Commission Delegated Regulation (EU) 2020/1273 of 4 June 2020 amending and correcting Delegated Regulation (EU) 2019/980 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 (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/1273

of 4 June 2020

amending and correcting Delegated Regulation (EU) 2019/980 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC[(1)], and in particular paragraphs 1 and 2 of Article 13, Article 14(3) and Article 15(2) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2019/980[(2)] lays down the information that issuers of equity and non-equity securities are required to disclose. Non-equity securities are subject to less stringent disclosure requirements than equity securities. Some equity securities, such as certain types of convertible, exchangeable and derivative securities, are similar to non-equity securities before being converted or before the rights conferred by them being exercised. Therefore, it is appropriate to subject issuers of those convertible, exchangeable and derivative securities to the lighter disclosure rules applicable to non-equity securities.

(2) Under Regulation (EU) 2017/1129, issuers can use a universal registration document to disclose the annual financial report required under Directive 2004/109/EC of the European Parliament and of the Council[(3)]. Delegated Regulation (EU) 2019/980 requires issuers using that option to provide the complete universal registration document in Extensible Hypertext Markup Language (XHTML) format, which is a disproportionate administrative burden. Article 24(4) and Article 25(5) of Delegated Regulation (EU) 2019/980 should therefore be amended to allow issuers to submit only the information contained in the annual financial report in XHTML format.

(3) Section 3 of Chapter II of Delegated Regulation (EU) 2019/980, on additional information to be included in the prospectus, applies to all types of prospectuses,

including the EU Growth prospectus. As the EU Growth prospectus is subject to a standardised format and sequence, it is necessary to clarify the order of disclosure of information items relating to derivative securities and, where applicable, to the underlying shares and/or to the information to be disclosed if consent to use the prospectus is given in accordance with Article 5(1) of Regulation (EU) 2017/1129. Article 32 of Delegated Regulation (EU) 2019/980 and Annexes 26 and 27 to that Regulation should be updated accordingly.

(4) Article 2(4) of Regulation (EU) 2019/2115 of the European Parliament and of the Council[(4)] amended Annex V to Regulation (EU) 2017/1129 by making the requirement to disclose the working capital statement in the EU Growth prospectus applicable to all issuers of equity securities, irrespective of their market capitalisation. Article 32(1), point (g), of Delegated Regulation (EU) 2019/980 and Annex 26 to that Regulation should be amended accordingly.

(5) Annexes 1, 3, 6 to 9, 24 and 25 to Delegated Regulation (EU) 2019/980 require that for most equity and non-equity securities, the historical annual financial information is to be independently audited and that the audit report is to be prepared in accordance with Directive 2006/43/EC of the European Parliament and of the Council[(5)] and Regulation (EU) No 537/2014 of the European Parliament and of the Council[(6)]. Those Annexes also require that, where Directive 2006/43/EC and Regulation (EU) No 537/2014 do not apply and where those audit reports on the historical financial information have been refused by the statutory auditors or where they contain qualifications, modifications of opinion, disclaimers or an emphasis of matter, such qualifications, modifications, disclaimers or emphasis be reproduced in full and the reasons given. To enable investors to take informed investment decisions, it is appropriate to subject issuers to the aforementioned disclosure requirements, irrespective of whether Directive 2006/43/EC or Regulation (EU) No 537/2014 apply. Annexes 1, 3, 6 to 9, 24 and 25 to Delegated Regulation (EU) 2019/980 should therefore be amended accordingly.

(6) Where the simplified disclosure regime for secondary issuances is applicable, Annex 4 to Delegated Regulation (EU) 2019/980 requires collective investment undertakings to provide information stemming from certain sections and items of Annex 3. To align with the disclosure requirements for primary issuances, that list of sections and items should be amended to include information on material contracts and exclude pro forma financial information.

