 2004/109/EC of the European Parliament and of the Council[20] (Transparency Directive), for issuers on regulated markets. It is also in line with the provisions of MiFID II and Commission Delegated Regulation (EU) 2017/565[21] regulating SME growth markets.

- **Consistency with other Union policies**

The proposal is fully in line with the CMU core aim to make financing more accessible to EU companies and in particular to SMEs. It is consistent with a number of legislative and non-legislative actions taken by the Commission in the framework of the 2015 CMU Action Plan,[22] 2017 Mid-term Review of the CMU Action Plan[23] and 2020 CMU Action Plan.

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20 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).

21 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).

22 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

23 Communication from the Commission on the mid-term review of the capital markets union action plan ({SWD(2017) 224 final} and {SWD(2017) 225 final} – 8 June 2017) https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf

In order to support jobs and growth in the EU, facilitating access to finance for companies, especially SMEs, has been a key goal of the CMU from the outset. Since the publication of the CMU Action Plan in 2015, some targeted actions were taken to develop adequate sources of funding for SMEs through all their stages of development. In its Mid-term Review of the CMU Action Plan published in June 2017, the Commission chose to raise its level of ambition and strengthened its focus on the SMEs' access to public markets. In November 2019, the co-legislators adopted a regulation to promote the use of SME growth markets[24] aiming to reduce the administrative burden and the high compliance costs faced by SME growth market issuers while ensuring a high level of market integrity and investor protection; foster the liquidity of publicly listed SME shares to make these markets more attractive for investors, issuers and intermediaries; and facilitate the registration of MTFs as SME growth markets. That Regulation entered into force in December 2019, except for the provision amending MAR that started applying in January 2021.

Furthermore, following the COVID-19 crisis, the Commission adopted the CMRP, which comprised of targeted amendments to capital markets and bank regulation, with the overarching aim to make it easier for capital markets to support EU businesses to recover from the COVID-19 crisis. The suggested changes to the capital market rules aimed in particular to alleviate regulatory burden and complexity for investment firms and issuers.

This proposal follows up on the 2020 CMU Action Plan and its objective to make financing more accessible to EU companies (Action 2 "supporting access to public markets"). The proposal focuses on alleviating the regulatory requirements that can deter a company from deciding to list or to remain listed (*'supply-side'*). Other factors that may deter issuers from listing, such as a narrow investor base and a more favourable tax treatment of debt over equity, are addressed by other ongoing and upcoming CMU initiatives that complement the amendments put forward in this proposal and should be analysed in conjunction with this initiative. These initiatives relate, for example, to (i) the creation of an EU Single Access Point (ESAP) that will tackle the lack of accessible and comparable data for investors, making companies more visible to investors, (ii) the centralisation of EU trading information in a consolidated tape for a more efficient public market trading landscape and price discovery and (iii) the introduction of a debt-equity bias reduction allowance (DEBRA)[25] to make equity financing more attractive (and less costly) for companies.

Furthermore, a series of the Commission initiatives will further strengthen the investor base for listed equity. The EU's SME IPO Fund will play the role of an anchor investor to attract more private investment in SMEs' public equity by partnering with institutional investors and investing in funds focused on SME issuers. The Capital Requirement Regulation and Solvency II reviews will increase the investor base for issuers by facilitating investments from banks and insurance companies in public long-term equity.

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24 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).

25 Proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (COM/2022/216 final).

This proposal is in line with action 2 of the New European Innovation Agenda[26] published in 2022, which recognized the important role of the listing act in facilitating access to finance for deep tech scale-ups.

The proposal also takes into account the evidence behind the opinion of the Fit For Future Platform on facilitating SMEs' access to capital and in particular on simplification of the procedures for the admission to trading of securities of SMEs and other listing obligations.

Finally, this proposal will help especially EU SMEs benefit from an alleviated legislative regime to access public capital markets and to comply with ongoing transparency and reporting requirements. This is also in line with the objective of the SME relief package announced by the Commission President Ursula von der Leyen in the State of the European Union speech on September 19, 2022.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis of the Prospectus Regulation, MAR and MiFIR is Article 114 of the Treaty on the Functioning of the European Union (TFEU). The proposal introduces targeted amendments to those Regulations and is therefore based on the same legal basis.

Article 114 TFEU provides for the adoption of measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States, which have as their goal the establishment and functioning of the internal market. Recourse to Article 114 TFEU is in particular possible where disparities between national rules are such as to obstruct the fundamental freedoms or create distortions of competition and thus have a direct effect on the functioning of the internal market.

• Subsidiarity (for non-exclusive competence)

Under Article 4 of the Treaty on the Functioning of the European Union (TFEU), EU action for completing the internal market must be appraised in light of the subsidiarity principle set out in Article 5(3) of the Treaty on European Union. According to the principle of subsidiarity, action at EU level should be taken only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus mandate action at EU level. It also has to be considered whether the objectives would be better achieved by action at EU level (the so-called 'test of European added-value').

Legislation applying to issuers and trading venues is largely harmonised at EU level, leaving limited flexibility for Member States to adapt this legal framework to local conditions. As a consequence, modifications of the EU legislation are necessary to bring about desired improvements. At the same time, the objectives of this proposal would be better achieved by action at EU level. By its scale, EU action could reduce the administrative burden for issuers, while at the same time safeguarding market integrity and investor protection, thus ensuring a level-playing field. In addition, an EU action is appropriate as the initiative seeks to support cross-border listing and securities trading activity across the whole EU, in order to further integrate and achieve scale on EU capital markets.

[26] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A New European Innovation Agenda (COM/2022/332 final).

- **Proportionality**

The proposed measures to reduce the regulatory burden on companies that seek a first-time listing and on companies that are already listed respect the principle of proportionality. They are adequate for reaching the objectives and do not go beyond what is necessary.

The proposed regulatory alleviations in the Prospectus Regulation aim to provide cost and burden reductions for issuers, while preserving and strengthening investor confidence in the well functioning of public markets. Proportionality is in particular ensured by introducing sizable simplifications to, or even exemptions from, the prospectus requirements only in cases where the issuer is already known to investors and a lot of information is already publicly available. Proportionality is furthermore ensured by tailoring disclosure to the prevailing size of the company on the market. The proposal introduces thus an EU Growth issuance document only for companies listed on SME growth markets (i.e. mainly, although not exclusively, SMEs).

Importantly, the proposed changes ensure that the level of transparency for investors is not negatively affected. None of the proposed measures will create the need for investors to perform any additional due diligence, and a high level of investor protection will be ensured. For instance, the possibility to use only English (i.e. common and widely-accepted language in the financial field) for drawing up the prospectus is counterbalanced with the requirement to have the summary in the language(s) of the Member State where the public offer is made. In the same vein, in the cases where an exemption from the prospectus is introduced, issuers are required to publish a statement (although not a prospectus) containing the most relevant information for the investor.

The proposed alleviations to reduce the administrative burden for already listed issuers (MAR) are also carefully calibrated to avoid a detrimental impact on market integrity and investor protection, which are the core objectives of MAR. By limiting the disclosure obligation to "mature" events only, the proposal ensures that markets and investors receive only meaningful information, avoiding the circulation of inaccurate or misleading information, which may misguide investment decisions. The proposed amendments to the disclosure regime are furthermore accompanied by strengthening the supervisors' monitoring system for order data, which, through the standardisation of order data reporting formats and the facilitation of exchanges of such data between NCAs, will enrich the market abuse supervisory toolbox, thereby ensuring greater market integrity and enhancing investor confidence. Finally, the targeted amendments to other disclosure and reporting obligations and to the sanctioning regime under MAR will remove undue administrative burden and create a more proportionate level of sanctions for smaller issuers (SMEs), thus striking a right balance between cost reduction and the primary need to safeguard market integrity and investor protection.

