Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/979. 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)EUR 2019 No. 979 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301 (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/979

of 14 March 2019

supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301

(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 Articles 7(13), 21(12), 21(13), 22(9), 23(7) and 25(7) thereof,

Whereas:

(1) The key financial information in the summary of a prospectus should present the key financial figures that provide investors with a succinct overview of the issuer's assets, liabilities and profitability, as well as any other key financial information that is relevant for investors to make a preliminary assessment of the financial performance and financial position of the issuer. In order to ensure that this information is concise and relevant, it is therefore necessary to identify a limited number of disclosures, specify their layout and calibrate the financial information to take account of different types of issuers and securities.

(2) In order to avoid misleading investors, issuers should be entitled to include specific additional disclosures, including alternative performance measures, where they consider that the required disclosures do not provide a clear picture of their performance and financial position. However, to ensure that investors focus primarily on the figures stemming from financial statements, alternative performance measures should not be given more prominence in the prospectus than the figures extracted from the historical financial information.

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(3) In order to reduce compliance costs and administrative burdens on issuers, the key financial information in the summary of a prospectus, including additional line items and alternative performance measures, should reproduce information disclosed in the body of the prospectus.

(4) It is appropriate that the key financial information in the summary of a prospectus is adapted to the economic activity of the issuer, its industrial sector, the major line items of its financial statements and the type of securities being issued or offered. However, it is not possible to provide specific templates for all types of issuers.

(5) To avoid misleading investors and ensure consistency with the information included in the prospectus, where the historical financial information included in the prospectus is restated in case of material errors contained in the financial statements or changes in accounting standards, the key financial information in the summary of a prospectus should reflect that restated historical financial information.

(6) Where an issuer has a complex financial history, it should, where appropriate, present both its financial information and the financial information relating to another entity or entities within a standalone section in the summary of the prospectus.

(7) Investors need clarity as regards which information forms part of the prospectus and to whom an offer of securities to the public is addressed. Therefore, with the exception of information incorporated by reference, where the prospectus contains hyperlinks, it should inform investors that the information on the related websites is not part of the prospectus and has not been scrutinised or approved by the competent authority. Furthermore, measures should be established to prevent websites used for the publication of the prospectus targeting residents in Member States or third countries where the offer of securities to the public does not take place, such as by including on the website a statement identifying the addressees of the offer.

(8) Reporting and publication of data in an electronic, machine-readable format facilitates the efficient use and exchange of that data. The list of data fields to be reported to the European Securities and Markets Authority (ESMA) for the classification of prospectuses should therefore be specified and the use of XML format templates should be required to ensure that such fields are machine-readable. The list of data should be sufficiently comprehensive to ensure that ESMA meets its mandate under Article 47 of Regulation (EU) 2017/1129 to publish a yearly report containing statistics on the prospectuses approved and notified in the Union, as well as an analysis of trends taking into account the type of issuers and the type of issuances.

(9) To avoid misleading retail investors during the process of marketing any security proposed for public offers or admission to trading on a regulated market, an advertisement should not purport to be the principal information document. Accordingly and in order to avoid confusion with the prospectus, advertisements should not be inappropriately long.

(10) Advertisements relating to an offer of securities to the public or an admission to trading on a regulated market can become inaccurate or misleading where a significant new factor, material mistake or material inaccuracy relating to the information in the

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corresponding prospectus arises. Requirements should be established to ensure that advertisements are amended without undue delay where they become inaccurate or misleading due to such a new factor, material mistake or material inaccuracy.

(11) To allow investors to take informed investment decisions, the information contained in advertisements should not present an unbalanced view for example by presenting negative aspects of such information with less prominence than the positive aspects.

(12) As alternative performance measures can disproportionally influence investment decisions, information about an offer to the public or an admission to trading on a regulated market circulated outside the prospectus should not be permitted to contain such measures, unless they are included in the body of the prospectus.

(13) Competent authorities in host Member States do not scrutinise prospectuses. Therefore, to ensure that investors in host Member States are adequately protected, when the competent authority of the host Member State seeks the assistance of the competent authority in the home Member State, it should communicate the information that is relevant for the competent authority in the home Member State to assess the consistency of the advertisement with the content of the prospectus. Such communication should occur within the appropriate timeframe to ensure that investors in host Member States are not penalised by the fact that host competent authorities do not scrutinise prospectuses and have sufficient time to analyse the underlying public offering. The competent authority in the host Member State should be informed to the degree necessary to exercise control over the compliance of advertising activity in its jurisdiction.

(14) To ensure a consistent application of Regulation (EU) 2017/1129 and to take account of technical developments on financial markets, it is necessary to specify situations where the publication of supplements to the prospectus is required. It is not possible to identify all situations where a supplement to the prospectus is required as this may depend on the issuer and securities involved. Therefore, it is appropriate to specify the minimum situations where a supplement is required.

