Commission Delegated Regulation (EU) 2019/1011 of 13 December 2018 amending Commission Delegated Regulation (EU) 2017/565 as regards certain registration conditions to promote the use of SME growth markets for the purposes of Directive 2014/65/EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/1011

of 13 December 2018

amending Commission Delegated Regulation (EU) 2017/565 as regards certain registration conditions to promote the use of SME growth markets for the purposes of Directive 2014/65/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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[(1)], and in particular Article 4(2) and Article 33(8) thereof,

Whereas:

(1) The Capital Markets Union initiative aims at reducing dependency on bank lending and diversifying market-based sources of financing for all smaller and medium-sized enterprises (SMEs) and in the issuance of bond and shares by SMEs on public markets. Companies established in the Union that seek to raise capital on trading venues are facing high one-off and ongoing disclosure and compliance costs which can deter them from seeking an admission to trading on Union trading venues in the first place. In addition, shares issued by SMEs on Union trading venues tend to suffer from lower levels of liquidity and higher volatility, which increases the cost of capital, making this source of funding too onerous.

(2) Directive 2014/65/EU has created a new type of trading venues, the SME growth markets, a subgroup of Multilateral Trading Facilities (‘MTFs’), in order to facilitate access to capital for SMEs and to facilitate the further development of specialist markets that aim to cater for the needs of SME issuers. Directive 2014/65/EU also anticipated that attention should be focused on how future regulation should further foster and promote the use of that market so as to make it attractive for investors, and provide a lessening of administrative burdens and further incentives for SMEs to access capital markets through SME growth markets.

(3) To ensure the liquidity and profitability of SME growth markets, Article 33(3)(a) of Directive 2014/65/EU requires that at least 50 % of the issuers whose financial instruments are admitted to trading on an SME growth market are SMEs issuing equity and/or debt securities. Under Directive 2014/65/EU, SME equity issuers are defined as

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/1011. (See end of Document for details)*

a company that had an average market capitalisation of less than EUR 200 million on the basis of the end-year quotes for the previous three calendars years. On the other hand, Commission Delegated Regulation (EU) 2017/565[(2)] provides that a non-equity (debt-only) SME issuer should meet at least two of the three following conditions: (i) the number of employees (less than 250); (ii) the total balance sheet (less than EUR 43 million); and (iii) the annual net turnover (less than EUR 50 million). This requirement for a non-equity issuer to qualify as an SME has been found to be too restrictive because such issuers tend to be larger than traditional SMEs. As a result, many non-equity issuers cannot qualify as SMEs under Delegated Regulation (EU) 2017/565, despite remaining relatively small. As they cannot meet the 50 % threshold of issuers qualifying as SMEs, many MTFs specialised in SME debt issuances or allowing both bond and shares issuances cannot register as SME growth markets. In turn, if operators of MTFs do not make use of SME growth markets framework, issuers on those MTFs cannot benefit from the lighter regulatory requirements foreseen to foster listings and issuances on these SME growth markets. In order to enable more MTFs to register as SME growth markets, the nominal value of an issuer's debt issuances (excluding loans) over the previous calendar year should therefore be laid down as the sole criterion for qualifying non-equity issuers as SMEs for the purposes of SME growth markets. The Commission will monitor the effectiveness of the new definition of non-equity SME issuer in enabling MTFs to register as SME growth markets and its impact on market developments and investor confidence.

(4) Delegated Regulation (EU) 2017/565 indicates that SME growth market should not have rules which impose greater burdens on issuers than those applicable to issuers on regulated markets. However, Article 78(2)(g) of Delegated Regulation (EU) 2017/565 requires issuers on SME growth markets to publish half-yearly financial reports. Non-equity issuers targeting professional clients on regulated markets on the other hand are not subject to the same obligation under Directive 2004/109/EC of the European Parliament and of the Council[(3)]. The production of half-yearly financial reports has been shown to be a disproportionate obligation imposed on non-equity SME growth market issuers. As many MTFs with a focus on SMEs do not require half-yearly financial report for non-equity issuers, such a mandatory requirement by Delegated Regulation (EU) 2017/565 appears to contribute to discouraging operators of MTFs from seeking registration as SME growth markets. The operator of a SME growth market should therefore have the flexibility to decide whether or not to impose the publication of half-yearly reports on non-equity issuers.

(5) Some SME growth market issuers have been seen to place a limited amount of their issued share capital in public hands, which makes the trading of those shares riskier for investors and has a negative impact on liquidity. This in turn acts as a disincentive for investors to invest on SME growth market listed shares. In order to ensure liquidity of shares and increase investors' confidence, SME growth market operators should therefore impose that a minimum amount of shares are placed in circulation for trading (‘free-float condition’) as a condition for admission to trading for the first time. SME growth market operators should however have the flexibility to set an appropriate threshold based on the particular circumstances of the market, including on whether

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the amount should be expressed in absolute value or in percentage of the total issued share capital.

(6) Delegated Regulation (EU) 2017/565 should therefore be amended accordingly.

(7) A minimum period of time after the entry into force of this Regulation should be given to incumbent operators of SME growth markets, to adapt their conditions for registration. Therefore, this Regulation should apply three months after its entry into force,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2017/565 is amended as follows:

(1) in Article 77, paragraph 2 is replaced by the following:

2. An issuer that has no equity instrument traded on any trading venue shall be deemed an SME for the purposes of Article 4(1)(13) of Directive 2014/65/EU if the nominal value of its debt issuances over the previous calendar year, on all trading venues across the Union, does not exceed EUR 50 million.;

(2) in Article 78, paragraph 2 is amended as follows:

(a) the following point (j) is added:

(j) requires issuers seeking admission of their shares to trading on its venue for the first time to allocate a minimum amount of their issued shares available for trading on the MTF, in accordance with a threshold to be established by the operator of the MTF and expressed either as an absolute value or as a percentage of the total issued share capital.;

(b) the following subparagraph is added:

The operator of an MTF may exempt issuers that have no equity instruments traded on the MTF from the requirement to publish half-yearly financial reports referred to in point (g) of the first subparagraph of this paragraph. Where the operator of an MTF exercises the option pursuant to the first sentence of this subparagraph, the competent authority shall not require, for the purposes of point (g) of the first subparagraph, that issuers that have no equity instruments traded on the MTF be required to publish half-yearly financial reports..

Article 2

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

It shall apply from 11 October 2019.

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