- **Choice of the instrument**

The proposal introduces targeted amendments to the Prospectus Regulation, the MAR and MiFIR. The legal basis of those Regulations is Article 114(1) TFEU. Any amending Regulation therefore must have the same legal basis. Moreover, as the proposed amendments are changes to existing legal texts, they can be introduced via an Omnibus Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This initiative focuses on reducing the regulatory burden that issuers incur during the listing process and afterwards when they are listed. Therefore, it only covers those aspects in the Prospectus Regulation and MAR that stakeholders consider to hinder companies' access to and ability to remain on public markets.

To inform this initiative, the Commission services collected a significant amount of data directly from trading venues and issuers (including SME associations). TESG (in force between October 2020 and May 2021) provided some evidence in addition to the input received from market participants. The Commission also contracted a study on Primary and Secondary Equity Markets in the EU from Oxera in November 2020, which contains a very detailed overview of EU capital markets. Other sources used included extensive academic literature and research.

Annex 6 to the impact assessment includes a detailed assessment of the effectiveness, efficiency and coherence of the Prospectus Regulation requirements, in line with the review clause (see Article 48 of Prospectus Regulation). The analysis of the Prospectus Regulation is furthermore based on data provided bilaterally by ESMA to the Commission services for the year 2021 and on ESMA's published reports on EEA approved prospectuses for the years 2019 and 2020. The analysis also took into account the key findings of ESMA's peer review report of the scrutiny and approval procedures of prospectuses by authorities of 21 July 2022. The analysis highlights that current prospectus requirements place unnecessary burden on issuers and that the intended objectives of the Prospectus Regulation could be delivered with less costly requirements for issuers while maintaining an adequate level of investor protection.

In 2019-2020, ESMA conducted a review of MAR and, in September 2020, following a formal request from the Commission, provided its technical advice in its MAR Review report[27]. ESMA's report is based on extensive feedback received from market participant representatives in reply to a public consultation, including from the Securities and Markets Stakeholder Group. The public consultation was published on 3 October 2019 and ran until November 2019[28]: 97 responses were received from a wide range of respondents (i.e., credit institutions, asset managers, issuers, legal and accountancy firms, and trading venues). In summary, ESMA concluded that the MAR framework was working well overall and considered that a major overhaul of the legislative framework would not be necessary, while proposing a number of technical adjustments and clarifications. The report also identified some areas for which ESMA deemed additional guidance as beneficial/necessary.

Some of the Report's conclusions are, however, contrasted by the conclusions of the CMU HLF and of the TESG, as well as by the feedback received from stakeholders in the context of the targeted consultation on the Listing Act and during the technical meetings. Annex 8 of the impact assessment summarises the assessment carried out by the Commission services in relation to the MAR provisions for which ESMA's conclusions are not in line with the feedback received from experts and stakeholders. This includes: the notion of inside information and the issuers' obligation to disclose inside information to the public; the conditions to delay disclosure; provisions regulating market soundings, insider lists and administrative sanctions. The analysis also covers the cross market order book surveillance.

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[27] MAR Review report (ESMA70-156-2391). Available at: esma70-156-2391_final_report_-_mar_review.pdf (europa.eu)

[28] Consultation paper MAR review report (ESMA70-156-1459). Available at: https://www.esma.europa.eu/sites/default/files/library/mar_review_-_cp.pdf

- **Stakeholder consultations**

On 19 November 2021, the Commission launched a Call for Evidence as well as a fourteen-week public and targeted consultations seeking views from stakeholders on how to increase the overall attractiveness of listings on public markets in the EU. The consultation also sought information on any potential shortcomings in the regulatory framework that dissuade companies from raising funds through public capital markets. In addition, the consultation asked specific questions about the Prospectus Regulation and the MAR.

Overall, 108 responses were received, sent by stakeholders from 22 Member States, the US, the UK and Switzerland.[29]

A vast majority of respondents (72%) believed that excessive compliance costs linked to regulatory requirements in the IPO and post-IPO phase were rather important or very important factors in explaining the lack of attractiveness of EU public markets. This included the vast majority of issuers, exchanges, investors and some NCAs. Several stakeholders stated that the listing burden is similar for large companies and SMEs, therefore making the burden very disproportionate for an SME. The majority of respondents argued that both listing and post-listing rules lead to a burden disproportionate with the investor protection objectives that these rules are meant to achieve (52% and 57%, respectively).

Overall, respondents admitted that the average cost of the different types of prospectuses was difficult to estimate and that the cost depended on various factors including legal fees, audit costs and the complexity of the business. Most respondents (59%) considered that the standard prospectus in its current form does not strike an appropriate balance between effective investor protection and the proportionate administrative burden for issuers, and that it should be significantly alleviated. The same view was also expressed by 44% of respondents about the EU Growth prospectus. Almost half of respondents believed that the prospectus regime for non-equity securities has been successful in facilitating fundraising through capital markets (48%).

On secondary issuances, respondents' views were split. While a slight majority of respondents (51%) considered that the prospectus requirement should not be lifted for follow-on issuances, a significant minority (43%) considered that issuers listed continuously for at least 18 months on a regulated market or an SME growth market, should not have to publish a prospectus for subsequent issuances.

Finally, most respondents (54%) said they did not think there was any alignment or convergence in the way NCAs assess the completeness, comprehensibility and consistency of draft prospectuses that are submitted to them for approval.

Overall respondents found most aspects of the current MAR regime burdensome. The most burdensome requirements were those related to the notion of inside information (64% said this was very burdensome or rather burdensome) and the conditions for delaying of disclosure (70% of respondents said this was very burdensome or rather burdensome). Respondents' views were split, when asked whether ESMA's clarifications by way of guidance on the notion of inside information would be sufficient. Almost half of those who expressed an opinion nevertheless believed that ESMA's guidelines would not be sufficient to provide the necessary clarifications around the notion of inside information (54%). Those respondents

[29] 15 public authorities (4 ministries of finance, 10 NCAs, 1 national agency); 3 chambers of commerce, 17 exchanges and 2 operators of market infrastructure other than trading venues; 40 industry associations, 4 NGOs, 4 consultancies/law firms, 4 academic institution and 5 private citizens. Those stakeholders come from 22 Member States: AT, BE, DE, DK, EE, EL, ES, FI, FR, HR, HU, IT, LI, LV, LU, MT, NL, PL, PT, RO, SK and SE.

(which included representatives of banks, trading venues, issuers, financial intermediaries and NCAs) expressed concerns that ESMA's guidance would not be effective in removing legal unclarity. They stated that the notion of inside information is too broadly defined and that too much information has to be published. According to them, a rethink of the notion of inside information is required, which can only be carried out in the context of the Level 1 regulation.

Respondents were further asked whether MAR should distinguish between a notion of inside information for the purposes of prevention of insider dealing and a notion of inside information triggering the disclosure obligation. A majority of respondents who expressed an opinion on the matter believed that a distinction between the two notions would be appropriate. Moreover, a majority of respondents who expressed an opinion noted that it should be clarified that inside information relating to a multi-stage process need only be made public once the end stage is reached, unless a leakage has occurred.

The overwhelming majority of respondents (72%) were in favour of an increased threshold for the reporting of managers' transactions under Article 19(8) MAR. They stated that such an increase would not harm market integrity. There was also consensus among respondents that the requirements on insider list need to be simplified for all issuers to ensure that only the most essential information for identification purposes is included. When asked if respondents considered that the ESMA's limited proposals to amend the market sounding procedure are sufficient, while providing a balanced solution to the need to simplify the burden and maintaining the market integrity, the majority of respondents disagreed (62.2%).

Finally, most respondents (51%) said that the current punitive regime under the MAR was not proportionate to the objective sought by legislation.

- **Collection and use of expertise**

Over the recent years, companies' and especially SMEs' access to public markets has been the focus of the Commission's continuous evaluations. Issues of regulatory burden on companies when accessing public markets were raised in the context of the CMU HLF, TESG and the 2020 CMU Action Plan. The Commission also took into account extensive research on the topic undertaken in the Oxera study.

The Commission also organised two technical meetings/workshops with industry stakeholders in April 2022 with a view to further refining the policy options under consideration.

Furthermore, the Commission presented the objective of the proposal at the European Securities Committee Expert Group and at the Coordinators of the Economic and Monetary Affairs Committee (ECON) of the European Parliament.

Expert groups' recommendations

In June 2020, the CMU HLF issued several recommendations to improve the public market ecosystem, generally with the objective of alleviating regulatory requirements. From the perspective of MAR and the Prospectus Regulation, the recommendations concentrated respectively on the notion of inside information, interaction between MAR and the Transparency Directive, the insider list, managers transactions and sanctions as well as the threshold and length of prospectuses, deadlines and the passporting regime.

In October 2020, the European Commission launched the TESG. The Group had been tasked with monitoring and assessing the functioning of SME growth markets, as well as providing expertise and possible input on other relevant areas of SMEs' access to public markets. The TESG confirmed the concerns expressed by the stakeholders that further legislative action is needed to support listing of companies and especially of SMEs. In its final report, published in May 2021, the TESG drew up 12 recommendations, including a recommendation on

clarifying and narrowing down the disclosure obligation under MAR and a recommendation to alleviate the listing requirements. On the Prospectus Regulation, the TESG suggested to introduce alleviations concerning the maximum length of the prospectus (e.g., through a page limit for IPO prospectuses), language (allowing prospectuses to be drawn up in English), secondary issuances and transfers of listing (e.g., introducing on a permanent basis significantly streamlined prospectus similar to the EU Recovery prospectus), the determination of "Home Member State". On the MAR, the TESG suggested introducing alleviations as regards its scope, the definition of inside information for the purpose of disclosure, market soundings, insiders list, managers' transactions, and sanctions.

Stakeholders' meetings

The Commission services also organised two virtual technical workshops at the beginning of April 2022 with representatives of exchanges, issuers and investors with a view to further refining the policy options that the Commission was considering. Numerous bilateral meetings with stakeholders were organised throughout the preparation of this initiative.

Meetings with Member State experts

The Commission also presented the objective of the proposal at the European Securities Committee Expert Group (EGESC) on 15 October 2021 and again at the same group on 17 and 30 May 2022. Delegations participating in the discussion showed support to the Commission's objective to improve the attractiveness of EU public markets, while ensuring investor protection and market integrity.

Meeting with the ECON Coordinators in the European Parliament

The MEP coordinators that participated in the discussion welcomed the Commission's proposed way forward on the Listing Act, acknowledging the problem with EU public markets. They stressed that the Commission needs to find a right balance to ensure that all companies, especially SMEs, can access public markets for funding, while at the same time ensuring adequate investor protection.

- **Impact assessment**

This proposal is accompanied by an impact assessment that was submitted on 10 June 2022, discussed on 6 July 2022 and received a positive opinion by the Regulatory Scrutiny Board (RSB) – with reservations – on 8 July 2022.

The RSB asked the Commission to amend the draft impact assessment to clarify: (i) the articulation and coherence of the Listing Act initiative with other linked capital markets initiatives; (ii) the risks and limitations of the analysis; (iii) the different views expressed by different categories of stakeholders on the problem definition, the options, and impacts of the options. The comments formulated by the Board were addressed and integrated into the final version of the impact assessment.

The impact assessment focuses on identifying and addressing specific regulatory barriers at each stage of the listing process. It discusses barriers at the pre-IPO stage stemming from company law, in particular, from the fact that a multiple-vote share listing is not possible in some Member States. It then focuses on barriers at the IPO stage arising from the Prospectus Regulation, notably from the high costs of drawing up a prospectus. Finally, it addresses barriers encountered at the post-IPO stage stemming from MAR, in particular, costs due to the legal uncertainty regarding the issuers' obligation to publicly disclose inside information. For each stage of the listing process, the impact assessment sets out two alternative policy options, after having analysed the available empirical evidence and accounting for stakeholders' views.

The impact assessment analyses the options in relation to three objectives, that is whether they: (i) reduce the regulatory and compliance costs for companies seeking to list or those that are already listed, (ii) ensure a sufficient level of investor protection and market integrity, and (iii) provide issuers with more incentives to list. The preferred option (for each stage of the listing process) should thus be cost-efficient and effective in addressing the identified barrier while safeguarding a sufficiently high level of investor protection and market integrity. The proportionality of measures for smaller companies has been considered when identifying and assessing options.

While the regulatory amendments set out in the options, on their own, could not address all the challenges faced by EU public markets, together with other measures considered as part of a wider plan to enhance companies' access to public capital markets, they seek to contribute to reversing the current negative trend in EU public markets. Absent of those regulatory improvements, EU public markets would continue to rely on the suboptimal regulatory framework for listing, which in turn would reduce the attractiveness of public markets, resulting in an economic cost for EU issuers, investors and the EU economy as a whole. The baseline scenario hence envisages no amendments to the legislative framework governing the rules for listing and already listed companies.

For the IPO-stage (i.e. Prospectus Regulation), policy option 1 proposes: (1) transferring the scrutiny of listing documents (including the prospectus) to exchanges, allowing the alleviation of contents only in specific cases (i.e. in the case of listings on SME growth markets and for secondary issuances). Policy option 2 proposes to have a shorter prospectus (or admission document) in all circumstances and a more streamlined scrutiny and approval process by NCAs. The analysis revealed that the introduction of shorter prospectuses combined with streamlined scrutiny by NCAs, as proposed in option 2, would be the most appropriate way to address the identified regulatory barriers.

For issuers the estimated cost savings would amount to approximately EUR 67 million per year. This figure includes EUR 56 million for primary issuances on regulated markets, EUR 2.7 million for primary issuances on SME growth markets, EUR 7 million for secondary issuances of fungible securities and EUR 1 million for secondary issuances of non-fungible securities.

Investors would take advantage of a lighter and more streamlined document, which is easier to read and navigate. The more standardised format (i.e., fixed order of disclosure of the prospectus sections) would facilitate the comprehensibility of prospectuses and their comparability across the EU. Furthermore, the possibility to publish the prospectus in an electronic format only would enable accessing and navigating the prospectus on an electronic support tool, which is nowadays more commonly used by investors.

NCAs scrutiny and approval process would be more efficient, convergent, and streamlined. Additional cost savings would stem from the fact that NCAs would no longer have to scrutinise and approve prospectuses for secondary issuances of fungible securities, which would now be exempted under certain conditions.

For the post-IPO stage, policy option 1 seeks to clarify and narrow down the disclosure obligation under MAR, also by reviewing the conditions for delaying such disclosure, and to render the sanctioning regime more proportionate for SMEs, while policy option 2 proposes to limit MAR disclosure of inside information to a closed pre-identified list of events. Option 1 has been identified as the preferred option.

Measures under this preferred option would enhance legal clarity on what is and what is not to be disclosed, removing disclosure of information that is too preliminary. This, in turn, implies

a reduction in burden for listed companies by limiting the amount of time and costs, including external advisers' fees, currently spent to ensure compliance with the disclosure obligation. This can also limit issuers' recourse to delayed disclosure. For issuers the decrease in direct and indirect costs is due to the additional clarity when assessing whether a certain piece of information qualifies as inside information in a specific case/event. The estimated reduction in annual compliance costs amounts to approximately EUR 89 million, broken down into EUR 24.6 million for SMEs and EUR 64.6 million for non-SMEs. The targeted amendments to the delayed disclosure rules could additionally reduce costs for companies by EUR 11 million, of which EUR 1 million for SMEs and EUR 10 million for non-SMEs.

Investors would benefit from the removal of unnecessary (or even misleading) disclosures and increased legal certainty with respect to the information issuers would be expected to disclose. This would avoid costs (including opportunity costs) linked to suboptimal decisions taken by investors based on prematurely disclosed information.

NCAs would benefit due to the streamlined supervision of compliance with disclosure obligations, which would lead to a reduction of the administrative burden. This option would also lower the administrative costs incurred by NCAs when reviewing the notifications of delays received from issuers, as the latter would have a lower need of delaying disclosure.

Finally, effects on exchanges are assumed to be limited under both preferred options. Exchanges would, however, benefit over time from a gradual increase in companies seeking admission to trading on them, because of the regulatory alleviations and higher attractiveness of public listing.

This proposal will contribute to the CMU agenda and its objective of diversifying the funding of EU companies as well as ensuring the development and further integration of capital markets in the EU. The regulatory measures proposed in this initiative are expected to have an impact on all companies in the EU, and particularly on SMEs, which are more exposed to the regulatory burden than larger companies with a higher cost absorption capability.

In terms of wider consequences, the proposal is not expected to have a direct social impact. However, there can be a positive indirect impact on employment due to better access to funding by companies, allowing firms to innovate and grow faster and to employ staff to achieve those objectives. As the initiative targets in particular SMEs (with some measures directly addressed at them), the (indirect) impact on employment is likely to be particularly relevant. Today SMEs in the EU provide for employment of around 100 million people, account for more than half of the EU GDP and play a key role in adding value in every sector of the economy[30]. Importantly, they make up 99.8 % of EU companies[31].

No direct environmental impacts and no significant harm, either direct or indirect, are expected to arise from the implementation of this proposal. A number of companies listed on public markets, however, may engage in the research and development of new environment-friendly technologies. Improved access to finance will allow these companies to grow at a more rapid pace and allocate more financial resources to R&D programmes that can contribute to the European Green Deal objectives.

The proposal may also positively, although marginally, affect the achievement of the Sustainable Development Goals (SDGs), in particular of SDG 8 (decent work and economic growth) and SDG 9 (industry, innovation, and infrastructure).

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30 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An SME Strategy for a sustainable and digital Europe, p. 1 (COM/2020/103 final).

31 Eurostat, 2018 Key Figures (europa.eu).

Finally, this proposal overall is not expected to have any serious impact on digitalisation. That said, the possibility under the Prospectus Regulation to request prospectuses in paper format is being removed with this proposal, thus promoting the digitalisation of the listing process. Moreover, the CMOBS will allow an automatic exchange of order book data among NCAs improving the cooperation for surveillance purposes through digital means.

- **Regulatory fitness and simplification**

The overall Listing Act package is expected to bring about annual administrative cost savings of approximately EUR 167 million for issuers, including SMEs. It is expected that NCAs would be able to reduce their costs because simpler and clearer requirements will make it possible to conduct their supervisory activities more efficiently. Investors would also benefit from the envisaged regulatory changes, as corporate information (at the moment of listing and thereafter) will become shorter, more timely and easier to navigate. It is expected that there would be only minor adjustment costs arising from the implementation of the proposal for issuers and NCAs.

- **Fundamental rights**

The proposal upholds fundamental rights and the principles recognised by the EU's Charter of Fundamental Rights, in particular the freedom to conduct a business (Article 16) and the principle of consumer protection (Article 38). As this initiative aims at alleviating the administrative burden placed on issuers, it will help improve the right to conduct business freely. The planned amendments to the Prospectus Regulation and the MAR should not have any negative impact on consumer protection, as those targeted changes are framed in a way that will preserve a high level of market integrity and investor protection.

4. BUDGETARY IMPLICATIONS

The initiative is not expected to have any noteworthy impact on the EU budget. The ICT infrastructure to facilitate the exchange among NCAs of cross market order book data for the purpose of market surveillance (CMOBS data) under the MAR is expected to cost around EUR 400 000 in one-off costs, with annual running costs of EUR 200 000. This CMOBS tool would be built by NCAs, potentially as a delegation agreement as allowed by Article 28 of Regulation (EU) No 1095/2010 that can be organised between NCAs and ESMA. Therefore, it would not be funded by EU budget but by NCAs, building on the existing Transaction Reporting Exchange Mechanism system that was established following Directive 2004/39/EC of the European Parliament and of the Council[32] (MiFID I) through a delegated project.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring of the impact of the amended Prospectus Regulation will be carried out in cooperation with ESMA and NCAs in the context of the annual reports on prospectuses approved in the EU [33], which ESMA is empowered to produce every year. In addition, the Commission will in 5 years assess the application of the Prospectus Regulation and whether the different prospectuses remain appropriate for meeting the Regulation's objectives. When

[32] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p.1).

[33] Article 47 of the Prospectus Regulation.

making its assessment, the Commission will strike an appropriate balance between achieving investor protection and minimising regulatory burden for companies.

The Commission will also assess the application of MAR in 5 years and report on the effects of this reform, in particular on the disclosure of inside information and the mechanism for exchanging order book data.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 – Amendments to the Prospectus Regulation

Exemptions for secondary issuances of securities fungible with securities admitted to trading on a regulated market or on an SME growth market.

Article 1(5)(a) of the Prospectus Regulation lays down 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 on the same regulated market. The proposal amends Articles 1(4) and 1(5) to set out that this exemption applies to both the offer of securities to the public and the admission to trading of the concerned securities. The proposal also extends this exemption to companies that have had securities traded on an SME growth market continuously for at least the last 18 months before the offer or the admission to trading of the concerned securities and increases the threshold from 20% to 40%.

In addition, the proposal amends Articles 1(4) and 1(5) to introduce a new exemption from the prospectus requirement. Under such new exemption, companies issuing securities fungible with securities already admitted to trading on a regulated market or an SME growth market, including companies transferring from an SME growth market to a regulated market, are not required to draw up and publish a prospectus. Instead, these companies are required to publish and file with the NCA a short summary document that includes a statement of compliance with ongoing and periodic reporting and transparency obligations and details the use of proceeds and any other relevant information, not yet disclosed publicly. A new Annex IX is inserted in the Prospectus Regulation to clarify what information is to be included in the summary document.

The new exemption however does not apply to secondary issuances of securities which are not fungible with securities already admitted to trading and to secondary issuances by companies that are in financial distress or that are going through a significant transformation, such as a change in control resulting from a takeover, a merger, or a division. In such cases, issuers are under the obligation to draw-up and publish a new short-form prospectus: the EU Follow-on Prospectus (see point below).

Compared to the exemption currently laid down in Article 1(5)(a), the new exemption has a broader scope (e.g., no percentage cap, no requirement that the new securities are admitted to trading on the same market) and is subject to specific safeguards to protect investors (e.g., the requirement to publish a summary document).

Provisions relating to existing prospectus exemptions that become redundant are deleted.

Harmonised threshold for exempting small offers of securities to the public from the requirement to publish a prospectus.

Article 1(3) of the Prospectus Regulation, which lays down a threshold of EUR 1 million below which the Regulation does not apply, is deleted.

Article 3(2) of the Prospectus Regulation is amended to set a unique harmonised threshold of EUR 12 million below which offers of securities to the public that do not require a passport are exempted from the prospectus requirement (threshold based on the total consideration of the aggregated offers made by the same issuer in the Union over a period of 12 months). Issuers are however allowed to draw up a prospectus on a voluntary basis. Furthermore, it is specified that Member States are allowed to require national disclosure documents for offers of securities to the public below EUR 12 million, provided the national disclosures do not constitute a disproportionate burden.

More standardised and streamlined prospectus for primary issuances of securities offered to the public or admitted to trading on a regulated market.

The proposal amends Articles 6(2) and 7 to introduce a standardised format and sequence of the prospectus as well as of the prospectus summary (i.e. a fixed order of disclosure of the information contained therein). Furthermore, the proposal introduces a page-limit (300) for shares IPO prospectuses and clarifies what information to be provided within the prospectus does not fall under the page limit.

The empowerment to the Commission to adopt delegated acts to set out the format and content of the prospectus is amended accordingly (Article 13(1) and Annexes I to III of the Prospectus Regulation). It is furthermore clarified that those delegated acts should also consider (i) for issuers of equity securities, whether the issuers is subject to the sustainability reporting under the upcoming Corporate Sustainability Reporting Directive[34], and (ii) for issuers of non-equity securities, whether those non-equity securities are marketed as taking into account ESG factors or pursuing ESG objectives.

Additional improvements to the efficiency and effectiveness of the prospectus requirements are achieved through amendments to Article 16 (to streamline risk factors), Article 19 (to make incorporation by reference mandatory), Article 21 (to remove the possibility for investors to request paper copies of the prospectus) and Article 27 (to ensure issuers can draw-up the prospectus in English only, except for the summary).

Replacing the simplified disclosure regime for secondary issuances and the (soon to expire) EU Recovery prospectus with a new EU Follow-on prospectus.

The proposal introduces a new EU Follow-on prospectus, which replaces on a permanent basis (for equity and non-equity securities) the simplified prospectus for secondary issuances. The simplified disclosure regime for secondary issuances (Article 14 of the Prospectus Regulation) is therefore repealed. Grandfathering provisions are introduced for simplified prospectuses for secondary issuances approved before the repeal (new Article 50(1) of the Prospectus Regulation). The EU Recovery prospectus regime (Articles 7(12a), 14a, 20(6a), 47a and Annex Va of the Prospectus Regulation) will have expired on 31 December 2022.

The regime for the EU Follow-on prospectus is laid down in the new Articles 7(12b), 14b, 20(6b), 21(5b) and Annexes IV and V to the Prospectus Regulation. This regime applies to secondary issuances that do not fall under an exemption (e.g., where the fungibility criterion is not fulfilled). Issuers however may, on a voluntary basis, draw-up and publish an EU Follow-on Prospectus also in the case of secondary issuances falling under one of the exemptions. Issuers are also allowed to draw up other prospectus types for secondary

[34] Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (COM/2021/189 final).

issuances (e.g., frequent issuers may use a standard prospectus including a URD[35] or, for non-equity securities, a base prospectus[36]).

The EU Follow-on prospectus follows a standardised format and sequence, is subject to a page limit in the case of secondary issuances of shares and can be drawn-up in a language customary in the sphere of international finance (except for the summary).

Replacing the EU Growth prospectus with a new EU Growth issuance document.

The proposal introduces a new EU Growth issuance document, which replaces on a permanent basis the EU Growth prospectus. The EU Growth prospectus regime set out in Article 15 of the Prospectus Regulation is therefore repealed. Grandfathering provisions are introduced for EU Growth prospectuses approved before the repeal (new Article 50(2) of the Prospectus Regulation).

The new regime for the EU Growth issuance document is laid down in the new Articles 7(12b), 15a, 21(5c) and Annexes VII and VIII to the Prospectus Regulation. Under the proposed amendments, the drawing-up and publication of an EU Growth issuance document is mandatory, except where an exemption from the obligation to publish a prospectus applies, for offers of securities to the public by certain identified categories of offerors, including SMEs and issuers whose securities are admitted or to be admitted to trading on an SME growth market, provided that they do not already have securities admitted to trading on a regulated market. However, in the case of secondary issuances, SMEs and issuers on SME growth markets may still choose to draw up an EU Follow-on prospectus for an offer of securities to the public, provided that they have securities already admitted to trading on an SME growth market continuously for at least the last 18 months and that they have no securities admitted to trading on a regulated market.

The EU Growth issuance document follows a standardised format and sequence, is subject to a page limit[37] in the case of offers to the public of shares and can be drawn-up in a language customary in the sphere of international finance (except for the summary).

Streamline and improve convergence of the scrutiny and approval of the prospectus by NCAs.

The proposal amends Article 20(11) to empower the Commission to specify in delegated acts: i) when a competent authority is allowed to use additional criteria for the scrutiny of the prospectus and the type of additional information that may be required in that circumstances; ii) the maximum timeframe for a competent authority to finalise the scrutiny of the prospectus and reach a decision on whether that prospectus is approved or the approval is refused and the

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35 Issuers whose securities are admitted to trading on a regulated market or an MTF have the possibility to draw up a URD, to be approved by the NCA for two consecutive years and filed every year after (i.e., kept on 'the shelf'). The URD allows the issuer to keep the information up-to-date and to draw up a prospectus when market conditions become favourable by adding a securities note and a summary and submitting the prospectus to the NCA for approval. The URD allows issuers to obtain the status of frequent issuers and benefit of a reduced approval time.

36 The base prospectus is a flexible document often used for the offer or the admission to trading of non-equity securities issued in a continuous or repeated manner or as part of an offering programme. The base prospectus contains information on the issuer and some general information on the securities, and is complemented by the 'final terms', which contain information relating to the securities note specific to the individual issue (e.g., ISIN, issue price, date of maturity, any coupon, exercise date, exercise price). Where the final terms are not included in the base prospectus, they are not approved by the NCA, but only filed with it, together with the specific summary of the issue which is annexed to them.

37 The page limit for an EU Growth issuance document for a public offer of shares or other transferable securities equivalent to shares to the public is 75 pages, when printed. However, 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 would be excluded from that page limit.

review process terminated; iii) the consequences for a competent authority that fails to take a decision on the prospectus within the time limits laid down in the Prospectus Regulation.

Furthermore, the proposal amends Article 20(13) to require ESMA to conduct one peer review on scrutiny and approval of prospectuses at least every 3 years.

Make permanent the amendments introduced by the CMRP and further clarify rules on supplements.

Article 23 is amended to make permanent the changes introduced by the CMRP.[38] Furthermore, Article 23 is amended to clarify that, in the event of a publication of a supplement to the prospectus, the financial intermediary is required to inform only those investors who are clients of that financial intermediary and agreed to be contacted by electronic means (at least to receive the information on the publication of a supplement).

Revise the equivalence regime under Articles 29 and 30 for third countries prospectuses to make it workable.

Additional conditions are introduced in Article 29 to make the equivalence regime workable[39]. Furthermore, the approval by the competent authority of the home Member State of a prospectus drawn up under the laws of a third country is replaced with the mere filing with that competent authority. Finally, general equivalence criteria are laid down and the Commission is empowered to adopt delegated acts to further specify those criteria.

Article 30 is also amended to confer ESMA the task to establish cooperation arrangements with the supervisory authority of the third country concerned and the Commission is empowered to define the minimum content of those cooperation arrangements.

Additional amendments.

The threshold of EUR 150 million to exempt offers of non-equity securities issued in a continuous and repeated manner by credit institutions introduced by the CMRP in Articles 1(4), point (j), and 1(5), first subparagraph, point (i) is made permanent.

Furthermore, the proposal simplifies and alleviates the URD regime by making it possible to draw up the document in English only and granting the status of frequent issuer after one year of approval instead of two (see amendments to Article 9(2), second subparagraph).

The proposal also reduces from six to three days the minimum period between the publication of a prospectus and the end of an offer of shares to facilitate swift book-building processes (especially in fast moving markets) and increase the attractiveness of the inclusion of retail investors in the IPOs[40].

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38 The CMRP extended from two to three working days the period within which investors may withdraw from their subscriptions for securities in case issuers published a supplement due to significant new factors, material mistakes or material inaccuracies. It also clarified which investors financial intermediaries have to contact when a supplement is published and extended the deadline to contact those investors (from the day of the publication of the supplement to the end of the following working day).

39 In the letter to the Commission relating to the technical advice on general equivalence criteria for prospectuses drawn up under the laws of third countries. ESMA observes that the Prospectus Regulation entitles EU home competent authorities to approve prospectuses from third countries, if the information requirements imposed by those third country laws are equivalent to the requirements under the Prospectus Regulation. This appears to significantly limit the added value of the equivalence regime because, while third country prospectuses would be drawn up under the disclosure rules of the equivalent third country, they would have to be scrutinised and approved under the disclosure rules of the Prospectus Regulation.

40 Given the impact associated with a delay deemed too long for opening the order book and therefore the possibility for investors to cancel orders associated with the public offering in fluctuating market conditions, issuers and advisers could choose not to proceed to an offer to the public (hence including

Finally, the proposal amends Article 47 (yearly ESMA report on prospectuses) to include the new EU Follow-on prospectus and EU Growth issuance document, as well as 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.

New timelines are set out for the review of the Prospectus Regulation (Article 48) and amendments are introduced for the key areas that the Commission is required to assess (taking into account the amendments introduced by this Regulation).

Article 2 – Amendments to the MAR

Narrow down the scope of the obligation to disclose inside information and enhance legal clarity as to what information needs to be disclosed and when.

The proposal narrows down the scope of the disclosure obligation set out in Article 17(1) in the case of the so-called protracted process (i.e. multi-staged events, such as a merger) by setting out that the disclosure obligation does not cover the intermediate steps of that process. Issuers in particular are under the obligation to disclose only the information relating to the event that is intended to complete a protracted process.

As the proposal does not amend the notion of inside information laid down in Article 7, the prohibition of insider dealing continues to be triggered also by an intermediate step of a protracted process that qualifies as inside information. At the same time, the proposal introduces an obligation for issuers to ensure the confidentiality of inside information (subject to the ban on insider dealing) until the moment of disclosure and to immediately disclose such inside information to the public in the case of a leakage.

Finally, the proposal enhances legal clarity as to which information falls under the scope of the disclosure obligation as well as to the timing of disclosure by empowering the Commission to adopt a delegated act to establish a non-exhaustive list of relevant information together with the indication (for each piece of information) of the moment when disclosure is expected to occur.

Clarify the conditions under which issuers may delay disclosure of inside information and modify the timing of the notification of the delay to the NCA

The proposal amends Article 17(4) to replace the general condition that the delay should not mislead the public by a list of specific conditions that the inside information that the issuer intends to delay must satisfy. Moreover, the timing of the notification of the delay to the NCA is advanced to the moment immediately after the decision to delay disclosure is taken by the issuer (instead of the moment immediately after the information is disclosed to the public). The proposal however does not impose an obligation on NCAs to authorise delays.

Clarify the safe-harbour nature of the market sounding procedure.

Article 11 regulates the interactions between a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, conducted in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring (so-called ‘‘market sounding’’). The proposal amends Article 11 to clarify that the market sounding regime and the relevant requirements are only an option for disclosing market participants (DMPs) to benefit from the protection against the allegation of unlawful disclosure of inside information (‘safe-harbour’). It follows that DMPs opting to carry out market soundings in accordance with certain information and record-keeping requirements are granted full protection against the allegation of unlawfully disclosing of inside information.

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retail investors) of securities for which they expect to have sufficient participation on the professional side (i.e., private placement).

DMPs opting to carry out market soundings without complying with the said requirements are not able to take advantage of the protection given to those who have complied. However, in the case of non-compliance, there is no presumption that DMPs have unlawfully disclosed inside information.

At the same time, to ensure the possibility for NCAs to obtain an audit trail of a process that may imply disclosure of inside information to third parties, the proposal specifies that all DMPs (irrespective of whether they intend to benefit from the safe-harbour or not) shall consider, before conducting market soundings and throughout the process whenever they disclose information, whether such process involves inside information. They must also make a written record of the conclusions and reasons and provide it to the NCA upon its request.

Finally, the definition of market sounding is expanded to also include cases where a transaction is not eventually announced.

Simplify the insider lists regime for all issuers building on the alleviations introduced by the Regulation (EU) 2019/2115.

The proposal amends Article 18 to extend the alleviations introduced to the insider lists regime by Regulation (EU) 2019/2115 for issuers on SME growth markets to all issuers (including those on regulated markets). The proposal in particular requires issuers to draw up and maintain a less burdensome list of 'permanent insiders'. This list includes all persons having regular access to inside information relating to that issuer due to their function or position within the issuer (such as members of administrative, management and supervisory bodies, executives who make managerial decisions affecting the future developments and business prospects of the issuers and administrative staff having regular access to inside information). This list will be easier for issuers to produce while being still meaningful for the investigations of NCAs on insider dealing cases.

This alleviation is only granted to issuers and is without prejudice to the obligation of persons acting on their behalf or for their account (such as accountants, lawyers, rating agencies) to draw up, update and provide to the NCA upon its request their own insider list. At the same time, for issuers whose securities have been admitted to trading on a regulated market for at least the last 5 years, the proposal allows Member States to opt out and require the drawing up and maintenance of a 'full insider list' where justified by market integrity concerns. This list includes all persons having access to inside information, as it is currently the case.

Finally, the proposal introduces further minor technical amendments to decouple the obligation of the issuer and the persons acting on its behalf or on its account to request the persons included in the insider list to acknowledge their legal and regulatory duties from the duty of those persons to acknowledge such duties. It also clarifies that the acknowledgement shall be done in a durable medium (instead of in writing).

Raise the threshold above which managers shall notify their transactions and expand the scope of exempted transactions during the close period.

The proposal amends Article 19 to raise from EUR 5 000 to EUR 20 000 the threshold above which transactions conducted by Persons Discharging Managerial Responsibilities (PDMRs) and Persons Closely Associated on their own account and relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto shall be notified to the issuer and to the NCA. The current 5 000 threshold is too low and is at the origin of the disclosure of not meaningful transactions. The proposal also raises from EUR 20 000 to EUR 50 000 the value to which NCAs may decide to increase the threshold applying at national level.

Moreover, the proposal includes certain further transactions in the scope of the exemptions to the prohibition for PDMRs to carry out transactions in the closed period (i.e. in the 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public). These are in particular employees' schemes that concern financial instruments other than shares, as well as qualification or entitlement of financial instruments other than shares, and transactions where no investment decision is taken by the PDMR (such as the automatic conversion of financial instruments).

Make administrative pecuniary sanctions for infringements of disclosure requirements more proportionate, in particular for SMEs.

The proposal amends Article 30(2)(i) and (4) to make administrative sanctions for infringements of disclosure requirements more proportionate to the size of the issuer.

The proposal provides that pecuniary sanctions for this type of infringements are by default calculated as a percentage of the total annual turnover of the issuer. However, competent authorities may calculate sanctions based on absolute amounts in exceptional cases and only where it would be impossible to consider all circumstances of an infringement, as set out in Article 31, where the calculation of pecuniary sanctions is done based on the total annual turnover of the issuer. For those cases, the proposal introduces lower absolute amounts of the minimum of the maximum pecuniary sanctions for SMEs. As a consequence, Member States would have the possibility to decrease in their national laws the cap on pecuniary sanctions for SMEs for disclosure-related infringements. The proposal does not amend any provisions on sanctions related to other types of infringements.

The proposal also amends Article 31 to ensure that competent authorities, when determining the type and level of administrative sanctions, take into account, among the relevant circumstances, the fact of duplication of criminal and administrative proceedings and penalties for the same breach.

Set up a CMOBS mechanism.

The proposal introduces a new Article 25(a) to set up a CMOBS mechanism that allows NCAs to exchange order book data collected from exchanges to detect market abuse in a cross-border context.

Other amendments.

Articles 14 and 15 prohibit insider dealing, the unlawful disclosure of inside information and market manipulation. Article 5 contains, however, an exception to those prohibitions for buy-back programmes and stabilisation. The proposal amends Article 5 to simplify the reporting mechanism that an issuer shall follow in order for its buy-back programme to benefit from such as well as the information to be disclosed. Under the proposed amendments, issuers shall report the information only to the NCA of the most relevant market in terms of liquidity for their shares and disclose to the public only aggregated information.

The definition of inside information with respect to "front running" conducts (Article 7(1)(d)) is amended to ensure that it captures not only persons charged with the execution of orders concerning financial instruments but also other categories of persons that may be aware of a future relevant order. The amendments also aim to ensure that the definition covers also the information on orders conveyed by persons other than clients, such as orders known by virtue of management of a proprietary account or a fund.

Considering that the operator of an SME growth market is not a party to a liquidity contract, the proposal amends Article 13(12) to remove the requirement for such operator to approve

the terms and conditions of liquidity contracts and replace it with an obligation to only acknowledge in writing to the issuer that it has received such contract.

Article 17(5) allows an issuer that is a credit institution or a financial institution to delay the public disclosure of inside information in order to preserve the stability of the financial system, provided that certain conditions are met. The proposal amends Article 17(5) to include in its scope the case of an issuer that is a parent or related undertaking of a listed or non-listed credit institution or financial institution.

The proposal adds an Article 25(b) to allow the creation by ESMA of collaboration platforms, with NCAs as well as with public bodies that monitor spot markets, to reinforce the exchange of information in the case of concerns related to market integrity or the good functioning of markets. The proposal also amends Article 25 to enable ESMA to initiate cooperation.

Finally, the proposal brings benchmark administrators and contributors expressly into the scope of MAR administrative sanctioning regime by amending Article 30(2), points (e) to (g).

Article 3 – Amendments to MiFIR

In connection with the introduction of the CMOBS mechanism, the proposal amends MiFIR to specify that a competent authority can request order book data on an ongoing basis to a trading venue under its supervision and to empower ESMA to harmonise the format of the template used to store such data.

Article 4 – Entry into force and application

Article 4 sets out the dates of the entry into force and application of this Regulation.

2022/0411 (COD)

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[41],

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[42] 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.

(2) The Capital 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[43] 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.

41 OJ C , , p. .

42 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).

43 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).

(3) Regulation (EU) 2019/2115 of the European Parliament and of the Council[44] 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 Capital Markets Union[45] recommended the Commission to remove regulatory obstacles that hold companies back from accessing public markets. The Technical Expert Stakeholder Group on SMEs[46] set out detailed recommendations on how to foster companies and, in particular, SMEs to access Union public markets.

(4) Building on a Commission's initiative within its post-Covid-19 recovery strategy, i.e. the Capital Markets Recovery Package, targeted amendments have been introduced into Regulation (EU) 2017/1129 of the European Parliament and of the Council[47], Regulation (EU) 2017/2402 of the European Parliament and of the Council[48], Directive 2014/65/EU and Directive 2004/109/EC of the European Parliament and of the Council[49] 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.

(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[50], 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 more attractive by reducing compliance costs, and by removing significant obstacles that hold back companies, including SMEs, from tapping 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

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44 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).

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

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

47 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).

48 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).

49 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).

50 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).

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[51].

(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.

(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 threshold of EUR 12 000 000 should be set out at Union level and should replace the existing optional thresholds. Below that threshold, 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 disproportionate or unnecessary burden.

(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.

(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

[51] Regulation (EU) No 596/2014 of the European Parliament and of the Council 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).

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 the same regulated market and provided 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 apply to both the offer to the public and the admission to trading on a regulated market of the concerned securities and the percentage threshold that determines the eligibility for that exemption should be increased. For the same reason, that modified exemption should also encompass an offer to the public of securities fungible with securities already admitted to trading on an SME growth market.

(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 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, for issuers on SME growth markets, in Commission Delegated Regulation (EU) 2017/565[52]. Where those companies issue securities fungible with securities already admitted to trading on 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 in financial distress or restructuring 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 investors, a short-form document with key information for investors should still be made available to the public and filed with the competent authority of the home Member State. 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

[52] 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).

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 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) To reduce the complexity of the prospectus documentation, and to make the prospectus a more harmonised document to improve 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. 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 or information to be provided when the issuer has a complex financial history or has made a significant financial commitment 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. 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 extend 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 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 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 companies seeking admission to trading on a regulated market. It is therefore appropriate to align Annexes I, II and III to Regulation (EU) 2017/1129 to the level of disclosure of the EU Growth prospectus, by taking as reference the related Annexes laid down in Commission Delegated Regulation (EU) 2019/980[53].

(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 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

[53] 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).

European Parliament and of the Council[54]. Moreover, the Commission should be empowered to set out a schedule specifying the ESG-related information to be included in prospectuses for non-equity securities 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 Follow-on prospectus should be available for 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 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.

(25) The EU Recovery prospectus referred to in Article 14a of Regulation (EU) 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

[54] 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).

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 short-form 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 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. 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 limited for secondary issuances of shares. 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 or information to be provided when the issuer has a complex financial history or has made a significant financial commitment should be excluded from the page limit.

(28) One of the key objectives of the Capital 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 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 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 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 the content of the EU Growth issuance 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 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.

(30) The EU Growth issuance 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 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 that have already 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 document should contain a short-form 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 document and should focus on key information enabling investors to decide which offers to the public and admissions to trading of shares to study further, and subsequently to review the EU Growth issuance document as a whole in order to take an informed investment decision.

(32) The EU Growth issuance document should be a harmonised document which is easy to 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 document should be disclosed in a standardised sequence. To further standardise and improve the readability of the EU Growth issuance 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 document is drawn up for secondary issuances of shares. That page limit should also be efficient in terms of the lighter requirements as to the content of the EU Growth issuance 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 should be excluded from the page limit.

(33) The EU Follow-on prospectus and the EU Growth issuance document should complement the other forms of prospectuses 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 document.

(34) Risk factors that are material and specific to the issuer and 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, issuers should no longer be required to rank the most material risk factors, which is complicated and burdensome for issuers. To improve the comprehensibility 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 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.

(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')[55]. 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.

(37) To remove unnecessary costs and burdens and to increase the efficiency and effectiveness of the incorporation into the prospectus of information by reference, companies should not be required to publish a supplement for updating the annual or interim financial information incorporated by reference in a base prospectus which is still valid.

(38) Regulation (EU) 2017/1129 promotes the convergence and harmonization of rules about the scrutiny and approval of prospectuses by competent authorities. In particular, criteria for the scrutiny of the completeness, comprehensibility, and

[55] 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).

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')[56] 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 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 information that competent authorities may require to be disclosed and the procedures and timeline for the approval of the prospectus.

(39) Peer reviews conducted 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 peer reviews on the scrutiny and approval of prospectuses on a regular basis and specify the appropriate time periods.

(40) Article 21 of Regulation (EU) 2017/1129 requires, for an IPO of shares, the publication of 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, 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 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 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

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

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 expires 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 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 a supplement is 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. To reduce unnecessary burdens significantly, companies should be allowed to draw up the prospectus in a language customary in the sphere of international finance, irrespective of whether the offer or admission to trading is domestic or cross border, while the translation requirement should 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 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 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, it should be clarified that, in the case of an admission to trading on an EU regulated market or 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 expended 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.

(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 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 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 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 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 the EU Follow-on prospectus and for the EU Growth issuance document. In particular, that report should assess whether those new regimes strike a proper balance between investor protection and the reduction of administrative burdens.