(15) Annual audited financial statements are crucial for investors when making investment decisions. To ensure that investors base their investment decisions on the most recent financial information, it is necessary to require the publication of a supplement incorporating new annual audited financial statements of issuers of equity securities and issuers of underlying shares where depository receipts are published after the approval of the prospectus.

(16) Given that profit forecasts and profit estimates can influence an investment decision, it is necessary to publish a supplement containing any amendments to implicit or explicit figures constituting profit forecasts or profit estimates or the withdrawal of a profit forecast or profit estimate already included in the prospectus. For the same reason, in case of equity securities and depositary receipts, it is also necessary to produce a supplement to the prospectus where a new profit forecast or profit estimate has been published before the end of the offer period or before admission to trading.

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(17) Information concerning the identity of the main shareholders or any controlling entity of the issuer is vital for an informed assessment of the issuer. However, change of control of the issuer is particularly significant where the offer refers to equity securities, which are generally more price sensitive to changes of issuers. Therefore, a supplement should be published where there is a change of control of an issuer of equity securities or an issuer of underlying shares of depository receipts.

(18) It is essential that potential investors assessing an outstanding offer of equity securities are in a position to compare the terms and conditions of such an offer with the price or exchange terms attached to any public takeover bid announced during the offer period. Moreover, the result of a public takeover bid is significant for the investment decision as investors need to know whether it implies or not a change of control of the issuer. It is therefore necessary to publish a supplement in the case of any new public takeover bid.

(19) Where the working capital statement is no longer valid, investors are unable to make a fully informed investment decision about the issuer's financial situation. Investors should be in a position to reassess their investment decisions in light of the new information on the issuer's ability to access cash and other available liquid resources to meet its liabilities. In order to do so, a supplement is necessary.

(20) After the approval of a prospectus, an issuer or offeror may decide to offer the securities in Member States other than those referred to in the prospectus, or to apply for admission to trading of the securities on regulated markets in Member States other than those provided for in the prospectus. Information about such offers and admissions therein is important for the investor's assessment of certain aspects of the issuer's securities and it is therefore appropriate to require a supplement in such cases.

(21) The financial position or the business of the entity is likely to be affected by a significant financial commitment. Therefore, investors should be entitled to receive additional information on the consequences of that commitment in a supplement to the prospectus.

(22) An increase of the aggregate nominal amount of an offering programme provides information on issuers' increased financing needs or an increase in demands for the issuers' securities. In such a case, a supplement to the prospectus should be published.

(23) Relevant competent authorities should receive in a timely manner via the notification portal the prospectus and accompanying data, together with a certificate of approval that states that the prospectus has been drawn up in accordance with Regulation (EU) 2017/1129. ESMA should ensure that the notification portal preserves the security and integrity of the information exchanged between competent authorities. Competent authorities remain responsible for the submission of such information. In order to enable a smoothly and timely operation of the notification portal, it is necessary to specify the accompanying data that is to be uploaded to that notification portal.

(24) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)], ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation. However, ESMA has

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not consulted that stakeholder group on the draft regulatory technical standards on the technical arrangements for the notification portal as those arrangements only affect ESMA and national competent authorities.

(25) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.

(26) Since this Regulation replaces Commission Delegated Regulation (EU) No 382/2014[(3)] and Commission Delegated Regulation (EU) 2016/301[(4)], those Delegated Regulations become obsolete and should therefore be repealed.

(27) As this Regulation supplements provisions of Regulation (EU) 2017/1129, its application should be deferred until the date of application of Regulation (EU) 2017/1129,

HAS ADOPTED THIS REGULATION:

CHAPTER I

KEY FINANCIAL INFORMATION IN THE PROSPECTUS SUMMARY

SECTION 1

Content of the key financial information in the prospectus summary

Article 1

Minimum content of the key financial information in the summary of a prospectus

1 The key financial information in the summary of a prospectus shall be made up of the financial information laid down in the Annexes to Commission Delegated Regulation 2019/980[(5)].

2 Where any information referred to in the relevant tables set out in Annexes I to VI to this Regulation is not included in the financial statements of the issuer, the issuer shall disclose a corresponding item from its financial statements instead.

3 The issuer may include additional line items or alternative performance measures in the summary of a prospectus where these are key financial information on the issuer or on the securities being offered or admitted to trading on a regulated market. For the purposes of the first sentence, alternative performance measures shall be financial measures of historical or future financial performance, financial position or cash flows, other than financial measures defined in the applicable financial reporting framework.

4 Issuers who do not fall under any of the types of issuers identified in Articles 2 to 8 shall present the key financial information referred to in the tables that they consider correspond most closely to the type of securities issued.

5 The key financial information shall be presented for the number of years required by Delegated Regulation 2019/980 for the type of issuance and the type of securities being issued.