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 (Text with EEA relevance)

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

(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 Article 9(14), paragraphs (1) and (2) of Article 13, Articles 14(3), 15(2) and 20(11) thereof,

Whereas:

(1) Regulation (EU) 2017/1129 lays down requirements to be complied with when drawing up prospectuses. The requirements concerning the scrutiny, review, approval and filing of the universal registration document and any amendments thereto, the requirements concerning the format of the prospectus, the base prospectus and the final terms, the specific information to be included in a prospectus, the minimum information to be included in the universal registration document, the reduced information to be included under the simplified disclosure regime for secondary issuances, the reduced content, the standardised format and the sequence of the EU Growth prospectus, the reduced content and standardised format of the specific summary and the scrutiny and approval of prospectuses all need to be specified.

(2) The content and the format of a prospectus depend on a variety of factors, such as the type of issuer, type of security, type of issuance as well as the possible involvement of a third party as a guarantor and the question of whether or not there is an admission to trading. It is therefore not appropriate to lay down the same requirements for all types of prospectuses. Specific information requirements should be laid down instead and should be combined depending on those factors and the type of prospectus. This should however not prevent an issuer, offeror or person asking for admission to trading

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/980. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

on a regulated market to provide in the prospectus the most comprehensive information available.

(3) To ensure legal certainty and increase transparency for investors, issuers should state in their universal registration document whether the universal registration document has been approved by the competent authority or merely has been filed and published without prior approval.

(4) The alleviated information requirements for secondary issuances should reflect the specificities of equity and non-equity securities.

(5) Collective investment undertakings of the close-end type pursue specific investment objectives and might be subject to specific investment restrictions. The registration documents for those undertakings should therefore be subject to specific information requirements.

(6) Due to the indirect link between the investor and the underlying shares of depository receipts, it is important that the investor is informed about the issuer of the underlying shares. The prospectus for depository receipts should therefore contain, apart from information about the depositary receipt and the issuer of the depository receipt, information about the underlying shares and the issuer of those underlying shares.

(7) The information contained in prospectuses for non-equity securities should be adapted to the level of knowledge and expertise of each type of investor. Prospectuses for non-equity securities in which retail investors can invest should therefore be subject to more comprehensive and distinct information requirements than prospectuses for non-equity securities that are reserved to qualified investors.

(8) The obligation to produce a prospectus applies to non-equity securities issued by third countries and their regional and local authorities in cases where those entities wish to make a public offer of securities in the Union or wish their securities to be admitted to trading on a regulated market. Due to the particular nature of those public entities, specific information requirements should be laid down.

(9) Investors should be able to understand the situation of an issuer with a complex financial history and the expected effects of a transaction involving a significant financial commitment. Those issuers should therefore be required to include additional information in the prospectus to that effect.

(10) Where securities are exchangeable for or convertible into shares that are already admitted to trading on a regulated market, shareholders and investors normally already have the information about the underlying shares of those securities. It is therefore sufficient to add to the prospectus a statement setting out the type of the underlying share and details of where information about the underlying share can be obtained.

(11) Investors may want to invest in securities that are exchangeable for or convertible into shares that are or will be issued by the issuer of those securities or by an entity belonging to that issuer’s group and that have not yet been admitted to trading on a regulated market. Those investors should have the same information about the ability of the issuer of the underlying shares to continue its operations and about its indebtedness

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/980. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

compared to its capitalisation as investors that have invested in those shares directly. The prospectus should therefore contain a working capital statement as well as a statement of capitalisation and indebtedness of the issuer of the underlying shares.

(12) Derivative securities entail particular risks for investors because, for instance, the losses might be higher than the investment made and because the underlying is not always admitted to trading on a regulated market and information about that underlying might therefore not be available. Some non-equity securities, such as structured bonds, also incorporate certain elements of a derivative security. Consequently, the securities note should contain additional information about the underlying of a derivative security or about the derivative component of the non-equity security and, where applicable, a statement about the potential losses that investors might face.

(13) Where a base prospectus is drawn up for securities linked to or backed by an underlying asset, that base prospectus should contain all information about the type of underlying asset where that underlying asset is known at the date of approval of the base prospectus. Market conditions may however change the choice of the underlying asset within a category of underlying assets. Only the final terms of the base prospectus should therefore contain specific details about that underlying asset.

(14) Guarantees are intended to ensure that the payments related to the security are duly serviced. Given the potential diversity in guarantees, clear information requirements related to the nature and the scope of those guarantees should be laid down.

(15) The format of the prospectus, base prospectus and final terms should be specified by determining the order in which the required information should be disclosed. However, due to the multipurpose character of the universal registration document, issuers who choose to draw up and publish a universal registration document every financial year should be granted more flexibility as regards the order of information to be provided in the universal registration document.

(16) Whilst the base prospectus should contain all information available at the time of drawing up that base prospectus, it should be possible to leave blanks as regards specific information that only becomes available at a later stage and is to be found in the final terms, or to include a list of that missing information.