(7) In the securities note for secondary issuances of non-equity securities, the description of the type, class, and amount of the securities being offered or admitted to trading should be set out under category B in the same way as for primary issuances, as not all details of that information are known at the time of approval of the base prospectus. Furthermore, to align with the disclosure requirements for primary issuances, it is necessary to clarify that for secondary issuances of retail non-equity securities, where the prospectus summary is substituted in part with the information set out in Article 8(3), points (c) to (i) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council[(7)], that information should also be contained in the securities note. Annex 16 to Delegated Regulation (EU) 2019/980 should be amended accordingly.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1273. (See end of Document for details)*

(8) Article 33(7) of Delegated Regulation (EU) 2019/980 erroneously refers to Annex 22 to that Regulation, instead of Annex 23. That error should be corrected.

(9) Article 26(4) of Regulation (EU) 2017/1129 requires that a registration document or a universal registration document notified in accordance with paragraph 2 of that Article contains an appendix setting out the key information on the issuer referred to in Article 7(6) of that Regulation. Point (g) of Article 42(2) of Delegated Regulation (EU) 2019/980 erroneously requires that such appendix is to be submitted in any case and not only where such appendix is required. That error should be corrected.

(10) Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/980 started applying as of 21 July 2019. For reasons of legal certainty and to ensure that issuers are not subject to unnecessary administrative burdens, Article 1, points (1) to (8), and Article 2 of this Delegated Regulation should have the same date of application as Regulation (EU) 2017/1129 and Delegated Regulation (EU) 2019/980.

(11) In the interest of legal certainty, prospectuses approved between 21 July 2019 and 16 September 2020, should continue to be valid until the end of their validity,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2019/980

Delegated Regulation (EU) 2019/980 is amended as follows:

(1) Article 2 is replaced by the following:

Article 2

Registration document for equity securities

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

2 By way of derogation from paragraph 1, the registration document for the following securities, where those securities are not shares or other transferrable securities equivalent to shares, may be drawn up in accordance with Article 7 of this Regulation for retail securities or Article 8 of this Regulation for wholesale securities:

a the securities referred to in Articles 19(1) and 20(1) of this Regulation;

b the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market;

c the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.;

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1273. (See end of Document for details)*

(2) Article 4 is replaced by the following:

Article 4

Registration document for secondary issuances of equity securities

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

2 By way of derogation from paragraph 1, the registration document for the following securities, where those securities are not shares or other transferrable securities equivalent to shares, may be drawn up in accordance with Article 9:

a the securities referred to in Articles 19(1) and 20(1) of this Regulation;

b the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market;

c the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.;

(3) Article 12 is replaced by the following:

Article 12

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

1 For equity securities or units issued by collective investment undertakings of the closed-end type, the securities note shall contain the information referred to in Annex 11 to this Regulation, unless it is drawn up in accordance with Articles 14 or 15 of Regulation (EU) 2017/1129.

2 By way of derogation from paragraph 1, the securities note for the securities referred to in paragraphs 1 and 2 of Article 19 and paragraphs 1 and 2 of Article 20 of this Regulation, where those securities are not shares or other transferrable securities equivalent to shares, shall be drawn up in accordance with Article 15 of this Regulation for retail securities or Article 16 of this Regulation for wholesale securities.;

(4) Article 13 is replaced by the following:

Article 13

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

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

2 By way of derogation from paragraph 1, the specific securities note for the securities referred to in paragraphs 1 and 2 of Article 19 and paragraphs 1 and 2 of Article 20 of this Regulation, where those securities are not shares or other transferrable securities equivalent to shares, shall be drawn up in accordance with Article 17 of this Regulation.;

(5) in Article 24, paragraph 4 is replaced by the following:

4. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information referred to in that Article shall be presented in accordance with Commission Delegated Regulation (EU) 2019/815[(8)].;

(6) in Article 25, paragraph 5 is replaced by the following:

5. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information referred to in that Article shall be presented in accordance with Commission Delegated Regulation (EU) 2019/815.;

(7) Article 28 is replaced by the following:

Article 28

EU Growth registration document for equity securities

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

2 By way of derogation from paragraph 1, the specific registration document for the following securities, where those securities are not shares or other transferrable securities equivalent to shares, may be drawn up in accordance with Article 29 of this Regulation:

a the securities referred to in Articles 19(1) and 20(1) of this Regulation;

b the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market;

c the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.;

(8) Article 30 is replaced by the following:

Article 30

EU Growth securities note for equity securities

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