(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.

(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. That definition 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) 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 (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(5) of Regulation (EU) No 596/2014, it should be specified that the market sounding regime and the related requirements 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 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 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 information related to intermediate steps is not sufficiently mature and hence should not be disclosed. In that case, the issuer should only disclose the information related to the event that this protracted process intends to bring about, at the moment when such information is sufficiently precise, 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 of the relevant information by the issuer and ensure a consistent interpretation of the requirement, the Commission should be empowered to adopt a delegated act to set out a non-exhaustive list of relevant information, and, for each information, the moment when the issuer could be reasonably expected to disclose it.

(60) Issuers should ensure the confidentiality of information related to intermediate steps where the event, 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. 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 on external factors or that do not involve active investment 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 initiative 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 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, ESMA should also be able to set up such platforms also with public bodies monitoring wholesale commodity markets, 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 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. The level of cross-border dimensions should be determined by the Commission in a delegated act. Furthermore, that mechanism for exchanging order book data should at first only concern shares, 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 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.

(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, the 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. Those sanctions should be determined based on the total annual turnover of the company. The sanctions determined based 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. In those cases, it is also appropriate to lower the minimum of the maximum level of sanctions for SMEs, as expressed in absolute amounts, in order to ensure their proportionate treatment.

(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[57]. 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[58]. 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.

(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, 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

[57] 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).

[58] 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).

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[59]. 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,

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 % of the number of securities already admitted to trading on the same market;

(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 an insolvency or restructuring procedure;

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

(iii) a document containing the information set out in Annex IX is filed 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).';

(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 point (db)(iii) shall have a maximum length of 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 offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except those offers of securities to the public 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).';

(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 % 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 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the third 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 an insolvency or restructuring procedure;

(iii) a document containing the information set out in Annex IX is filed 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).

(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 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 point (ba)(iii) shall have a maximum length of 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 offers of securities to the public that have been made 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 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).';

(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 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) 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;'.

(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.

The total aggregated consideration for the securities offered, as referred to in the first subparagraph, point (b), shall take into account the total aggregated consideration of all offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except those offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus pursuant to Article 1(4), first subparagraph.

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

(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 [*1], shall not be taken into account for the maximum length referred to in paragraph 4 of this Article.

[*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 3 additional sides of A4-sized paper where there are more 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, 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.

The summary of an EU Follow-on prospectus or of an EU Growth issuance 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 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 Secondary prospectus or of the EU Growth issuance 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 subparagraph, points (a) and (b), the summary of an EU Follow-on prospectus or of an EU Growth issuance 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 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 3 additional sides of A4-sized paper where there are more 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 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 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[*2];

(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.

[*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 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 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) 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.

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.

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[*3].

4. The EU Follow-on prospectus shall be drawn up as a single document containing 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, 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.

[*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 document

1. Without prejudice to Article 1(4) and Article 3(2), the following persons shall draw up an EU Growth issuance 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 offers of securities to the public that have been made in the 12 months preceding the start date of a new offer of securities to the public, except for offers of securities to the public that were subject to any exemption from the obligation to publish a prospectus in accordance with Article 1(4), first subparagraph, or pursuant to Article 3(2).

2. By way of derogation from Article 6(1) and without prejudice to Article 18(1), an EU Growth issuance 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 on the overall capital structure of the issuer, and the use of proceeds.

3. The information contained in the EU Growth issuance 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 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 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, shall not be taken into account for the maximum length referred to in paragraph 5 of this Article.

7. The EU Growth issuance document shall be a document of a standardised format and the information disclosed in an EU Growth issuance 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.';

(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 drawing up the prospectus, issuers, offerors or persons asking for admission to trading on a regulated market shall 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.';

(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 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).';

(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 (b) is replaced by the following:

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

(iii) point (f) is replaced by the following:

'(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 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 annual or interim financial information incorporated by reference in a base prospectus that is still valid under Article 12(1).';

(18) Article 20 is amended as follows:

(a) paragraph 6a is deleted;

(b) 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.';

(c) paragraph 11 is replaced by the following:

'11. The Commission is empowered to adopt 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;

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

(c) the maximum timeframe 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.

The maximum timeframe referred to in point (c) shall include any competent authority's requests to issuers to change the prospectus or provide supplementary information, as referred to in paragraph 4.';

(d) paragraph 13 is 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, 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 [3 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 3 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 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;

(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 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 and 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) paragraphs 1 and 2 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 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 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 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.

3. Where, in accordance with paragraphs 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.

4. Where all criteria laid down in paragraphs 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.

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.

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

(24) 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;';

(25) 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), (6) and (6b) in respect of that application.';

(26) 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 16(5), Article 20(11), Article 29(6) 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 16(5), Article 20(11), Article 29(6) 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 16(5), Article 20(11), Article 29(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.';

(27) 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 (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.';

(28) Article 47a is deleted;

(29) in Article 48, 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 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 documents;

(b) an analysis of whether the EU Growth issuance 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 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 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.';

(30) the following Article 50 is added:

'*Article 50*

Transitional provisions

1. 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.

2. 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.';

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

(32) Annex Va is deleted;

(33) 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:

(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.’;

(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.’;

(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 those conditions, the 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).';

(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.';

(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.';

(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 intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about a set of circumstances or an event.';

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

'1a. The Commission shall be empowered to adopt a delegated act to set out and review, where necessary, a non-exhaustive list of relevant information and, for each information, the moment when the issuer can be reasonably expected to disclose it.

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 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 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.';

(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:

'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, 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).’;

(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.’;

(d) paragraph 6 is deleted;

(e) 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, 1a and 1b.

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.’;

(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

(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 by the person discharging managerial responsibilities, or result from external factors or third parties, or are the exercise of derivatives based on predetermined terms.’;

(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;’;

(42) Article 25 is amended as follows:

(a) the following paragraph 1a is inserted:

‘1a. ESMA shall 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.’;

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

‘Article 25a

Mechanism to exchange order book data

1. Competent authorities supervising trading venues with a significant cross-border dimension shall, by [12 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 referred to in paragraph 2 and collected from those trading venues in accordance with Article 25 of Regulation (EU) No 600/2014 with respect to the instruments traded in such market. Competent authorities may delegate the set-up of the mechanism to ESMA.

Where a competent authority submits a request for data under paragraph 2, the requested competent authority shall provide that data in a timely manner and not later than 1 calendar day from the date of the request. The request for ongoing data from a competent authority may be submitted for a specific set of instruments.

2. A competent authority may obtain order book data originating from a trading venue that has a 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 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 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 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.

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. The Commission is empowered to adopt delegated acts 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 at least the market share of the

trading venues on the instruments. The Commission shall review such list at least every 4 years.

6. The Commission is empowered to adopt delegated acts in accordance with Article 35 to amend paragraph 2 by updating the financial instruments, taking into account 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 concerns about market integrity or the good 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) of Regulation (EU) No 1095/2010.

ESMA may also decide to initiate and coordinate on-site inspections. It shall invite the competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform to participate in such on-site inspections.

ESMA may also 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 functioning of markets affect both financial and spot markets.';

(44) Article 28 is deleted

(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).';

(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 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. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose administrative sanctions of at least EUR 2 500 000, or, where the legal person is an SME, 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. Instead of the minimum amount based on the total annual turnover, competent authorities may exceptionally impose administrative sanctions of at least EUR 1 000 000, or where the legal person is an SME, 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.';

(b) 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).';

(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 duplication of criminal and administrative proceedings and penalties for the same breach against the responsible person.';

(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(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(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(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.';

(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 surveillance mechanism in relation to market abuse, including recommendations for enforcing such mechanism; and'.

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

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

Article 1, point(6)(b) and (c), and Article 2, point (38)(a), shall apply from [12 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*