(17) It is not always required to include a summary into the prospectus. That should however not prevent the insertion of an overview section into the prospectus. To avoid confusion among investors, such overview section should however not be called a summary, unless it complies with all the requirements for summaries.

(18) The EU growth prospectus is intended to alleviate the administrative burden, in particular for SMEs. It is therefore appropriate to simplify the drafting of EU growth prospectuses by laying down a fixed order in which the information should be presented. However, to ensure that information is presented in a manner that is coherent and consistent with the different business models, flexibility should be allowed as regards the order of information items within each section of the EU growth prospectus.

(19) To allow for flexibility and to encourage the use of the EU growth prospectus, it should be possible that the EU growth prospectus is composed of separate documents. To avoid

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/980. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

the risk of duplicating information, separate detailed information requirements for the specific registration document on the one hand and for the specific securities note on the other should be laid down and adapted to the type of securities concerned, differentiating between equity and non-equity securities.

(20) The specific summary of the EU Growth prospectus should provide investors with key information needed to decide which offers of securities they want to study further by reviewing the prospectus as a whole. It should therefore convey the essential characteristics of, and risks associated with, the issuer and the securities offered and contain the general terms and conditions of the offer. However, given that the specific summary is only an introduction to the EU Growth prospectus and must be read together with the other parts thereof, the content of the specific summary should be consistent with those other parts. To ensure that the size of the specific summary is tailored to the reduced size of the EU Growth prospectus, the length of the summary should be restricted.

(21) To ensure that competent authorities apply harmonised standards across the Union when scrutinising prospectuses, and in particular the completeness, comprehensibility and consistency of the information contained in draft prospectuses, criteria for prospectus scrutiny should be laid down. Those criteria should be applied for the entire draft prospectus and any of its constituent parts, including the universal registration document and any amendments and supplements to the prospectus.

(22) A high level of investor protection should be ensured. Competent authorities should therefore be allowed to consider, where necessary, additional criteria for the scrutiny of the completeness, consistency and comprehensibility of draft prospectuses in order to adapt that scrutiny to the specific characteristics of a prospectus.

(23) Some issuers are involved into very specific business activities that require a profound knowledge of the activities concerned to have a full understanding of the securities issued by those issuers. That would apply for example in the case of a property company that could be required to disclose a valuation report providing all relevant details in respect of material properties necessary for the purposes of the valuation. Competent authorities should therefore be able to take a proportionate approach and require, where appropriate, that those specialist issuers include in the prospectus specific and adapted information about those activities that goes beyond the information required from non-specialist issuers.

(24) Due to the rapid evolution of securities markets, there is the possibility that certain types of securities that are not covered by the Annexes to this Regulation will be offered to the public or admitted to trading. In such a case, to enable investors to make an informed investment decision, competent authorities should decide in consultation with the issuer, offeror or person asking for admission to trading on a regulated market which information should be included in the prospectus.

(25) To drive efficiency in the process of drawing up the prospectus and eliminate unnecessary burdens, it is appropriate to allow the omission of information items set out in the Annexes to this Regulation that are not pertinent to the issuer or to the securities being offered or admitted to trading on a regulated market.

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/980. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(26) Scrutiny and approval of prospectuses is an iterative process. As such, the decision of the competent authority to approve the draft prospectus may involve several rounds of analysis of the draft prospectus and ensuing improvements by the issuer, offeror or person asking for admission to trading on a regulated market to ensure that the draft prospectus meets the standards of completeness, comprehensibility and consistency. To provide certainty about the approval process, it is necessary to specify which documents should be provided to competent authorities at the different stages of the approval process.

(27) For reasons of efficiency, competent authorities should be permitted to carry out a lighter scrutiny where a draft prospectus replicates information that has already been scrutinised or reviewed.

(28) To enable competent authorities to search for specific terms or words in submitted documents and thus to ensure an efficient and timely scrutiny process of the prospectuses, draft prospectuses and accompanying information should be submitted in searchable electronic format and through electronic means acceptable to the competent authority.

(29) Issuers, offerors or persons asking for admission to trading on a regulated market should be able to demonstrate to the competent authority how they addressed issues notified by that authority. Each draft of the prospectus submitted to the competent authority, with the exception of the first draft, should therefore contain both a marked-up version that clearly highlights all changes made to the previously submitted draft, and a clean version where such changes are not highlighted.

(30) To minimise delays in the scrutiny process, competent authorities should be able to identify quickly information requirements that are not applicable or not relevant. For that purpose, the competent authorities should be informed about the information that has not been included in the draft prospectus.

(31) To facilitate the drawing up of a prospectus and thus to facilitate the raising of capital by undertakings established in the Union, and to ensure that common standards are applied when scrutinizing and approving prospectuses, all requirements related to the format, content, scrutiny and approval of prospectuses should be laid down in a single Regulation.

(32) Since this Delegated Regulation replaces Commission Regulation (EC) No 809/2004[(2)], the latter has become obsolete and should therefore be repealed.

(33) For reasons of coherence, the application of this Regulation should be deferred until the date of application of Regulation (EU) 2017/1129,

HAS ADOPTED THIS REGULATION: